

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

William T. Hurley, Jr.,  
as Trustee of the Aiken Property Trust,

**RECEIVED**  
**Feb 04 2025**  
**SC Court of Appeals**

Respondent,

vs.

Linda Donovan,

Appellant.

---

**RECORD ON APPEAL (v. 2 of 4)**

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|                                    |   |                                        |
|------------------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA            | ) | IN THE COURT OF COMMON PLEAS           |
|                                    | ) | SECOND JUDICIAL CIRCUIT                |
| COUNTY OF AIKEN                    | ) |                                        |
|                                    | ) | CASE NO: 2022-CP-02-02654              |
| William T. Hurley, Jr., as Trustee | ) |                                        |
| of the Aiken Property Trust,       | ) |                                        |
|                                    | ) |                                        |
| Plaintiff,                         | ) | <b>MEMORANDUM OF LAW IN OPPOSITION</b> |
|                                    | ) | <b>OF PLAINTIFF'S MOTION FOR</b>       |
| vs.                                | ) | <b>JUDGMENT ON THE PLEADINGS</b>       |
|                                    | ) |                                        |
| Linda Donovan,                     | ) |                                        |
|                                    | ) |                                        |
| Defendant.                         | ) |                                        |
| _____                              | ) |                                        |

TO: THE ABOVE-NAMED PLAINTIFF AND HIS ATTORNEY, MATTHEW L. JEPERTINGER, ESQ.:

Defendant Linda Donovan ("Defendant"), by and through her undersigned counsel, respectfully submits this Memorandum of Law in opposition to Plaintiff's Motion for Judgment on the Pleadings. As discussed more fully below, Plaintiff William T. Hurley, Jr. ("Plaintiff") alleged causes of action contain issues of fact to be dealt with in regards to the beneficiary of Trust One- JJD, and subsequently the Aiken Property Trust. Accordingly, this Court should stay the proceedings until the Massachusetts Superior Court has come to a final determination of the ongoing appeal of the final arbitration order against John J. Donovan. Sr.

#### **STATEMENT OF FACTS**

This action arises from Plaintiff's attempts to eject Defendant from the Aiken Properties (Tax Map Nos.: 139-19-01-002 and 140-08-04-001). The Aiken Property Trust, of which Plaintiff is the current acting Trustee, purchased the Aiken Properties on January 14, 2015 for \$457,500.00 and \$1,042,500.00. A copy of the two deeds are attached hereto and incorporated herein as Exhibit A. The Aiken Properties were purchased for the benefit of John J. Donovan, Sr., and his wife, who is the Defendant. John J. Donovan, Sr. is the sole beneficiary of Trust One- JJD, which is the sole beneficiary of the Aiken Property Trust. John J. Donovan, Sr. was

and is still the sole beneficiary of Trust One- JJD as the arbitration award from November 10, 2021 that purported to extinguish John J. Donovan, Sr.'s entire beneficiary interest in Trust One- JJD is undergoing an appeal with the Massachusetts court system.

### **STANDARD OF REVIEW**

Under Rule 12(c), South Carolina Rules of Civil Procedure ("SCRCP"), "any party may move for judgment on the pleadings." "When considering such motion, the court must regard all properly pleaded factual allegations as admitted." *Falk v. Sadler*, 533 S.E.2d 350, 341 S.C. 281 (S.C. App. 2000), citing *Russell v. City of Columbia*, 305 S.C. 86, 406 S.E.2d 338 (1991).... A 12(c) motion shall be granted when "there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff's favor." *Sapp v. Ford Motor Co.*, 687 S.E.2d 47, 386 S.C. 143 (S.C. 2009), citing *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991). A judgment on the pleadings motion "tests only the sufficiency of the complaint and does not resolve the merits of the plaintiff's claims or any disputes of fact." *Massey v. Ojaniit*, 759 F.3d 343, 353 (4th Cir. 2014).

### **ARGUMENT**

Rule 12(c), SCRCP, requires that there is no issue of fact when looking at the Plaintiff's complaint. There are several issues of fact when looking at the face of the complaint. First, the November 10, 2021 arbitration order is not a final judgment of the Massachusetts Superior Court. John J. Donovan, Sr. is currently appealing the arbitration order. A copy of the Appeals Court Case Docket, Defendant's Emergency Motion to Enjoin the Dissipation of Trust Assets Pending Appeal, and Appellant's Motion to Enlarge Time to File Brief are attached hereto and incorporated herein as Exhibits B, C, and D, respectively.

This arbitration order is attempting to remove John J. Donovan, Sr. 's beneficiary interest in Trust One- JJD, which is the sole beneficiary of the Aiken Property Trust. There are no other beneficiaries named in either Trust besides John J. Donovan, Sr. A copy of Trust One- JJD and

a copy of the Aiken Property Trust are attached hereto and incorporated herein as Exhibits E and F, respectively.

Additionally, Plaintiff's Motion for Judgment on the Pleadings contends that the four-corners of the two deeds for the Aiken Properties establishes that Defendant has no right or interest to possess, use or occupy the Aiken Properties. This is incorrect. Defendant's Answer and Counterclaim outlines Defendant's argument that Plaintiff as Trustee of the Aiken Property Trust owed duties to the Defendant. Regardless, John J. Donovan, Sr. is named sole beneficiary for Trust One- JJD and subsequently the Aiken Property Trust. As his wife, Defendant is able to occupy the property and has spent her own money in the purchase and maintenance of the Aiken Properties.

Plaintiff refers to the 2020 Corrective Deed signed by both Defendant and her husband. Pl.'s Mem. 5. Plaintiff states that the "2020 Corrective Deed's unambiguous language establishes as a matter of law that Defendant and Donovan Sr. conveyed to the Aiken Trust any preexisting right or interest in the Aiken Properties." Pl.'s Mem. 8. This is incorrect as the 2020 Corrective Deed states "the undersigned hereby release and terminate any and all right, title and interest that may have been granted in the Option to Purchase and Right of First Refusal stated in a certain Life Estate, Will and Option to Purchase Real Estate . . . ." Pl.'s Compl. Ex. M. Defendant and her husband only relinquished any right or interest that may have been created in the referenced Life Estate document, not any currently existing right, title or interest in the Aiken Properties or John J. Donovan, Sr.'s interest as sole beneficiary of Trust One- JJD, which is the sole beneficiary of the Aiken Property Trust. A copy of the 2020 Corrective Deed is attached hereto and incorporated herein as Exhibit G.

### **CONCLUSION**

Defendant respectfully requests that the Court deny Plaintiff's Motion for Judgment on the Pleadings, or in the alternative, stay the proceedings until a final judgment is rendered in the Massachusetts court system.

Respectfully submitted,

s/Brad A. Brodie

Brad A. Brodie, ID 8632  
Smith, Massey, Brodie, Guynn & Mayes, LLC  
P.O. Box 519  
Aiken, SC 29802  
(803) 643-4110  
brodielawfirm@gmail.com

Attorneys for Defendant

March 24, 2023  
Aiken, South Carolina



2015001023  
DEED  
RECORDING FEES \$10.00  
STATE TAX \$1189.50  
COUNTY TAX \$503.25  
PRESENTED & RECORDED  
01-16-2015 08:30 AM  
JUDITH WARNER  
REGISTER OF MORTGAGE CONVEYANCE  
AIKEN COUNTY, SC  
BY: MARILYN SEIGLER DEPUTY  
BK: RB 4536  
PG: 790 - 793

ELECTRONICALLY FILED - 2023 Mar 24 4:08 PM - AIKEN - COMMON PLEAS - CASE#2022CPO202654

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN ) LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That H 'N D STABLES, LLC, a South Carolina limited liability company (successor to H 'n D Stables, Inc.), (hereinafter called "Grantor"), for and in consideration of the sum of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 Dollars (\$457,500.00), to it in hand paid at and before the sealing of these presents by WILLIAM T. HURLEY, JR. TRUSTEE OF AIKEN PROPERTY TRUST U/D JANUARY 14, 2015 (hereinafter called "Grantee"), the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto Grantee, his heirs, successors and assigns, the following described real estate, to wit:

All that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being in Southeast of the City of Aiken, in the County of Aiken , State of South Carolina, West of and adjoining Banks Mill Road (S.C. Highway No. S-2-79), containing 36.68 acres, more or less, as shown and designated upon a plat prepared for Ira E. Coward, et. al, by Southern Partners, Inc. dated December 30, 2004, and recorded February 14, 2005, in the Office of the RMC of Aiken County, South Carolina, in Plat Book 49 at Page 9-2. Reference is hereby made to said plat for a more complete and accurate description of said property as to metes, bounds and location.

This being the same property conveyed to H n' D Stables, Inc. by deed of Ira E. Coward, II, William L. Coward and Edgar A. Coward dated April 18, 2005, recorded May 12, 2005, in Title Book 2512 at Page 200, records of Aiken County, South Carolina. Thereafter, H 'n D Stables,

Inc. filed Articles of Amendment with the South Carolina Secretary of State (a copy of which are attached hereto and incorporated herein as Exhibit A) converting said entity to H 'n D Stables, LLC.

Tax Parcel No. 140-08-04-001

Grantee's Address: Trust One JDD  
William T. Hurley, Trustee  
c/o Verdolino and Lowery PC  
124 Washington Street  
Foxborough, MA 02035

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions as set forth on Exhibit B attached hereto and incorporated herein.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining thereto,

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Grantee, his heirs, successors and assigns forever, and the Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, his heirs and assigns, against Grantor and its successors and assigns and none other.

[Signatures Commence on Next Page]

WITNESS the Hand and Seal of the Grantor this 14 day of January, 2015.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

H 'n D Stables, LLC, a South Carolina limited  
liability company (successor to H 'n D Stables, Inc.)  
By: The R. Bruce Duchossois Revocable Trust u/a/d  
12/13/1989

Its: Sole Member

By: Thomas A. Smith (LS)  
Thomas A. Smith, not individually, but solely as  
Co-Trustee of the R. Bruce Duchossois  
Revocable Trust u/a/d 12/13/1989

Rosemarie Vincent  
Witness

Christine Murray  
Notary Public

STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

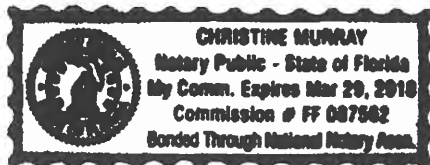
PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Thomas A. Smith, as Co-Trustee of The R. Bruce Duchossois Revocable Trust u/a/d 12/13/1989, as sole member of H 'n D Stables, LLC, sign, seal and as Grantor's act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this  
14 day of JANUARY, 2015.

Christine Murray  
Notary Public for STATE OF FLORIDA  
My Commission Expires: 3/29/2018

Rosemarie Vincent  
Witness

[NOTARY SEAL]



After recording return to Morris Rudnick, Esquire

EXHIBIT B  
PERMITTED EXCEPTIONS

1. Rights or claims of parties in possession not shown by the Public Records.
2. Any encroachment, encumbrance, violation or adverse circumstances affecting the Title that would be disclosed by an accurate and complete survey of the Land.
3. Easements, or claims of easement, not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore furnished, imposed by law and not shown by the Public Records.
5. Taxes and assessments for the year 2015, and subsequent years, which are a lien but are not yet due and payable.
6. Restrictive covenants and easements contained therein appearing of record in Deed Book 2512, page 200, Public Records of Aiken County, South Carolina.
7. Any taxes assessed under the rollback provision of Section 12-43-220(D-4) South Carolina Code of Laws 1976, as amended.

2015001022  
DEED  
RECORDING FEES \$10.00  
STATE TAX \$2710.50  
COUNTY TAX \$1146.75  
PRESENTED & RECORDED  
01-16-2015 08:30 AM  
JUDITH WARNER  
REGISTER OF MEGNE CONVEYANCE  
AIKEN COUNTY, SC  
BY: MARILYN SEIGLER DEPUTY  
BK: RB 4536  
PG: 786 - 789

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN ) LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That H 'N D STABLES, LLC, a South Carolina limited liability company (successor to H 'n D Stables, Inc.), (hereinafter called "Grantor"), for and in consideration of the sum of ONE MILLION FORTY-TWO THOUSAND FIVE HUNDRED AND NO/100 Dollars (\$1,042,500.00), to it in hand paid at and before the sealing of these presents by WILLIAM T. HURLEY, JR. TRUSTEE OF AIKEN PROPERTY TRUST U/D JANUARY 14, 2015 (hereinafter called "Grantee"), the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto Grantee, his heirs, successors and assigns, the following described real estate, to wit:

All that certain piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in the County of Aiken, State of South Carolina, West of and adjoining Banks Mill Road (S.C. Highway No. S-2-79), approximately 4.37 miles South of the City limits of the City of Aiken, County and State aforesaid, containing 40.00 acres, more or less, as shown and designated upon a plat prepared for Cornelius Debonte by Charles M. Jones, dba, Jones and Murph dated April 14, 1997, recorded May 16, 1997, in the Office of the RMC of Aiken County, South Carolina, in Plat Book 36 at Page 258-1. Reference is hereby made to said plat for a more complete and accurate description of said property as to metes, bounds and location.

This being the same property conveyed to H 'n D Stables, Inc. by deed of Debonte Family Limited Partnership dated July 20, 1998, recorded July 21, 1998, in Title Book 1795 at Page 127, records of Aiken County, South Carolina. Thereafter, H 'n D Stables, Inc. filed Articles of

Amendment with the South Carolina Secretary of State (a copy of which are attached hereto and incorporated herein as Exhibit A) converting said entity to H 'n D Stables, LLC.

Tax Parcel No. 139-19-01-002

Grantee's Address: Trust One JDD  
William T. Hurley, Trustee  
c/o Verdolino and Lowery PC  
124 Washington Street  
Foxborough, MA 02035

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions as set forth on Exhibit B attached hereto and incorporated herein.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining thereto,

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Grantee, his heirs, successors and assigns forever, and the Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, his heirs and assigns, against Grantor and its successors and assigns and none other.

[Signatures Commence on Next Page]

WITNESS the Hand and Seal of the Grantor this 14 day of January, 2015.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

H 'n D Stables, LLC, a South Carolina limited  
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By: The R. Bruce Duchossois Revocable Trust u/a/d  
12/13/1989  
Its: Sole Member

By: Thomas A. Smith (LS)  
Thomas A. Smith, not individually, but solely as  
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Rosemarie Vincent  
Witness

Christine Murray  
Notary Public

STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

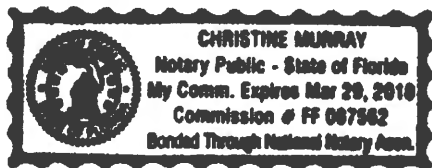
PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Thomas A. Smith, as Co-Trustee of The R. Bruce Duchossois Revocable Trust u/a/d 12/13/1989, as sole member of H 'n D Stables, LLC, sign, seal and as Grantor's act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this  
14 day of JANUARY, 2015.

Christine Murray  
Notary Public for STATE OF FLORIDA  
My Commission Expires: 3/29/2018

Rosemarie Vincent  
Witness

[NOTARY SEAL]



After recording return to Morris Rudnick, Esquire

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4. Any lien, or right to a lien, for services, labor or material heretofore furnished, imposed by law and not shown by the Public Records.
5. Taxes and assessments for the year 2015, and subsequent years, which are a lien but are not yet due and payable.
6. Any taxes assessed under the rollback provision of Section 12-43-220(D-4) South Carolina Code of Laws 1976, as amended.



APPEALS COURT  
Full Court Panel Case  
Case Docket

REBECCA M. BROWN & others vs. JOHN J. DONOVAN SR. & another  
2022-P-1075

CASE HEADER

|                |                        |               |             |
|----------------|------------------------|---------------|-------------|
| Case Status    | No briefs yet          | Status Date   | 11/02/2022  |
| Nature         | Business/Commercial    | Entry Date    | 11/02/2022  |
| Appellant      | Defendant              | Case Type     | Civil       |
| Brief Status   | Awaiting blue brief    | Brief Due     | 04/28/2023  |
| Arg/Submitted  |                        | Decision Date |             |
| Panel          |                        | Citation      |             |
| Lower Court    | Suffolk Superior Court | TC Number     | 0384CV04247 |
| Lower Ct Judge | Peter B. Krupp, J.     | TC Entry Date | 09/04/2003  |
| SJ Number      |                        | FAR Number    |             |
| SJC Number     |                        |               |             |

INVOLVED PARTY

Rebecca M. Brown  
Plaintiff/Appellee  
Awaiting red brief  
Due 05/30/2023

James H. Donovan  
Plaintiff/Appellee  
Awaiting red brief  
Due 05/30/2023

Maureen Donovan  
Plaintiff/Appellee  
Awaiting red brief  
Due 05/30/2023

Carolyn Donovan Rosenbaum  
Plaintiff/Appellee  
Awaiting red brief  
Due 05/30/2023

John J. Donovan Sr.  
Pro Se Defendant/Appellant  
Awaiting blue brief  
Due 04/28/2023  
2 Enls, 136 Days

John J. Donovan Jr.  
Defendant

John Berry  
Other interested party

Peter E. Fleming Jr.  
Other interested party

Mitchell Hurley  
Other interested party

T Barry Kingham  
Other interested party

Douglas B. Maynard  
Other interested party

Richard Zabel  
Other interested party

ATTORNEY APPEARANCE

[Joseph D. Lipchitz, Esquire](#) - Withdrawn  
[Henry A. Sullivan, Esquire](#)  
[Scott C. Ford, Esquire](#) - Withdrawn  
[Damien C. Powell, Esquire](#)  
[Catherine S. Lombardo, Esquire](#)  
[Bruce A. Singal, Esquire](#)

[Joseph D. Lipchitz, Esquire](#) - Withdrawn  
[Henry A. Sullivan, Esquire](#)  
[Scott C. Ford, Esquire](#) - Withdrawn  
[Damien C. Powell, Esquire](#) - Withdrawn  
[Catherine S. Lombardo, Esquire](#)

[Joseph D. Lipchitz, Esquire](#) - Withdrawn  
[Henry A. Sullivan, Esquire](#)  
[Scott C. Ford, Esquire](#) - Withdrawn  
[Damien C. Powell, Esquire](#) - Withdrawn  
[Catherine S. Lombardo, Esquire](#)

[Joseph D. Lipchitz, Esquire](#) - Withdrawn  
[Henry A. Sullivan, Esquire](#)  
[Scott C. Ford, Esquire](#) - Withdrawn  
[Damien C. Powell, Esquire](#) - Withdrawn  
[Catherine S. Lombardo, Esquire](#)

[Bruce A. Singal, Esquire](#)  
[Michelle R. Peirce, Esquire](#) - Withdrawn  
[Damien C. Powell, Esquire](#)

| Entry Date | Paper | Entry Text                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|------------|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11/02/2022 | #1    | Lower Court Assembly of the Record Package                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 11/02/2022 |       | Notice of entry sent.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 11/02/2022 | #2    | Affidavit of indigency (IMPOUNDED) filed for John J. Donovan Sr..                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 11/02/2022 | #3    | Civil Appeal Entry Form filed by John J. Donovan                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 11/02/2022 |       | RE#2 ALLOWED FORTHWITH. The appellant's Affidavit of Indigency appears regular and complete on its face, and indicates that the appellant is indigent. The court hereby allows the Motion to Waive entry fee. Notice sent.                                                                                                                                                                                                                                                                                                       |
| 11/09/2022 | #4    | Notice of appearance filed for Rebecca M. Brown, James H. Donovan, Maureen Donovan and Carolyn Donovan Rosenbaum by Attorney Catherine Lombardo.                                                                                                                                                                                                                                                                                                                                                                                 |
| 11/14/2022 | #5    | Docketing Statement received from John J. Donovan Sr.                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 11/17/2022 |       | <b>Returned Mail:</b> Notice of Case Entry sent to Mitchel Hurley returned as VACANT--Unable to Forward. Notice not re-sent as no updated address is on file.                                                                                                                                                                                                                                                                                                                                                                    |
| 11/17/2022 |       | <b>Returned Mail:</b> Notice of Case Entry sent to Henry A. Sullivan returned as VACANT--Unable to Forward. Notice not re-sent as no updated address is on file.                                                                                                                                                                                                                                                                                                                                                                 |
| 11/21/2022 |       | <b>Returned Mail:</b> Notice of entry of appeal sent to Peter B. Krupp returned as return to sender, not deliverable as addressed unable to forward. Notice not resent as no current address is available .                                                                                                                                                                                                                                                                                                                      |
| 11/22/2022 |       | <b>Returned Mail:</b> Notice of entry of appeal sent to John Berry returned as return to sender, not deliverable as addressed unable to forward. Notice not resent as no current address is available .                                                                                                                                                                                                                                                                                                                          |
| 11/25/2022 |       | <b>Returned Mail:</b> Notice of Docket Entry sent to John Berry returned as return to sender, not deliverable as addressed unable to forward. Notice not resent as no current address is available .                                                                                                                                                                                                                                                                                                                             |
| 12/12/2022 |       | <b>Returned Mail:</b> Notice of docket entry re #2 sent to Mitchell Hurley returned as return to sender, not deliverable as addressed unable to forward . Notice not resent as no current address is available.                                                                                                                                                                                                                                                                                                                  |
| 12/12/2022 |       | <b>Returned Mail:</b> Notice of docket entry re#2 sent to Douglas B. Maynard returned as return to sender, not deliverable as addressed unable to forward . Notice not resent as no current address is available .                                                                                                                                                                                                                                                                                                               |
| 12/12/2022 |       | <b>Returned Mail:</b> Notice of docket entry re#2 sent to Richard Zabel returned as return to sender, not deliverable as addressed unable to forward . Notice not resent as no current address is available .                                                                                                                                                                                                                                                                                                                    |
| 12/12/2022 | #6    | MOTION to extend brief & appendix due date. filed by John J. Donovan Sr.                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 12/13/2022 | #7    | RESPONSE filed for Rebecca M. Brown, James H. Donovan, Maureen Donovan, Carolyn Donovan Rosenbaum and John J. Donovan Jr. by Attorney Henry Sullivan.                                                                                                                                                                                                                                                                                                                                                                            |
| 12/13/2022 |       | [VACATED AS HAVING BEEN ENTERED IN ERROR. (By the Court 12/13/2022) RE#6: Allowed to 03/15/2023 . *Notice.                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 12/13/2022 |       | [VACATED AS HAVING BEEN ENTERED IN ERROR. (By the Court 12/13/2022) ORDER: Attorneys Robert M. Strasnik, Barry C. Klickstein, Bruce A. Singal and Michele R. Pierce are withdrawn from this matter. The court's docket is updated accordingly. *Notice                                                                                                                                                                                                                                                                           |
| 12/13/2022 |       | ORDER: The action entered this date on paper #6 and the ORDER regarding withdrawal of counsel are vacated as having entered in error. *Notice                                                                                                                                                                                                                                                                                                                                                                                    |
| 12/13/2022 |       | RE#6: No action taken pending clarification by Attorneys Robert M. Strasnik, Barry C. Klickstein, Bruce A. Singal and Michele R. Pierce as to their representation status. As the docket reflects the defendant as being represented by counsel in this matter only filings from counsel will be considered. Counsel are cautioned that the defendant's brief was due on or before 12/12/2022 and the court is not in receipt of a motion from counsel for an enlargement, subjecting the appeal to possible dismissal. *Notice. |
| 12/15/2022 | #8    | Statement of Atty Strasnick regarding representation filed for John J. Donovan Sr. by Attorney Robert Strasnick.                                                                                                                                                                                                                                                                                                                                                                                                                 |
| 12/16/2022 |       | RE#8: Attorney Strasnick is withdrawn from this matter. The court's docket is updated accordingly. *Notice.                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 12/19/2022 | #9    | Notice re status of Attorneys Bruce A. Singal and Michele R. Pierce filed for John J. Donovan Jr. by Attorney Damien Powell.                                                                                                                                                                                                                                                                                                                                                                                                     |
| 12/22/2022 | #10   | Letter from Attorney Barry C. Klickstein re: Retired from Practice                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| 12/23/2022 |       | RE#9: Noted that Attorney Michelle Pierce is withdrawn from this matter and Attorney Bruce A. Singal represents the Estate of John J. Donovan, Jr., and Rebecca M. Brown as Trustee. *Notice.                                                                                                                                                                                                                                                                                                                                    |
| 12/23/2022 |       | RE#10: Noted that Attorney Klickstein does not represent John J. Donovan, Sr. Appellant is proceeding pro se in this matter. *Notice.                                                                                                                                                                                                                                                                                                                                                                                            |
| 12/23/2022 |       | RE#6 (Revised): Allowed to 03/15/2023. In (22-P-1075) view of appellee's response, appellant is not to anticipate any further enlargements. *Notice.                                                                                                                                                                                                                                                                                                                                                                             |
| 03/15/2023 | #11   | Notice of appearance filed for John J. Donovan Sr. by Attorney Patricia Davidson.                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 03/15/2023 | #12   | Motion of Appellant to extend date for filing brief and appendix filed for John J. Donovan Sr. by Attorney Patricia Davidson.                                                                                                                                                                                                                                                                                                                                                                                                    |
| 03/16/2023 | #13   | RESPONSE filed for Rebecca M. Brown, James H. Donovan, Maureen Donovan, Carolyn Donovan Rosenbaum and John J. Donovan Jr. by Attorney Henry Sullivan.                                                                                                                                                                                                                                                                                                                                                                            |
| 03/17/2023 |       | RE#12 & #13: After review of papers #12 & 13, the motion to enlarge is allowed, in part, for 45 days, or to 04/28/2023. No further enlargements. (Meade, J.). Notice sent.                                                                                                                                                                                                                                                                                                                                                       |

COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT



SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
C.A. No. 03-04247

REBECCA M. BROWN, JAMES H.  
DONOVAN, MAUREEN DONOVAN  
LANTZ, AND CAROLYN DONOVAN  
ROSENBAUM,

Plaintiffs,

V.

JOHN J. DONOVAN, SR.,  
Defendant

And

THE ESTATE OF JOHN J.  
DONOVAN, JR.

*Jurisdiction Retained in the Business  
Litigation Session of the Suffolk Superior  
Court, C.A. No. 03-04247*

**DEFENDANT’S EMERGENCY MOTION TO ENJOIN THE  
DISSIPATION OF TRUST ASSETS PENDING APPEAL**

Now comes the defendant, through counsel, and respectfully moves this Honorable Court to enjoin the dissipation of the assets of Trust 1-JJD (“the Trust”) pending appeal.

As reasons therefor, and in support whereof, the defendant states as follows:

1. An Order (Krupp, J.) entered on July 29, 2022 in this matter in which the court denied Professor Donovan’s petition to vacate an arbitration award that stripped him of his entire interest in the Trust that is the subject of this action.

2. Judgment entered on Judge Krupp's Order on August 18, 2022. A notice of appeal was timely filed and the case will be entered in the Appeals Court after the Superior Court Clerk assembles the record.
3. The plaintiffs in this action, along with parties in the matter of Brining v. Donovan, C.A. No. 2184 CV 00349, are seeking court approval for a settlement in that matter that would permit them to dissipate the assets of the Trust even though the appeal in this matter is still pending.
4. The defendant opposed the request for settlement approval in both the arbitration proceeding and in the other Suffolk Superior Court case. The court is scheduled to hear oral argument on that matter today.
5. Allowance of the plaintiff's request for settlement approval and/or the right to dissipate assets before the judgment in this matter is final, and before an appeal can be heard, would not be proper. Indeed, the contemplated settlement requires the Trust to sell its real estate which would, if Professor Donovan is successful on appeal, constitute irreparable harm because the properties – two of which have been in his family for years and one of which his wife resides in – could not be recovered.<sup>1</sup>

**WHEREFORE:** The defendant requests that the within motion be allowed.

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<sup>1</sup> The settlement would also divest the trust of liquid assets as well.

Respectfully submitted,

John J. Donovan, Defendant,  
By his attorneys,

*Robert Strasnick*

Dated: 9/29/2022 \_\_\_\_\_

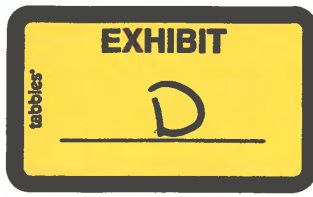
\_\_\_\_\_  
Robert M. Strasnick – B.B.O. #637598  
Principe & Strasnick, P.C.  
17 Lark Avenue  
Saugus, MA 01906  
(781)-231-9191  
rob@psbostonlaw.com

**Certificate of Service**

I, Robert M. Strasnick, attorney for the defendant, do hereby certify that I have served a true copy of the foregoing document upon all counsel of record, by e-mail, on this 29<sup>th</sup> day of September, 2022.

*Robert Strasnick*

\_\_\_\_\_  
Robert M. Strasnick



COMMONWEALTH OF MASSACHUSETTS  
APPEALS COURT

DOCKET NO: 2022-P-1075

JOHN J. DONOVAN, SR. et al.,  
Appellant

v.

REBECCA M. BROWN et al.,  
Appellees.

**APPELLANT'S MOTION TO ENLARGE TIME TO FILE BRIEF**

The Appellant, John J. Donovan, Sr., moves for an extension of time to file his brief and appendix. The current due date is March 15, 2023. The Appellant seeks an additional approximate 120 days, to about July 17, 2023.

In support of this Motion, the Appellant states as follows:

1. This matter concerns the appeal of a Superior Court's (Krupp, J.) order that confirmation of an arbitration award.
2. The appeal was entered in this Court on November 2, 2022.
3. On December 12, 2022, the Appellant filed a motion to extend the deadline for filing the brief and appendix. This Court allowed the motion, setting a deadline of March 15, 2023.
4. Subsequently to filing the motion, counsel for the Appellant withdrew. The docket notes that the Appellant was proceeding *pro se*.
5. On March 14, 2023, the Appellant engaged counsel to represent him in the appeal.

6. Preparation of brief of the Appellant requires review of many years' worth of evidence and transcripts related to proceedings in the arbitration and ultimately in the Superior Court.

7. New counsel is committed to working collaboratively with the Appellees to assemble the appendix and prepare the brief in this matter.

8. The Appellant has many good faith bases for the appeal, including whether the arbitrator improperly refused to hear evidence material to the controversy in a way that substantially prejudiced the rights of the Appellant. G.L. c. 251, §12(a)(4).

9. The arbitration award dispossessed the Appellant of significant assets, including his real estate. Concepts of justice and fair play require that the Appellant have every good faith opportunity for appellate review of issues that are fundamental to the Appellant's rights as legal and beneficial owner of real estate and as an individual who needs some place to live.

10. Even though this Court granted a prior extension, the Appellant had challenges obtaining successor counsel in view of his incarceration. Nevertheless, extensions of time in this Court are common, promoting the concept that parties have a right to have good faith appeals fully briefed and adjudicated on the merits. This Court has a long history of granting parties and appellate counsel time to brief the issues comprehensively and in accordance with the Rules of Appellate Procedure.

11. The disputes among the parties have continued for numerous years. A few additional months to permit the completion of the briefs will not prejudice the Appellees.

12. An additional 120 or so days is necessary in view of appellate counsel's schedule, including at least three trials between now and the end of July.

13. The Appellant acknowledges that this Court previously noted that “Appellant is not to anticipate any further enlargements.” However, more than one extension of time is not unprecedented. Justice and equity, and the spirit of fair play, should permit the Appellant to proceed with this appeal with new counsel and to have a reasonable amount of time to do so.

WHEREFORE, the Appellant request that his brief in this matter be due on or before July 17, 2023.

JOHN J. DONOVAN, SR.

By his attorney,



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Patricia L. Davidson, Esq.  
BBO #556647  
Mirick, O’Connell, DeMallie & Lougee, LLP  
100 Front Street  
Worcester, MA 01608-1477  
Phone: (508) 791-8500  
Fax: (508) 791-8502

Dated: March 15, 2023

CERTIFICATE OF SERVICE

I, Patricia L. Davidson, hereby certify that I have this day served a copy of the foregoing document, by mailing a copy, first class mail, postage prepaid, to:

Scott Carter Ford, Esq.  
Henry A. Sullivan, Esq.  
Bruce A. Singal, Esq.  
Mintz Levin Cohn Ferris Glovsky et al.  
One Financial Center  
Boston, MA 02111

Damien Powell, Esq.  
Hinckley Allen  
28 State Street  
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Barry C. Klickstein, Esq.  
95 Front Street, Unit 5  
Marblehead, MA 01945

Robert M. Strasnick, Esq.  
Principe and Strasnick, PC  
17 Lark Ave.  
Saugus, MA 01906



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Patricia L. Davidson, Esq.

Dated: March 15, 2023

TRUST AGREEMENT

John J. Donovan, Jr. of Manchester, Massachusetts, in his capacity as trustee (hereinafter with its successors in trust called the "Trustee") hereby declares and covenants that the Trustee has received the property described in Schedule A, in trust, and it will hold, manage, invest and reinvest the same, together with any other property hereafter purchased by, owned by, conveyed, assigned or transferred to the Trustee, as Trustee hereunder, or added to the Trust by gift or will, and accepted by the Trustee, and any other property however acquired by the Trustee hereunder, and, after paying or making provision for all proper expenses of administration, will dispose of the income and principal upon the trusts and subject to the terms, provisions and conditions hereinafter set forth. Such property shall be held in trust for the sole benefit of John J. Donovan.

ARTICLE FIRSTNAME AND NATURE OF TRUST

1.1 Name. This Declaration of Trust may be referred to as the "Trust One JJD of \_\_\_\_\_, \_\_\_\_\_, 20\_\_." This Trust shall be irrevocable and not subject to amendment or alteration except as set forth in Section 1.2.

1.2 Trustee's Power to Amend. The Trustee may amend this Declaration of Trust if it is determined that such amendment is appropriate (a) to cure ambiguities, inconsistencies or defects in this Declaration of Trust, (b) to enable the Trustee more effectively to carry out a purpose or wish expressed in this Declaration of Trust, or (c) for the more convenient or efficient administration of any trust hereunder. Any such amendment shall be made by a writing signed by the Trustee and a copy delivered to the then beneficiaries. This power to amend shall be exercisable by the Trustee only in a fiduciary capacity and shall be exercisable (1) upon written approval of the Honorable John S. Martin, Jr., or his successors, (hereinafter, "Justice Martin") until the Transfer Date, as hereinafter defined in section 2.3; or (2) after the Transfer Date, upon consent of the Trustee.

ARTICLE SECOND  
DISPOSITION OF TRUST PROPERTY

2.1 Disposition of Income and Principal. The Trustee shall hold, manage, invest and reinvest the Trust assets and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

From the date of this Trust to the Transfer Date, so much of the net income of the Trust, as the Trustee deems advisable, shall be paid to or applied for the payment of real estate taxes and municipal assessments due and owing for any real property owned by the Trust. After the payment of real estate taxes and municipal assessments, and at the sole discretion of the Trustee, interest income may be paid to or applied for the benefit of the beneficiaries. Any income not so paid or applied may be added to principal or may be held for later payment to or application for each beneficiary, or addition to principal, as the Trustee determines in its sole discretion. From the date hereof to the Transfer Date, the Trustee shall invest any and all cash assets of the Trust in U.S. Government Bonds, unless authorized otherwise by Justice Martin. The Trustee shall not make any distributions of Trust principal to any beneficiary from the date hereof to the Transfer Date. The interests of any and all beneficiaries shall not and may not be transferred, pledged, assigned or sold until the Transfer Date, and thereafter only upon the written consent of the Trustee, which shall be in the Trustee's sole and exclusive discretion.

After the Transfer Date, The Trustee shall hold, manage, invest and reinvest the Trust assets and shall collect the income, if any, therefrom and shall dispose of the net income and principal as it determines, in its sole discretion.

2.2 Disposition of Real Property. Real property owned by the Trust may be sold, in whole or in part, by the Trustee in its discretion, provided, however, that from the date hereof to the Transfer Date, any such sale must be at fair market value and must have the prior written approval of Justice Martin, or his successor. All proceeds from such sale(s) shall remain in the Trust and shall be invested and may be distributed only as set forth herein. The Trust may

purchase replacement property at fair market value for any property sold, provided however, that from the date hereof to the Transfer Date, any such purchase of replacement property must have the prior written approval of Justice Martin, or his successor.

2.3 Transfer Date. The Transfer Date shall be the earliest of the following to occur: the date of the death of John J. Donovan, Sr.; ten years from the effective date of this Trust; or six years from the effective date of this Trust if, and only if, Justice Martin determines that the Trustee and beneficiaries have acted in good faith with respect to the management of this Trust and compliance with the terms of that certain Final Settlement Agreement of March 26, 2007 between John J. Donovan, Sr., John J. Donovan, Jr., James H. Donovan, Carolyn D. Rosenbaum, Maureen D. Lantz, Rebecca M. Donovan and Linda Donovan, as the same may be amended from time to time (hereinafter, the "FSA"). Upon the Transfer Date, the Trustee shall have the full power, authority and discretion to manage and administer this Trust and its assets, for the benefit of the beneficiaries, as permitted by law and the terms hereof without the requirement of any prior approvals from Justice Martin, or his successor.

2.4 Limitation Trustees' Discretionary Powers. A Trustee may not participate in any exercise of discretionary powers that would discharge a personal legal obligation of that Trustee.

### ARTICLE THIRD

#### SUCCESSION OF TRUSTEES

3.1 Change of Trustees. A Trustee may resign at any time, such resignation to be effective when delivered to any co-trustee and/or to the designated independent manager for this Trust. Any vacancy in the office of trustee, whether created by resignation, removal or otherwise, may be filled only by the designated independent manager. The appointed Trustee must be a disinterested party with respect to the Trust assets and any beneficiaries and may not be the designated independent manager. The designated independent manager may remove and/or replace a Trustee at any time and this shall be the designated independent manager's sole power and authority with respect to this Trust, unless specifically stated otherwise herein. The

designated independent manager must be a disinterested party with respect to the Trust Assets and any beneficiaries and may not be the Trustee. The designated independent manager may resign at any time, such resignation to be effective when delivered to any Trustee and to the beneficiaries. The designated independent manager shall name its successor. If there shall be a vacancy in this position and no successor is named, the designated independent manager shall be appointed by a vote of the majority of the then beneficiaries of this Trust.

Any such removal and appointment, and the acceptance by such Trustee, shall be by an instrument in writing signed and acknowledged by each signatory before a notary public, and shall take effect simultaneously as of a date specified in said instrument which is not earlier than thirty days after delivery of a copy of such instrument to the trustee being so removed.

Until the Transfer Date, the independent manager shall be Justice Martin, or his successor. Upon the Transfer Date, Justice Martin, or his successor, shall resign as independent manager, and the next independent manager shall be determined by John J. Donovan, Jr.

3.2 Incapacity of Trustee. If the Trustee shall become incapable of performing the duties of trustee by reason of advanced age or mental or physical incapacity, the determination in writing of such incapacity, if made in good faith and if supported by a certificate to that effect by a physician, shall terminate such trusteeship and shall be binding upon all persons interested.

#### ARTICLE FOURTH

##### GENERAL ADMINISTRATIVE PROVISIONS

4.1 Income. Except as otherwise provided, all accumulated, accrued and undistributed income of a deceased income beneficiary which has not been paid prior to the death of such person shall be income of the next succeeding estate.

4.2 Accounting. The Trustee hereunder shall from time to time render an

account to each income beneficiary and, if requested, to Justice Martin or his successor; provided, however, that if the Trustee has received notice that a guardian, conservator, executor or other fiduciary has been appointed for an income beneficiary, the account shall be rendered to such fiduciary. "Income beneficiary" shall mean each person who is eligible to receive income from the Trust during the period covered by the account. The assent to such account by a majority of such income beneficiaries and fiduciaries shall fully discharge the Trustee as to all matters included in such account or reflected thereby. The failure of any income beneficiary or fiduciary to object to any account by a writing received by the Trustee within sixty days after the delivery to such person of a copy of the account shall be deemed to be an assent by such person.

4.3 Spendthrift Clause. No person to whom any reversionary, future or expectant interest in this Trust, nor any person entitled to any income from this Trust, shall have power to alienate or dispose of such interest or income by anticipation or to subject the same to such person's debts or liabilities. The interest of a beneficiary in this Trust shall not be subject to be taken by his or her creditors by any process.

4.4 Disclaimers by Beneficiaries. A beneficiary, with the prior written consent of the Trustee, may disclaim all or any part of his or her interest in the Trust, before or after such interest is accepted, and before or after it is vested, for any period of time, by filing an appropriate writing with the Trustee. The Trustee shall not consent to such disclaimer if the Trustee in its discretion believes such disclaimer shall not be informedly made, not in the best interest of the beneficiary, not in accord with the purposes of this Trust, or an attempt to circumvent the provisions hereof prohibiting anticipation and alienation of interests, or if it imposes additional duties on the Trustee which the Trustee does not want to accept.

## ARTICLE FIFTH

### TRUSTEE PROVISIONS

5.1 Discretionary Powers. Whenever in this Declaration of Trust the Trustee is empowered to make a determination, it shall have absolute discretion in making such determination, unless otherwise specifically provided. The exercise of any discretion by the

Trustee, if made in good faith, shall be conclusive and binding upon all persons interested.

5.2 Disclaimers and Releases by Trustee. The Trustee may at any time disclaim or release any power in whole or in part by an instrument in writing, signed and delivered to any co-trustee or if none, to the designated independent manager. Any disclaimer or release of a power by a Trustee may be upon such conditions as the Trustee specifies. In addition, the Trustee may disclaim any interest in property. A disclaimer or release by a Trustee shall be binding upon the successors to the Trustee unless the Trustee specifies otherwise. Such rights of the Trustee are subject to the prior written approval of Justice Martin until the Transfer Date.

5.3 Certificate by Trustee. A written statement by the Trustee at any time as to facts relative to this Trust may always be relied upon by, and shall always be conclusive evidence in favor of, any transfer agent or other person dealing in good faith with the Trustee in reliance upon such statement.

5.4 Bond. No Trustee shall be required to give bond or furnish surety on any bond required by law.

5.5 Liability of Trustee. No Trustee shall be liable for the acts or omissions of any co-trustee, prior trustee or person administering any estate. Unless requested in writing by a beneficiary, a Trustee shall not be obligated to inquire as to any such acts or omissions or to ascertain that the property transferred to him is the entire Trust property.

5.6 Delegation to Co-Trustee. Whenever there is more than one trustee hereunder, the Trustee may delegate any trustee powers and discretions to a co-trustee for such period or periods of time as the Trustees may agree; provided, however, that any powers or discretions withheld from any Trustee by the terms of this Declaration of Trust may not be delegated to such Trustee under this section.

5.7 Compensation. The Trustee shall be entitled to reasonable compensation,

which may be charged to income only.

5.8 Powers of Trustee. Except as may be specifically provided otherwise in this Declaration of Trust, the Trustee shall have wide discretion in matters of the management of Trust property, and the following enumeration of specific powers is not intended to exclude other powers reasonably incidental to such management. Except where specifically provided otherwise in this Declaration of Trust, the Trustee shall have in addition to those powers conferred by law or otherwise the following powers, privileges and exemptions, which may be exercised and invoked in the Trustee's absolute discretion:

(a) To invest and reinvest the cash assets of this Trust in U.S. Government Bonds, or other investments as may be approved by Justice Martin, prior to the Transfer Date and to invest and reinvest such cash assets of the Trust as the Trustee deems advisable, in its sole discretion, after the Transfer Date.

(b) To manage real property; including but not limited to the authority to sell, transfer or convey such property, to purchase replacement property, to lease such property and to collect and receive rents and income from such property, provided however, that from now until the Transfer Date the Trustee must receive the prior written approval of Justice Martin, or his successor, to sell, transfer or convey such property or purchase replacement property,

(c) To sell any Trust property at public or private sale upon such terms and conditions as the Trustee deems advisable; to exchange or partition all or any part of the property of any trust, real or personal, at any time held, to purchase or exercise any form of option or right to purchase securities or other property; to execute any and all deeds and other instruments necessary or appropriate to accomplish the foregoing, with or without covenants, warranties or representations. From the date hereof to the Transfer Date, no power in this paragraph can be exercised without the prior written approval of Justice Martin, or his successor.

(d) To receive additions to the Trust by gift or will, or otherwise, and to hold and administer the same under the provisions hereof; except that from the date hereof to the

Transfer Date, the trustee may not receive additions to the Trust by gift or will, or otherwise

(e) Pursuant to the terms herein, to make any division or distribution in cash or in kind or in undivided interests in specific property or partly in each, at then current values, without regard to the basis or other income tax attributes of specific property allocated to any beneficiary (including any trust which is a beneficiary).

(f) To make any payment or distribution directly to a beneficiary, who is a minor or who is otherwise incompetent, or to such beneficiary's guardian, conservator or custodian under the Uniform Transfers to Minors Act, or to a relative for such beneficiary's use or any trust then being held for such beneficiary.

(g) To employ accountants, attorneys-at-law and other professionals, and to rely upon their opinions; to employ a trustee or a firm in which a trustee has an interest to perform necessary services for the trust on customary terms.

(h) To determine in accordance with IRS tax rules what shall belong and be chargeable to principal and what shall belong and be chargeable to income; to amortize or not amortize bond premiums in accordance with IRS tax rules; to retain reserves out of income for expenses, taxes and other liabilities; if any trust property is subject to actual depreciation, depletion or obsolescence, to retain or not retain reasonable reserves out of income, irrespective of any change in the market value of such trust property.

(i) To settle, by compromise, arbitration or otherwise, any and all taxes on future interests and any and all other claims and demands in favor of or against or in any way relating to Trust property, upon such terms as the Trustee determines.

(j) To investigate, prevent and remediate violations or possible violations of Federal, state or local law regarding substances posing a hazard to the environment or to human health which may be applicable to any property held by the Trustee; to undertake such actions prior to the formal enforcement of such laws by any Federal, state or local agency against Trust

property; to charge all expenses associated with any such investigation, prevention or remediation, including the fees of consultants and counsel, against the income or principal of this Trust.

(k) 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 to exchange any such property for other properties and to retain such properties in exchange.

(l) To borrow money and to encumber, mortgage or pledge any asset of the Trust estate upon such terms and conditions as the Trustee deems advisable to carry out the intent of this Trust; except that from the date hereof to the Transfer Date, the Trustee may not encumber, mortgage or pledge any asset of the Trust estate

(m) To make ordinary or extraordinary repairs or alterations to the buildings or structures on any real property of the Trust, out of income.

(n) To compromise, adjust, arbitrate, sue on or defend, abandon or otherwise deal with and settle claims in favor of or against the Trust estate as the Trustee deems advisable, in its sole discretion. Except that from the date hereof to the Transfer Date the Trustee will not use any asset of the Trust estate to pay for the compromise, adjustment, arbitration, law suit or defense, abandonment or settlement of claims in favor of or against the Trust estate or John Donovan without the prior written approval of Justice Martin, or his successor.

(o) 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 prudent, and to do all acts which it may deem necessary or proper to reasonably maintain the assets of this Trust, whether personal or real, carry out the purpose of this Trust.

**Notwithstanding anything to the contrary herein, from the date hereof until the Transfer**

**Date, the Trustee shall manage any assets transferred to and held by the Trustee in accordance with the terms of this document and the direction of Justice Martin, or his successor, and shall be required to make any payments, transfers, or demands, ordered by Judge Martin or his successor**

5.9 Trustee May Assume Investment Responsibility. The Trustee may assume responsibility for the investment of all or part of the Trust property, and the Trustee shall have no liability with respect to such investments, except as may otherwise be directed by Justice Martin, or his successor.

5.10 Acquisition and Retention of Certain Assets. The Trustee is authorized to use trust principal, including the entire principal of the Trust, to purchase any property or interest in property, real or personal, in which the Trustee has an interest. The Trustee may retain indefinitely or for such other period as the Trustee may determine any such property or interest in property so purchased by the Trustee, or any property given to the Trustee by any other person, or received from any estate, whether or not the property is income producing and without regard to the proportion which the value of the property may bear to the total value of the Trust even if such retention involves business or financial risks that trustees would not ordinarily incur. The Trustee shall have no liability for any depreciation or loss as a result of the retention of any property retained or acquired under the authority of this section.

From the date hereof to the Transfer Date, no power in this paragraph can be exercised without the prior written approval of Justice Martin, or his successor.

5.11 Real Estate. The Trustee may acquire or retain real property, whether or not income producing, for long term investment or the rent free use of one or more of the beneficiaries eligible to receive the income from that trust, upon such equitable terms as the Trustee determines.. The Trustee may execute, assume or redeem any note or mortgage on such real property, with the Trust income or principal or both, and may pay taxes, insurance premiums and general expenses of upkeep, maintenance and repair with respect to such property

From the date hereof to the Transfer Date, no power in this paragraph can be exercised

without the prior written approval of Justice Martin.

5.12 Investment Advisors. The Trustee may employ investment advisors and consult with them on all matters relating to the purchase, retention or sale of trust property. The Trustee may act upon the advice of such advisors in whole, or to such extent as he determines, and to the extent that the Trustee follows the advice of such advisors, the Trustee shall not be liable for losses or other consequences therefrom. The Trustee may pay any investment advisor reasonable compensation as a Trust expense, which may be charged to income only. An appropriate adjustment shall be made in the compensation of the Trustee to reflect the change in his/her duties which results from such employment.

ARTICLE SIXTH  
MISCELLANEOUS PROVISIONS

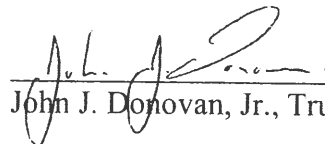
6.1 Applicable Law. This Declaration of Trust shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts, and its validity and administration shall be governed by said laws except with respect to such assets as are required by the law controlling to be governed by the laws of some other jurisdiction.

6.2 References. References in this Declaration of Trust to the masculine shall include the feminine and the plural the singular, and vice versa, unless the context requires otherwise. References to provisions of the Internal Revenue Code mean provisions of the Internal Revenue Code of 1986 as amended from time to time or the corresponding provisions of any subsequent Federal tax law. The term "state" shall include the District of Columbia.

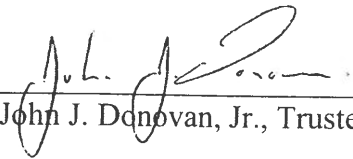
6.3 Delivery. A document or notice shall be deemed delivered when it is mailed first class, postage prepaid, to the addressee's last known address, or, if not mailed, when actually delivered to the addressee in person or to the addressee's last known address.

6.4 Effective Date of Trust. This Declaration of Trust shall be the date stated in Section 1.1.

IN WITNESS WHEREOF, John J. Donovan, Jr., as Trustee, has executed this Declaration of Trust under seal the day and year first above written.

  
\_\_\_\_\_  
John J. Donovan, Jr., Trustee

The office and duties of trustee as above described are hereby accepted by the undersigned.

  
\_\_\_\_\_  
John J. Donovan, Jr., Trustee

DECLARATION OF TRUST  
ESTABLISHING  
AIKEN PROPERTY TRUST



I, William T. Hurley, Jr. JD CPA, of Verdolino & Lowey, Foxborough, Massachusetts (the "Trustee"), hereby declare that Ten Dollars (\$10.00) is held in trust hereunder and any and all additional property and interest in property, real and personal, that may be acquired hereunder (the "Trust Estate") shall be held in trust, for the sole benefit of the individuals or entities listed in the Schedule of Beneficiaries in the proportions stated in said Schedule, which Schedule has this day been executed by the Beneficiaries and filed with the Trustee with receipt acknowledged by at least one Trustee (hereafter, as it may be amended, "Schedule of Beneficiaries").

SECTION ONE

Name and Purpose

1.1 This Trust shall be known as the **Aiken Property Trust** and is intended to be a nominee trust, so-called, for federal and state income tax purposes and to hold the record legal title to the Trust Estate and such functions as are necessarily incidental thereto.

SECTION TWO

Trustees

2.1 In the event there are two Trustees at any time, both trustees shall be required to execute any and all instruments and certificates necessary to carry out the provisions of the trust. In the event there are more than two Trustees at any time, any two trustees, except as otherwise provided in Paragraph 7.2, may execute such instruments and certificates necessary to carry out the provisions of the Trust.

2.2 No Trustee shall be required to furnish bond. No Trustee hereunder shall be liable for any action taken at the direction of the Beneficiaries, nor for any error of judgment nor for any loss arising out of any acts or omissions in the execution of the Trust so long as acting in good faith, but shall be responsible only for his or her own willful breach of trust. No license of court shall be requisite to the validity of any transaction entered into by the Trustees. No purchaser, transferee, pledgee, mortgagee or other lender shall be under any liability to see the application of the purchase money or of any money or property loaned or delivered to any Trustee or to see that the terms and conditions of this Trust have been complied with. Every agreement, lease, deed, mortgage, note or other instrument or document executed or action taken by the person or persons appearing from the records of the Registry of Deeds to be Trustees, as required in Paragraph 2.1, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof or of the taking of such action this Trust was in full force and effect, that the execution and delivery thereof or taking of such action was duly authorized, empowered and directed by the Beneficiaries, and that such instrument or document or action is valid, binding, effective and

legally enforceable.

2.3 Any person dealing with the Trust Estate or the Trustees may always rely without further inquiry on a certificate signed by the person or persons appearing from the records of the Registry of Deeds to be Trustees, as required in paragraph 2.1, as to who are the Trustees or the Beneficiaries hereunder or as to the authority of the Trustees to act or as to the existence or nonexistence of any fact or facts which constitute conditions precedent to action by the Trustees or which are in any other manner germane to the affairs of the Trust. Execution, delivery or recording of such certificate shall not be a condition precedent to the validity of any transaction of the Trust.

### SECTION THREE

#### Beneficiaries

3.1 The term "Beneficiaries" shall mean the persons and entities listed as Beneficiaries in the Schedule of Beneficiaries and in such revised Schedules of Beneficiaries, from time to time hereafter executed and delivered as provided above and the respective interests of the Beneficiaries shall be as therein stated.

3.2 Decisions made and action taken hereunder (including without limitation, amendment and termination of this Trust; appointment and removal of a Trustee; directions and notices to Trustee(s); and execution of documents) shall be made or taken, as the case may be, by all of the Beneficiaries.

3.3 Any Trustee may without impropriety become a Beneficiary hereunder and exercise all rights of a Beneficiary with the same effect as though he or she or it were not a Trustee. The parties hereunder recognize that if a sole Trustee and a sole Beneficiary are one and the same person, legal and equitable title hereunder shall merge as a matter of law.

### SECTION FOUR

#### Powers of Trustees

4.1 The Trustees shall hold the principal of this Trust and receive the income therefrom for the benefit of the Beneficiaries, and shall pay over the principal and income pursuant to the direction of all of the Beneficiaries and without such direction shall pay the income to the Beneficiaries in proportion to their respective interests.

4.2 Except as hereinafter provided in case of termination of this Trust, the Trustees shall have no power to deal in or with the Trust Estate except as directed by all of the Beneficiaries. When, as, if and to the extent specifically directed by all of the Beneficiaries, the Trustee shall have the following powers:

- 4.2.1 to buy, sell, convey, assign, mortgage or otherwise dispose of all or any part of the Trust Estate and as landlord or tenant execute and deliver leases and subleases;
- 4.2.2 to execute and deliver notes for borrowing for the Beneficiaries;
- 4.2.3 to grant easements or acquire rights or easements and enter into agreements and arrangements with respect to the Trust Estate;
- 4.2.4 to endorse and deposit checks in an account for the benefit of the Beneficiaries;

Any and all instruments executed pursuant to such direction may create obligations extending over any periods of time, including periods extending beyond the date of any possible termination of the Trust. A direction to the Trustees by the Beneficiaries may be by a Durable Power of Attorney.

4.3 Notwithstanding any provisions contained herein, no Trustee shall be required to take any action which will, in the opinion of such Trustee, involve the Trustee in any personal liability unless first satisfactorily indemnified.

4.4 All persons extending credit to, contracting with or having any claims against the Trustees shall look only to the funds and property of this Trust for payment of any contract, or claim or for the payment of any debt, damage, judgment, or decree, or for any money that may otherwise become due or payable to them from the Trustee, so that neither the Trustees nor the Beneficiaries shall be personally liable therefore. If any Trustee shall at any time for any reason (other than for willful breach of trust) be held to be under any personal liability as such Trustee, then such Trustee shall be held harmless and indemnified by the Beneficiaries, jointly and severally, against all loss, costs, damage, or expense by reason of such liability.

## SECTION FIVE

### Termination

5.1 This Trust may be terminated at any time by notice in writing from all of the Beneficiaries, provided that such termination shall be effective only when a certificate thereof signed by the Trustees shall be recorded with the Registry of Deeds. Notwithstanding any other provision of this Declaration of Trust, and consistent with the intention of the undersigned that this Trust not violate the Rule Against Perpetuities, this Trust shall terminate in the event TWENTY (20) years from the date of the death of the last surviving Trustee of the original Trustees named in this instrument.

5.2 In the case of any termination of the Trust, the Trustees shall transfer and convey the specific assets constituting the Trust Estate, subject to any leases, mortgages, contracts or other encumbrances on the Trust Estate, to the Beneficiaries as tenants in common in proportion to their

respective interests hereunder, or as otherwise directed by all of the Beneficiaries, provided, however, the Trustees may retain such portion thereof as in their opinion necessary to discharge any expense or liability, determined or contingent, of the Trust.

## SECTION SIX

### Amendments

6.1 This Declaration of Trust may be amended from time to time by an instrument in writing signed by all of the Beneficiaries and delivered to the Trustees, provided in each case that the amendment shall not become effective until the instrument of amendment or a certificate setting forth the terms of such amendment, signed by all Trustees, is recorded with the Registry of Deeds.

## SECTION SEVEN

### Resignation and Successor Trustee

7.1 Any Trustee hereunder may resign at any time by an instrument in writing and acknowledged by such Trustee and delivered to all remaining Trustees and to each Beneficiary. Such resignation shall take effect on the later of the dates specified therein or upon the date of the recording of such instrument with the Registry of Deeds.

7.2 Succeeding or additional Trustees may be appointed or any Trustee may be removed by an instrument or instruments in writing signed by all of the Beneficiaries, provided in each case that a certificate signed by any Trustee naming the Trustee or Trustees appointed or removed and, in the case of an appointment, the acceptance in writing by the Trustee or Trustees appointed, shall be recorded in the Registry of Deeds. Upon the recording of such instrument, the legal title to the Trust Estate shall, without the necessity of any conveyance, be vested in said succeeding or additional Trustee or Trustees, with all the rights, powers, authority and privileges as if named as an original Trustee hereunder.

7.3 In the event that there is no Trustee, either through the death or resignation of a sole Trustee without prior appointment of a successor Trustee or for any other cause, a person purporting to be a successor Trustee hereunder may record in the Registry of Deeds an affidavit, under pains and penalties of perjury, stating he or she has been appointed by all of the Beneficiaries a successor Trustee. Such affidavit when recorded together with an attorney's certificate under M.G.L. c. 183 Section 5B, stating that such attorney has knowledge of the affairs of the Trust and that the person signing the affidavit has been appointed a Trustee by all of the Beneficiaries, shall have the same force and effect as if the certificate of a Trustee or Trustees required or permitted hereunder had been recorded and persons dealing with the Trust or Trust Estate may always rely without further inquiry upon such an affidavit as so executed and recorded as to the matters stated herein.

## SECTION EIGHT

Governing Law

8.1 This Declaration of Trust shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

## SECTION NINE

Registry of Deeds

9.1 The term "Registry of Deeds" shall mean the Registry of Deeds or Registry District of the Land Court for the district in which any real estate included in the Trust Estate is located.

Executed as a sealed instrument this 14<sup>th</sup> day of January, 2015.

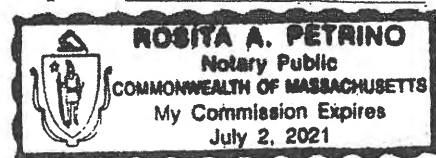
William T. Hurley, Jr., Trustee  
William T. Hurley, Jr., JD CPA, Trustee

## COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

On this 14<sup>th</sup> day of January, 2015, before me, the undersigned notary public, personally appeared William T. Hurley, Jr., JD CPA, **as aforesaid**, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, or ☒ personal knowledge of the undersigned, and acknowledged to me that he signed it voluntarily for its stated purpose.

Rosita A. Petrino  
Notary Public  
My Comm. Expires: \_\_\_\_\_



SCHEDULE OF BENEFICIARIES OF THE AIKEN PROPERTY TRUST

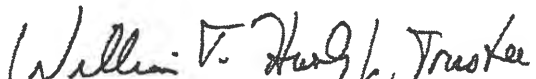
The Beneficiary of the Aiken Property Trust is Trust One JJD, whose sole beneficiary is John J. Donovan, II.

Trust One JJD, Beneficiary

  
William T. Hurley, Jr., JD CPA, Trustee

Acknowledged:

Aiken Property Trust

  
William T. Hurley, Jr., JD CPA, Trustee

Dated: January 14, 2015

AIKEN COUNTY ASSESSOR  
Tax Map:  
139-19-01-002  
Date: 02/04/2020

AIKEN COUNTY AUDITOR  
Charles T. Barton  
Endorsed 03/31/2020



2020002069  
DEED  
RECORDING FEES \$15.00  
STATE TAX \$0.00  
COUNTY TAX \$0.00  
PRESENTED & RECORDED  
01-28-2020 12:30 PM  
JUDITH WARNER  
REGISTER OF MESNE CONVEYANCE  
AIKEN COUNTY, SC  
BY: VIRGINIA DUNN DEPUTY  
BK: RB 4824  
PG: 1247 - 1249

ELECTRONICALLY FILED - 2023 Mar 24 4:08 PM - AIKEN - COMMON PLEAS - CASE#2022CPO202654

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN ) QUITCLAIM DEED AND RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That John J. Donovan, Sr., individually and as sole beneficiary of Trust One JJD, which is the sole beneficiary of Aiken Property Trust, and Linda Donovan, for and in consideration of the sum of One and xx/100 (\$1.00) Dollar, the receipt and sufficiency of which are hereby acknowledged, hereby grant, bargain, sell and release to William T. Hurley, Jr., Trustee of Aiken Property Trust under declaration of trust dated January 14, 2015, the following described real estate:

All that certain piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in the County of Aiken, State of South Carolina, West of and adjoining Banks Mill Road (S.C. Highway No. S-2-79), approximately 4.37 miles South of the City limits of the City of Aiken, County and State aforesaid, containing 40.00 acres, more or less, as shown and designated upon a plat prepared for Cornelius Debonte by Charles M. Jones, dba, Jones and Murphy dated April 14, 1997, recorded May 16, 1997, in the Offices of the RMC of Aiken County, South Carolina, in Plat Book 36 at Page 258-1. Reference is hereby made to said plat for a more complete and accurate description of said property as to metes, bounds and location.

Tax Parcel No. 139-19-01-002.

Grantee address: Trust one JJD  
William T. Hurley Trustee  
c/o Verdolino and Lowery PC  
124 Washington Street  
Foxborough, MA 02035

All that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being in Southeast of the City of Aiken, in the County of Aiken, State of South Carolina, West of and adjoining Banks Mill Road (S.C. Highway No. S-2-79), containing 36.68 acres, more or less, as shown and designated upon a plat prepared for Ira E. Coward, et. al, by Southern Partners, Inc. dated December 30, 2004, and recorded February 14, 2005, in the Office of the RMC of Aiken County, South Carolina, in Plat Book 49 at Page 9-2. Reference is hereby made to said plat for a more complete and accurate description of said property as to metes, bounds and location.

Tax Parcel No. 140-08-04-001.

By this grant, the undersigned hereby release and terminate any and all right, title and interest that may have been granted in the Option to Purchase and Right of First Refusal stated in a certain Life Estate, Will and Option to Purchase Real Estate dated April 27, 2015 and recorded in the Office of the RMC of Aiken County, South Carolina in Book RB 4549, Pages 2386 – 2388.

Witness our hands and seals this 9<sup>th</sup> day of January, 2020

Signed, sealed and delivered in the presence of:

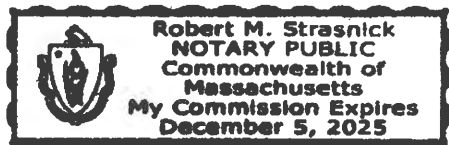
Nicole Romnelli  
Witness

Amy Gambino  
Witness

John J. Donovan  
John J. Donovan, Sr., individually and as sole beneficiary of Trust One JJD, which is the sole beneficiary of Aiken Property Trust  
a/k/a John J. Donovan, Jr.  
a/k/a Professor Donovan

State of  
County of

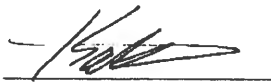
On this 9<sup>th</sup> day of January, 2020 before me, the undersigned notary public, personally appeared John J. Donovan, Sr., proved to me through satisfactory evidence of identification, which was ☒ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, or ☒ personal knowledge of the undersigned, and acknowledged to me that he signed it voluntarily for its stated purpose.



Robert M. Strasnick  
Notary Public

My Comm. Expires: 12/5/25

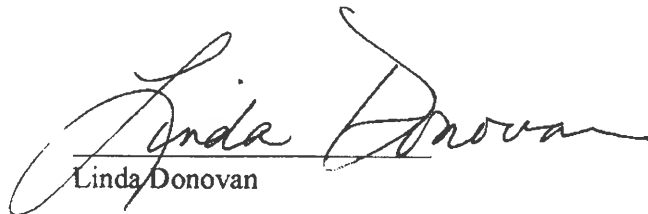
Signed, sealed and delivered in the presence of:



Witness



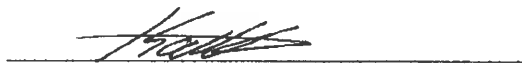
Witness



Linda Donovan

State of  
County of

On this 10 day of January, 2020 before me, the undersigned notary public, personally appeared Linda Donovan, proved to me through satisfactory evidence of identification, which was [☒] photographic identification with signature issued by a federal or state governmental agency, [☐] oath or affirmation of a credible witness, or [☐] personal knowledge of the undersigned, and acknowledged to me that she signed it voluntarily for its stated purpose.



Notary Public

My Comm. Expires: 04/03/2029

**KAITLIN VANCAMP**  
Notary Public - State of South Carolina  
My Commission Expires April 3, 2029

|                               |   |                                    |
|-------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA       | ) | IN THE COURT OF COMMON PLEAS       |
|                               | ) | SECOND JUDICIAL CIRCUIT            |
| COUNTY OF AIKEN               | ) |                                    |
|                               | ) | Civil Action No.: 2022-CP-02-02654 |
|                               | ) |                                    |
| William T. Hurley, Jr., as    | ) |                                    |
| Trustee of the Aiken Property | ) |                                    |
| Trust,                        | ) |                                    |
|                               | ) |                                    |
| Plaintiff,                    | ) | <b>MEMORANDUM OF</b>               |
| v.                            | ) | <b>LAW IN OPPOSITION</b>           |
|                               | ) | <b>OF DEFENDANT’S</b>              |
| Linda Donovan.                | ) | <b>MOTION TO DISMISS</b>           |
|                               | ) |                                    |
| Defendant.                    | ) |                                    |

**TO: BRAD A. BRODIE, ESQUIRE, ATTORNEY FOR DEFENDANT LINDA DONOVAN**

Plaintiff William T. Hurley, Jr., as Trustee of the Aiken Property Trust (“Plaintiff”), by and through their undersigned counsel, submit this Memorandum in Opposition to Defendant Linda Donovan’s (“Defendant”) Motion to Dismiss pursuant to SCRCP 12(b)(1), 12(b)(6), and 12(b)(7).

### **ARGUMENT**

Plaintiff respectfully opposes Defendant’s Motion to Dismiss for the reasons stated by counsel at oral argument at the hearing on March 27, 2023,<sup>1</sup> the arguments advanced in Plaintiff’s Motion for Judgment on the Pleadings and the accompanying Memorandum of Law, which are hereby incorporated by reference, and the following:

Under SCRCP 12(b)(1), this Court has subject matter jurisdiction because this case concerns a dispute over the subject properties, identified by TMS #'s 139-19-01-002 and 140-08-04-001 (the “Aiken Properties”), which are located in this jurisdiction, and Defendant has consented to subject matter jurisdiction by filing her own counterclaims in this action.

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<sup>1</sup> Defendant did not file her supporting memorandum of law until 3:55 p.m., Friday, March 24, 2023, in which she describes for the first time the basis of her motion.

Under SCRCP 12(b)(6), Plaintiff has not only stated a claim with respect to each of the causes of action, but established the definitive basis for judgment to enter in his favor, for the reasons stated in his Motion for Judgment on the Pleadings and accompanying Memorandum of Law.

Under SCRCP 12(b)(7), John J. Donovan, Sr., is not an indispensable party because the Defendant herself is the subject of this action for trespass and ejectment; she has never had any interest or rights in Trust One – JJD or the Aiken Property Trust; and Defendant and John J. Donovan, Sr. transferred to the Aiken Property Trust any interest or rights they could have had in the Aiken Properties with the Corrective Deed (as defined in the Complaint). Nor is Trust One – JJD, the sole beneficiary of the Aiken Property Trust, an indispensable party, because its interests are represented by Plaintiff, who is the trustee for both the Aiken Property Trust and Trust One – JJD.

For the reasons stated herein, Plaintiff requests that this Court deny Defendant's Motion to Dismiss.

Respectfully submitted,

**CALLISON TIGHE & ROBINSON, LLC**

*s/Matthew L. Jepertinger*

Matthew L. Jepertinger, S.C. Bar No. 104171

Michael W. Tighe, S.C. Bar No. 5574

Post Office Box 1390

Columbia, SC 29202-1390

Telephone: (803) 404-6900

Facsimile: (803) 404-6902

[mattjepertinger@callisontighe.com](mailto:mattjepertinger@callisontighe.com)

[miketighe@callisontighe.com](mailto:miketighe@callisontighe.com)

March 27, 2023  
Columbia, South Carolina

|                               |   |                                    |
|-------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA       | ) | IN THE COURT OF COMMON PLEAS       |
|                               | ) | SECOND JUDICIAL CIRCUIT            |
| COUNTY OF AIKEN               | ) |                                    |
|                               | ) | Civil Action No.: 2022-CP-02-02654 |
|                               | ) |                                    |
| William T. Hurley, Jr., as    | ) |                                    |
| Trustee of the Aiken Property | ) |                                    |
| Trust,                        | ) |                                    |
|                               | ) | <b>PLAINTIFF'S NOTICE</b>          |
|                               | ) | <b>OF MOTION AND</b>               |
| Plaintiff,                    | ) | <b>MOTION FOR</b>                  |
| v.                            | ) | <b>SUMMARY JUDGMENT</b>            |
|                               | ) |                                    |
| Linda Donovan.                | ) |                                    |
|                               | ) |                                    |
| Defendant.                    | ) |                                    |

**TO: BRAD A. BRODIE, ESQUIRE, ATTORNEY FOR DEFENDANT LINDA DONOVAN:**

**YOU WILL PLEASE TAKE NOTICE** that ten (10) days from the date hereof or as soon thereafter as counsel may be heard, Plaintiff William T. Hurley, Jr. ("Plaintiff"), as Trustee of the Aiken Property Trust ("Aiken Trust"), will move before the presiding Judge of Aiken County Court of Common Pleas for an order pursuant to Rule 56, SCRPC granting Plaintiff summary judgment in his favor on each his Causes of Action<sup>1</sup> and dismissing with prejudice each of Defendant Linda Donovan's ("Defendant") Counterclaims<sup>2</sup> on the grounds that there is no genuine issue as to any material fact as to the title to and lawful possession of the properties in dispute, which must be resolved as a matter of law in Plaintiff's favor. More specifically, Plaintiff will show the following:

- 1) Plaintiff, as Trustee, is the record title holder to the subject properties, identified by TMS Nos. 139-19-01-002 and 140-08-04-001 ("Aiken Properties") pursuant to unambiguous limited warranty deeds conveying the Aiken Properties solely to the Aiken Trust in 2015.

<sup>1</sup> (1) First Cause of Action for Declaratory Judgment that Defendant has no right or interest to possess, use, or occupy the Aiken Properties; (2) Second Cause of Action for Trespass; and (3) Third Cause of Action for Ejectment of Trespasser.

<sup>2</sup> (1) Constructive or Resulting Trust; (2) Breach of Fiduciary Duty; (3) Unjust Enrichment; and (4) Declaratory Judgment.

- 2) To the extent that Defendant ever had any right or interest in the Aiken Properties, which she did not, she conveyed all such rights or interests to the Aiken Trust with an unambiguous quitclaim deed and release that she voluntarily executed before two witnesses and a notary on January 10, 2020, which was recorded on January 28, 2020.
- 3) Defendant has no right, title, or interest of any kind, beneficial or otherwise, in the Aiken Properties, and occupies the Aiken Properties as a trespasser.
- 4) Defendant is not and never has been a beneficiary of the Aiken Trust, the sole beneficiary of which is Trust One – JJD (“Trust One”).
- 5) Defendant is not and never has been a beneficiary of Trust One.
- 6) As a matter of law, no resulting or constructive trust has been created in favor of Defendant by virtue of the controlling, unambiguous deeds.
- 7) As a matter of law, Plaintiff cannot have breached any fiduciary duty to Defendant because no such duty was ever owed.
- 8) As a matter of law, Defendant fails to state a claim for “unjust enrichment” because she does not and cannot allege the elements of such a claim.
- 9) As a matter of law, Defendant’s Counterclaim for Declaratory Judgment fails because there is no issue in controversy in light of the controlling, unambiguous deeds.

This Motion is further supported by the Memorandum in Support of Plaintiff’s Motion for Summary Judgment filed contemporaneously herewith, as well as documentary evidence attached to the Memorandum, public records, the statutory and common law of South Carolina, and such other matters as may be properly presented to the Court at the time of the hearing.

**NOW WHEREFORE**, based upon the foregoing, Plaintiff respectfully requests that this Court enter its Order and judgment for the Plaintiff as follows:

- a. Finding that Defendant possesses no right or interest in the Aiken Properties.
- b. Requiring Defendant to immediately quit the premises.
- c. Granting Plaintiff judgment on each of the Causes of Action against Defendant.

- d. Dismissing with prejudice Defendant's Counterclaims against Plaintiff.
- e. Entering any further relief that the Court deems just and proper.

Respectfully submitted,

**CALLISON TIGHE & ROBINSON, LLC**

*s/Richard C. Detwiler*

Richard C. Detwiler, S.C. Bar No. 6473

Matthew L. Jupertinger, S.C. Bar No. 104171

Michael W. Tighe, S.C. Bar No. 5574

Post Office Box 1390

Columbia, SC 29202-1390

Telephone: (803) 404-6900

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[rickdetwiler@callisontighe.com](mailto:rickdetwiler@callisontighe.com)

[mattjupertinger@callisontighe.com](mailto:mattjupertinger@callisontighe.com)

[miketighe@callisontighe.com](mailto:miketighe@callisontighe.com)

April 25, 2023  
Columbia, South Carolina

|                               |   |                                    |
|-------------------------------|---|------------------------------------|
| STATE OF SOUTH CAROLINA       | ) | IN THE COURT OF COMMON PLEAS       |
|                               | ) | SECOND JUDICIAL CIRCUIT            |
| COUNTY OF AIKEN               | ) |                                    |
|                               | ) | Civil Action No.: 2022-CP-02-02654 |
|                               | ) |                                    |
| William T. Hurley, Jr., as    | ) |                                    |
| Trustee of the Aiken Property | ) |                                    |
| Trust,                        | ) |                                    |
|                               | ) | <b>PLAINTIFF'S</b>                 |
| Plaintiff,                    | ) | <b>MEMORANDUM IN</b>               |
|                               | ) | <b>SUPPORT OF MOTION</b>           |
| v.                            | ) | <b>FOR SUMMARY</b>                 |
|                               | ) | <b>JUDGMENT</b>                    |
| Linda Donovan.                | ) |                                    |
|                               | ) |                                    |
| Defendant.                    | ) |                                    |

---

In support of his Motion for Summary Judgment, the Plaintiff, William T. Hurley, Jr. ("Plaintiff"), in his capacity as Trustee of the Aiken Property Trust ("Aiken Trust"), would respectfully show unto this Honorable Court as follows:

Plaintiff brought this action against Defendant Linda Donovan ("Defendant") to eject her from properties solely owned by the Aiken Trust, identified by TMS #'s 139-19-01-002 and 140-08-04-001 ("Aiken Properties"). Plaintiff asserts in the Complaint: (1) First Cause of Action for Declaratory Judgment that Defendant has no right or interest to possess, use, or occupy the Aiken Properties; (2) Second Cause of Action for Trespass; and (3) Third Cause of Action for Ejectment of Trespasser. Defendant asserts Counterclaims for (1) Constructive or Resulting Trust; (2) Breach of Fiduciary Duty; (3) Unjust Enrichment; and (4) Declaratory Judgment.

Summary judgment in Plaintiff's favor is proper and trial is unnecessary because, as a matter of law, Defendant has no right or interest in the Aiken Properties pursuant to (1) the unambiguous limited warranty deeds conveying the Properties solely to the Aiken Trust in 2015 and (2) the unambiguous quitclaim deed Defendant voluntarily executed, delivered, and recorded in 2020, conveying any right or interest that she could have had in the Aiken Properties to the

Aiken Trust. Accordingly, judgment should enter in Plaintiff's favor as to each of his Causes of Actions, and Defendant's Counterclaims should be dismissed with prejudice.

### **FACTS**

The indisputable facts are as follows:

1. On January 14, 2015, the Aiken Properties, identified by TMS #'s 139-19-01-002 and 140-08-04-001, were purchased for \$1,042,500 and \$457,500 respectively, and transferred to the Aiken Trust pursuant to limited warranty deeds ("2015 Deeds") on January 14, 2015, recorded in the Aiken County Register of Deeds on January 16, 2015, in Book 4536, Pages 786, 790, attached hereto as **Exhibits A and B**.
2. Trust One – JJD ("Trust One") is and always has been the sole beneficiary of the Aiken Trust.
3. Trust One was established by a Final Settlement Agreement dated March 26, 2007 ("FSA"), attached hereto as **Exhibit C** between Defendant's husband, John J. Donovan, II ("Donovan Sr."), and his children, and a subsequent January 12, 2010 Trust Agreement ("Trust Agreement"), attached hereto as **Exhibit D**, which settled Trust One with certain properties owned by the Donovan children, and named Donovan Sr. as the beneficiary of Trust One.
4. The initial trustee of Trust One was John J. Donovan, III ("Donovan Jr."), son of Donovan Sr., and Plaintiff became the successor trustee upon Donovan Jr.'s death on April 25, 2015.
5. Under the FSA (§ 8) and the Trust Agreement an arbitrator ("Arbitrator")<sup>1</sup> was permanently empowered to oversee aspects of Trust One's administration and resolve disputes concerning Trust One, and the Arbitrator has the "discretion to award any remedy including sanctions, damages, attorneys' fees."
6. The FSA (§ 2) and the Trust Agreement (§ 2.1) restricted Donovan Sr.'s beneficiary interest, including by prohibiting any transfer, assignment, or pledge of such interest.
7. In December of 2014, Donovan Sr. and his children executed an Amendment to the Trust Agreement ("2014 Amendment"), attached hereto as **Exhibit E**, which among other things, provided for the sale of certain Trust One properties and the purchase by Trust One of replacement property in the form of the Aiken Properties.

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<sup>1</sup> The Honorable John J. Martin ("Arbitrator"), retired judge of the United States District Court for the Southern District of New York, was appointed by the Massachusetts Superior Court (van Gestel, J.) as the permanent arbitrator.

8. The 2014 Amendment provided that the Aiken Properties “shall be owned solely by Trust 1-JJD.” (§ 9).
9. On January 14, 2015, the Aiken Trust was formed by a Declaration of Trust, attached hereto as **Exhibit F**, to facilitate the purchase of the Aiken Properties, naming Plaintiff its Trustee and Trust One its sole beneficiary.
10. In accordance with the 2014 Amendment, the executed and recorded 2015 Deeds solely named the Aiken Trust as the title holder of the Aiken Properties.
11. On April 27, 2015, despite having no transferable interest in the Aiken Properties, Donovan Sr. executed certain documents including a “Life Estate, Will, Option to Purchase” (“2015 Aiken Filings”) attached hereto as **Exhibit G**, and secretly recorded the 2015 Aiken Filings in the Aiken County Register of Deeds on April 27, 2015, in Book 4549, Page 2386. In the 2015 Aiken Filings, Donovan purported to convey to Defendant, among other things: (A) an option to purchase the Aiken Properties for well below fair market value; (B) an exclusive life estate; and (C) clear title to the Aiken Properties upon his death.
12. Upon discovering Donovan Sr.’s clandestine execution and recording of the 2015 Aiken Filings, Donovan Sr.’s children brought sanction proceedings before the Arbitrator, and on May 1, 2019, Donovan Sr. executed a Stipulation by John J. Donovan, Sr., attached hereto as **Exhibit H**, in which he admitted that: the 2015 Aiken Filings are “invalid, of no force and effect, and are void ab initio” (§ 1); as beneficiary of Trust One, he did not “have the right or authority to transfer, assign or pledge any assets held by or for the benefit of Trust One” (§ 5); and he would not in the future attempt to, among other things, transfer, convey, or assign his beneficial interest in Trust One or Trust One assets” (§ 6).
13. The Arbitrator’s resulting October 1, 2019 Arbitral Order, attached hereto as **Exhibit I**, found that Donovan Sr. had violated the FSA and the Trust Agreement, and ordered, among other things, that the fraudulent 2015 Aiken Filings be corrected. On October 30, 2019, the October 1, 2019 Arbitral Order was confirmed and adopted as a Final Order of the Massachusetts Superior Court, attached hereto as **Exhibit J**.
14. In compliance, Defendant and Donovan Sr. executed a Quitclaim Deed on January 10, 2020 (“2020 Corrective Deed”), recorded on January 28, 2020 in the Aiken County Register of Deeds in Book 4824, Page 1247, attached hereto as **Exhibit K**, by which Defendant and Donovan Sr. conveyed any right or interest they may have had in the Aiken Properties to the Aiken Trust.

15. Donovan Sr.'s beneficiary interest in Trust One was extinguished by an arbitral award issued by the Arbitrator on November 10, 2021 ("November 10, 2021 Arbitral Award"), attached hereto as **Exhibit L**, on account of his repeated commission of fraud, forgery, and filing false documents in registries of deeds, among other unlawful conduct, which Award was confirmed and adopted as a Final Judgment of the Massachusetts Superior Court on August 18, 2022, attached hereto as **Exhibit M**.
16. Donovan, Sr. is currently incarcerated for his fraudulent conduct.<sup>2</sup>
17. Defendant has never been a beneficiary of the Aiken Trust.
18. Defendant has never been a beneficiary of Trust One.
19. Despite the foregoing and numerous requests by the Trustee to vacate the Aiken Properties in which Defendant has no color of title and no possessory right or interest, Defendant refuses to vacate the premises.

### **DISCUSSION**

#### **I. The unambiguous 2015 Deeds vested the Aiken Properties to Plaintiff as sole grantee.**

When a deed is unambiguous, any attempt to determine the grantor's intent must be limited to the deed itself and using extrinsic evidence to contradict the plain language of the deed is improper. *See Penza v. Pendleton Station, LLC*, 404 S.C. 198, 204, 743 S.E.2d 850, 853 (Ct. App. 2013); *Springob v. Farrar*, 334 S.C. 585, 590, 514 S.E.2d 135, 138 (Ct. App. 1999). Ambiguity exists when the language of the deed is reasonably susceptible to more than one interpretation. *S.C. Dep't of Natural Res. v. Town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001). The determination of whether language in a deed is ambiguous is a question of law. *Id.* The Court is without authority to consider parties' secret intentions and words cannot be read into a deed to impart an intent unexpressed when the deed is recorded. Therefore, summary judgment is proper and trial unnecessary when the intention of the parties as to the legal effect of the deed

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<sup>2</sup> In an April 3, 2023 Summary Decision and Order, attached hereto as **Exhibit N**, the Massachusetts Superior Court recently denied Donovan Sr.'s emergency motion to stay his sentence on the basis of, among other things, "Donovan has proven himself to be nothing short of a charlatan. He cannot be believed; either about his health, where he would live, or that he would somehow abandon his twenty-year quest to destroy his family."

may be gathered from the four corners of the instrument itself. *Edgewater on Broad Creek Owners Ass'n v. Ephesian Ventures, LLC*, 430 S.C. 400, 406, 845 S.E.2d 211, 214 (Ct. App. 2020).

The 2015 Deeds, which are unambiguous on their face, conveyed all rights, title, and interest to the Aiken Properties solely to Plaintiff. Because there is no ambiguity within the four corners of the Deeds, Defendant is precluded from introducing any evidence to contradict the plain meaning of the Deeds' language, including her own subjective beliefs regarding the parties' intentions at the time of transfer. Thus, as a matter of law, Defendant was never conveyed any right or interest in the Aiken Properties, which have always been held exclusively by Plaintiff.

**II. Notwithstanding that Defendant never had any right or interest in the Aiken Properties, Defendant conveyed to the Aiken Trust any right or interest she may have had with Defendant's unambiguous 2020 Corrective Deed, recorded on January 28, 2020.**

In order to correct the fraudulent 2015 Aiken Filings (discussed *infra*), on January 9 and 10, 2020, Donovan Sr. and Defendant respectively executed, in the presence of two witnesses and a notary, the 2020 Corrective Deed, which was recorded in the Aiken County Register of Deeds on January 28, 2020. Exhibit K, Compl. ¶ 39. The 2020 Corrective Deed provides in relevant part (emphasis added):

KNOW ALL MEN BY THESE PRESENTS:

That ***John J. Donovan, Sr.***, individually and as sole beneficiary of Trust One JJD, which is the sole beneficiary of Aiken Property Trust, ***and Linda Donovan***, for and in consideration of the sum of One and xx/100 (\$1.00) Dollar, the receipt and sufficiency of which are hereby acknowledged, ***hereby grant, bargain, sell and release to William T. Hurley, Jr., Trustee of Aiken Property Trust under declaration of trust dated January 14, 2015, the following described real estate . . .*** [description of the metes and bounds of the Aiken Properties with references to the corresponding Registry Plat Books and Tax Parcel Numbers].

The 2020 Corrective Deed further provides:

By this grant, the undersigned hereby release and terminate any and all right, title and interest that may have been granted in the [2015 Aiken Filings].

Compl. ¶ 40, Ex. K.

The 2020 Corrective Deed is facially unambiguous as a matter of law. The language “hereby grant, bargain, sell and release to [the Trustee] the following described real estate” clearly establishes—without qualification or limitation—the contemporaneous intent of the grantors, Defendant and Donovan Sr., to convey to the Aiken Trust the entirety of any right or interest that they had in the Aiken Properties, which are described with particularity by the metes and bounds and with reference to the corresponding Registry Plat Books and Tax Parcel Numbers.<sup>3</sup> *Spence*, 368 S.C. at 119, 628 S.E.2d at 876; *Bell v. Bennett*, 307 S.C. 286, 293, 414 S.E.2d 786, 790 (Ct. App. 1992) (*citing* 26 C.J.S. *Deeds* § 104(a) (1956) (there is a presumption that a grantor intends to convey his entire interest, and a deed will be taken to convey the entire property and interest of the grantor in the premises unless something appears to limit it to a lesser interest)). Moreover, to preempt any potential ambiguity arising from the fraudulent 2015 Aiken Filings, the 2020 Corrective Deed further specifies that any rights or interest that may have been created by those fraudulent Filings are extinguished.

To the extent that Defendant asserts in her Answer (¶ 15) that the 2020 Corrective Deed, which she voluntarily executed before two witnesses and a notary, “was for insufficient consideration,” such a revisionist characterization is repudiated by the controlling, unambiguous language of the 2020 Corrective Deed. Such language states, in relevant part, that the conveyance to the Aiken Trust is “for and in consideration of the sum of One and xx/100 (\$1.00) Dollar, the

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<sup>3</sup> A quitclaim deed conveys only that right, title and interest the grantor may possess.

receipt and sufficiency of which are hereby acknowledged.” It is well-established in this jurisdiction that “the slightest consideration is sufficient to support the most onerous obligation.” *First National Bank of South Carolina v. Wade*, 245 S.C. 426, 431, 141 S.E.2d 102, 104 (1965); *see also Dixon v. Dixon*, 362 S.C. 388, 396-97, 608 S.E.2d 849, 852-53 (2005) (“We find that the consideration did not fail, and that even if it had, the proper remedy would not be to set the deed aside.”).

Because the 2020 Corrective Deed is, like the 2015 Deeds, unambiguous, the Court need not and should not consider extrinsic evidence beyond the Deed itself. *See Penza*, 404 S.C. at 204-05, 743 S.E.2d at 853; *Springob*, 334 S.C. at 590, 514 S.E.2d at 138. Together these Deeds establish as a matter of law that Defendant has no right or interest in the Aiken Properties. This Court must therefore enter judgment in Plaintiff’s favor as to each of his Causes of Action, and order Defendant to quit the premises.

**III. Defendant’s Counterclaim for Constructive or Resulting Trust fails as a matter of law because the 2020 Corrective Deed conveyed to the Aiken Trust any interest or rights she could have had in the Aiken Properties.**

Assuming that Plaintiff contributed \$19,974.24 of the \$1,500,000 purchase price (1.3%) of the Aiken Properties in January 2015 as she has alleged, she subsequently conveyed any resulting right or interest in such Properties to the Aiken Trust when she voluntarily executed the unambiguous 2020 Corrective Deed on January 10, 2020, which was recorded on January 28, 2020. Thus, Plaintiff’s Counterclaim for Constructive or Resulting Trust asserting some residual right or interest in the Aiken Properties fails as a matter of law, and the Court need not and should not consider any extrinsic evidence beyond the 2020 Corrective Deed.

In any event, even if the Court were to examine the circumstances of the original purchase, which it should not do beyond the four corners of the 2015 Deeds, Defendant would bear the

burden to show by *clear, definite, and convincing evidence* that she was intended to receive an interest in the Aiken Properties.<sup>4</sup> The contemporaneous evidence is to the contrary. The 2014 Amendment,<sup>5</sup> authorizing the purchase of the Aiken Properties by Trust One (as sole beneficiary of the Aiken Trust), expressly provides that such Properties “shall be owned solely by Trust 1-JJD.” The fact that no one, including Donovan Sr. or Defendant, was ever intended to have any right or interest in the Aiken Properties other than Trust One (as sole beneficiary of the Aiken Trust) is further evidenced by the original 2015 Deeds, recorded on January 16, 2015 at the time of purchase, naming the Aiken Trust as the sole title-holder of the Aiken Properties. Thus, Defendant has no likelihood of proving by clear, definite, and convincing evidence any result contrary to the controlling, unambiguous documents.

**IV. Defendant’s Counterclaim for Breach of Fiduciary Duty fails as a matter of law because Plaintiff owes no fiduciary duty to Defendant, who has never been a beneficiary of the Aiken Trust or Trust One.**

The South Carolina Trust Code (“Code”) requires a trustee to “administer the trust in good faith, *in accordance with its terms and purposes and the interests of the beneficiaries...*” S.C. Code Ann. § 62-7-801 (emphasis added); S.C. Code Ann. § 62-7-802(a). A “beneficiary” is a person that has a beneficial interest in a trust, vested or contingent. S.C. Code Ann. § 62-7-103(2)(A).

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<sup>4</sup> A resulting trust arises whenever a party has obtained money that does not equitably belong to him or her. *Chapman v. Citizens & S. Nat'l Bank*, 302 S.C. 469, 472, 395 S.E.2d 446, 448 (Ct. App. 1990). Generally, when real estate is conveyed to one person and the consideration is paid by another, it is presumed that the party who pays the purchase money intended a benefit to himself and a resulting trust is raised on his or her behalf. *Lollis v. Lollis*, 291 S.C. 525, 528, 354 S.E.2d 559, 561 (1987). However, this presumption may not be in accord with the truth and *must be supported by clear, definite, and convincing evidence*. *Green v. Green*, 237 S.C. 424, 426, 117 S.E.2d 583, 584 (1960). Clear and convincing evidence is more than a mere preponderance of the evidence. *State v. Simmons*, 384 S.C. 145, 682 S.E.2d 19 (2009). In order to survive a motion for summary judgment on a claim requiring this heightened burden of proof, the non-moving party must show more than a mere scintilla of evidence. *Thomas v. Milliman*, 392 S.C. 116, 392 S.E.2d 116 (2011).

<sup>5</sup> The 2014 Amendment amended the 2010 Trust Agreement that established Trust One with the Arbitrator’s approval specifically to allow the purchase of the Aiken Properties by Trust One.

Defendant cannot claim to be a beneficiary of the Aiken Trust, which has only ever had Trust One as its sole beneficiary. Therefore, Plaintiff has never owed Defendant any fiduciary duty as the Trustee of the Aiken Trust.

With respect to Trust One, it is undisputed that beginning from Plaintiff's appointment as the successor Trustee in April 2015, Plaintiff owed a fiduciary duty to Donovan Sr., who was formerly a beneficiary of Trust One, until the November 10, 2021 Arbitral Award extinguished his beneficiary interest. However, Defendant has never been a beneficiary of Trust One, and her status as merely the spouse of a former beneficiary of a trust does not in and of itself confer upon her a beneficiary interest.<sup>6</sup> Moreover, the Arbitrator and the Massachusetts Superior Court have repeatedly rejected prior attempts by Donovan Sr. and Defendant to transfer his former beneficiary interest to Defendant.

The 2007 FSA and the 2010 Trust Agreement which established Trust One expressly restricted Donovan Sr.'s beneficiary interest to prohibit any transfer, assignment, or pledge of such interest. Ex. C & D, Compl. ¶ 15. Notwithstanding this express prohibition, Donovan Sr. and Defendant attempted on several occasions over the years to convey Donovan Sr.'s beneficiary interest to Defendant, one such example being the 2015 Aiken Filings that Donovan secretly recorded. In these fraudulent Filings, Donovan attempted to grant Defendant, among other things: (A) an option to purchase the Aiken Properties for well below fair market value; (B) an exclusive life estate; and (C) clear title to the Aiken Properties upon his death. Ex. G, Compl. ¶¶ 29-30.

In the course of the subsequent sanction proceedings before the Arbitrator, on May 1, 2019, Donovan Sr. executed a Stipulation by John J. Donovan, Sr., Ex. H, in which he admitted that: the

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<sup>6</sup> In connection with the FSA, Defendant also executed her own settlement agreement with the Donovan children on March 26, 2007, through which she expressly settled, renounced, and/or released any rights she purported to have with respect to Trust One's assets. *See* Compl. ¶ 10.

2015 Aiken Filings are “invalid, of no force and effect, and are void ab initio” (¶ 1); as beneficiary of Trust One, he did not “have the right or authority to transfer, assign or pledge any assets held by or for the benefit of Trust One” (¶ 5); and he would not in the future attempt to, among other things, transfer, convey, or assign his beneficial interest in Trust One or Trust One assets” (¶ 6). Compl. ¶ 36. The Arbitrator’s resulting October 1, 2019 Arbitral Order, Ex. I, found that Donovan Sr. had violated the Trust One governing documents, and ordered, among other things, that the fraudulent 2015 Aiken Filings be corrected. Compl. ¶ 37.<sup>7</sup> In compliance with this Order, on January 9 and 10, 2020, Donovan Sr. and Defendant respectively executed, in the presence of two witnesses and a notary, the 2020 Corrective Deed, recorded on January 28, 2020, to convey any interest they could have had in the Aiken Properties to the Aiken Trust. Subsequently, Donovan Sr.’s own beneficiary interest in Trust One was extinguished by the Arbitrator’s November 10, 2021 Arbitral Order<sup>8</sup> on account of his repeated acts of fraud, for which he remains incarcerated.

Thus, Defendant cannot be deemed to have ever been a beneficiary of Trust One through any form of conveyance from Donovan, as his spouse or otherwise, and Plaintiff has never owed Defendant any fiduciary duty as the Trustee of Trust One. Plaintiff cannot breach a fiduciary duty to Defendant when no such duty exists, and Defendant’s Counterclaim for Breach of Fiduciary Duty fails as a matter of law.

**V. Defendant’s Counterclaim for Unjust Enrichment fails as a matter of law because Defendant fails to state a basis for her claim.**

Unjust enrichment may exist as an equitable remedy when 1) a plaintiff confers a *non-gratuitous* benefit on a defendant; 2) the defendant receiving the benefit realizes some value from

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<sup>7</sup> On October 30, 2019, the October 1, 2019 Arbitral Order was confirmed and adopted as a Final Order of the Massachusetts Superior Court, Exhibit L to the Complaint. Compl. ¶ 38.

<sup>8</sup> This Arbitral Award was confirmed and adopted as a Final Judgment of the Massachusetts Superior Court on August 18, 2022.

the benefit; and 3) it would be inequitable for the defendant receiving the benefit to retain said benefit without paying the plaintiff for its value. *Inglese v. Beal*, 403 S.C. 290, 297, 742 S.E.2d 687, 691 (Ct. App. 2013). The benefit must be non-gratuitous, either because it was conferred at a defendant's request, or because the circumstances were such that the plaintiff could reasonably rely on the defendant for repayment. *Id.* at 298.

Defendant does not even allege facts that would meet the elements necessary to support a cause of action for unjust enrichment. Defendant's mere allegation that she has "expended well over \$200,000.00 in making improvements to the [Aiken Properties], including renovations, building of structures and other improvements" (Def. Ans. ¶ 44) does not establish that these alleged improvements were made at Plaintiff's request or that Defendant reasonably relied upon anything Plaintiff said or did to expect repayment. There is no evidence that such improvements were carried out at the request of Plaintiff or for the benefit of anyone other than Defendant herself. Indeed, it is undisputed that during the period of her possession, Defendant has paid absolutely no rent to the Trust for the Aiken Properties. Whatever "renovations, building of structures and other improvements" allegedly made by the Defendant cannot be considered "non-gratuitous," and Defendant's Counterclaim for Unjust Enrichment fails as a matter of law.

**VI. Defendant's Counterclaim for Declaratory Judgment fails as a matter of law because there is no issue in controversy in light of the controlling, unambiguous Deeds.**

Because the unambiguous 2015 Deeds and the 2020 Corrective Deed require judgment to enter in Plaintiff's favor as to each of his Causes of Action and dismissal of Defendant's Counterclaims without the admission of extrinsic evidence, there is no issue in controversy as to any of Defendant's rights or interest with respect to the Aiken Properties. She has none as a matter of law.

Based upon the foregoing, Plaintiff respectfully requests that the Court enter its order and judgment in Plaintiff's favor:

- a. Finding that Defendant possesses no right or interest in the Aiken Properties.
- b. Requiring Defendant to immediately quit the premises.
- c. Granting Plaintiff judgment on each of the Causes of Action against Defendant.
- d. Dismissing with prejudice Defendant's Counterclaims against Plaintiff.
- e. Entering any further relief that the Court deems just and proper.

Respectfully submitted,

**CALLISON TIGHE & ROBINSON, LLC**

*s/Richard C. Detwiler*

Richard C. Detwiler, S.C. Bar No. 6473

Matthew L. Jepertinger, S.C. Bar No. 104171

Michael W. Tighe, S.C. Bar No. 5574

Post Office Box 1390

Columbia, SC 29202-1390

Telephone: (803) 404-6900

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[rickdetwiler@callisontighe.com](mailto:rickdetwiler@callisontighe.com)

[mattjepertinger@callisontighe.com](mailto:mattjepertinger@callisontighe.com)

[miketighe@callisontighe.com](mailto:miketighe@callisontighe.com)

April 25, 2023  
Columbia, South Carolina

# EXHIBIT A

## AIKEN COUNTY ASSESSOR

Tax Map:

139-19-01-002

Date: 01/23/2015

**2015001022**

DEED

RECORDING FEES

\$10.00

STATE TAX

\$2710.50

COUNTY TAX

\$1146.75

PRESENTED &amp; RECORDED:

**01-16-2015 08:30 AM**

JUDITH WARNER

REGISTER OF MESNE CONVEYANCE

AIKEN COUNTY, SC

BY: MARILYN SEIGLER DEPUTY

**BK: RB 4536****PG: 786 - 789**

STATE OF SOUTH CAROLINA    )  
                                                   )       LIMITED WARRANTY DEED  
 COUNTY OF AIKEN                    )

## KNOW ALL MEN BY THESE PRESENTS:

That H 'N D STABLES, LLC, a South Carolina limited liability company (successor to H 'n D Stables, Inc.), (hereinafter called "Grantor"), for and in consideration of the sum of ONE MILLION FORTY-TWO THOUSAND FIVE HUNDRED AND NO/100 Dollars (\$1,042,500.00), to it in hand paid at and before the sealing of these presents by WILLIAM T. HURLEY, JR. TRUSTEE OF AIKEN PROPERTY TRUST U/D JANUARY 14, 2015 (hereinafter called "Grantee"), the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto Grantee, his heirs, successors and assigns, the following described real estate, to wit:

All that certain piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in the County of Aiken, State of South Carolina, West of and adjoining Banks Mill Road (S.C. Highway No. S-2-79), approximately 4.37 miles South of the City limits of the City of Aiken, County and State aforesaid, containing 40.00 acres, more or less, as shown and designated upon a plat prepared for Cornelius Debonte by Charles M. Jones, dba, Jones and Murph dated April 14, 1997, recorded May 16, 1997, in the Office of the RMC of Aiken County, South Carolina, in Plat Book 36 at Page 258-1. Reference is hereby made to said plat for a more complete and accurate description of said property as to metes, bounds and location.

This being the same property conveyed to H 'n D Stables, Inc. by deed of Debonte Family Limited Partnership dated July 20, 1998, recorded July 21, 1998, in Title Book 1795 at Page 127, records of Aiken County, South Carolina. Thereafter, H 'n D Stables, Inc. filed Articles of

Book 4536 Page 786

ELECTRONICALLY FILED - 2023 Apr 25 11:32 AM - AIKEN - COMMON PLEAS - CASE#2022CP0202654

Amendment with the South Carolina Secretary of State (a copy of which are attached hereto and incorporated herein as Exhibit A) converting said entity to H 'n D Stables, LLC.

Tax Parcel No. 139-19-01-002

Grantee's Address: Trust One JDD  
William T. Hurley, Trustee  
c/o Verdolino and Lowery PC  
124 Washington Street  
Foxborough, MA 02035

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions as set forth on Exhibit B attached hereto and incorporated herein.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining thereto,

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Grantee, his heirs, successors and assigns forever, and the Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, his heirs and assigns, against Grantor and its successors and assigns and none other.

[Signatures Commence on Next Page]

WITNESS the Hand and Seal of the Grantor this 14 day of January, 2015.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

H 'n D Stables, LLC, a South Carolina limited  
liability company (successor to H 'n D Stables, Inc.)  
By: The R. Bruce Duchossois Revocable Trust u/a/d  
12/13/1989

Its: Sole Member

By: Thomas A. Smith (LS)  
Thomas A. Smith, not individually, but solely as  
Co-Trustee of the R. Bruce Duchossois  
Revocable Trust u/a/d 12/13/1989

Rosemarie Vincent  
Witness

Christine Murray  
Notary Public

STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

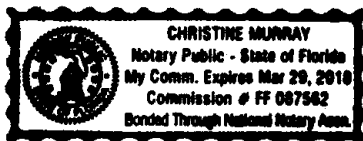
PERSONALLY appeared before me the undersigned witness and made oath that s/he saw  
the within named Thomas A. Smith, as Co-Trustee of The R. Bruce Duchossois Revocable Trust  
u/a/d 12/13/1989, as sole member of H 'n D Stables, LLC, sign, seal and as Grantor's act and  
deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he,  
with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this  
14 day of JANUARY, 2015.

Christine Murray  
Notary Public for STATE OF FLORIDA  
My Commission Expires: 3/29/2018

Rosemarie Vincent  
Witness

[NOTARY SEAL]



After recording return to Morris Rudnick, Esquire

EXHIBIT B  
PERMITTED EXCEPTIONS

1. Rights or claims of parties in possession not shown by the Public Records.
2. Any encroachment, encumbrance, violation or adverse circumstances affecting the Title that would be disclosed by an accurate and complete survey of the Land.
3. Easements, or claims of easement, not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore furnished, imposed by law and not shown by the Public Records.
5. Taxes and assessments for the year 2015, and subsequent years, which are a lien but are not yet due and payable.
6. Any taxes assessed under the rollback provision of Section 12-43-220(D-4) South Carolina Code of Laws 1976, as amended.

# EXHIBIT B

## AIKEN COUNTY ASSESSOR

Tax Map:

140-08-04-001

Date: 01/23/2015

2015001023  
 DEED  
 RECORDING FEES \$10.00  
 STATE TAX \$1189.50  
 COUNTY TAX \$503.25  
 PRESENTED & RECORDED  
 01-16-2015 08:30 AM  
 JUDITH WARNER  
 REGISTER OF DEEDS CONVEYANCE  
 AIKEN COUNTY, SC  
 BY: MARILYN SEIGLER DEPUTY  
 BK: RB 4536  
 PG: 790 - 793

STATE OF SOUTH CAROLINA )  
 ) LIMITED WARRANTY DEED  
 COUNTY OF AIKEN )

## KNOW ALL MEN BY THESE PRESENTS:

That H 'N D STABLES, LLC, a South Carolina limited liability company (successor to H 'n D Stables, Inc.), (hereinafter called "Grantor"), for and in consideration of the sum of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 Dollars (\$457,500.00), to it in hand paid at and before the sealing of these presents by WILLIAM T. HURLEY, JR. TRUSTEE OF AIKEN PROPERTY TRUST U/D JANUARY 14, 2015 (hereinafter called "Grantee"), the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto Grantee, his heirs, successors and assigns, the following described real estate, to wit:

All that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being in Southeast of the City of Aiken, in the County of Aiken, State of South Carolina, West of and adjoining Banks Mill Road (S.C. Highway No. S-2-79), containing 36.68 acres, more or less, as shown and designated upon a plat prepared for Ira E. Coward, et. al, by Southern Partners, Inc. dated December 30, 2004, and recorded February 14, 2005, in the Office of the RMC of Aiken County, South Carolina, in Plat Book 49 at Page 9-2. Reference is hereby made to said plat for a more complete and accurate description of said property as to metes, bounds and location.

This being the same property conveyed to H n' D Stables, Inc. by deed of Ira E. Coward, II, William L. Coward and Edgar A. Coward dated April 18, 2005, recorded May 12, 2005, in Title Book 2512 at Page 200, records of Aiken County, South Carolina. Thereafter, H 'n D Stables,

Book 4536 Page 790

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Inc. filed Articles of Amendment with the South Carolina Secretary of State (a copy of which are attached hereto and incorporated herein as Exhibit A) converting said entity to H 'n D Stables, LLC.

Tax Parcel No. 140-08-04-001

Grantee's Address: Trust One JDD  
William T. Hurley, Trustee  
c/o Verdolino and Lowery PC  
124 Washington Street  
Foxborough, MA 02035

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions as set forth on Exhibit B attached hereto and incorporated herein.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining thereto,

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Grantee, his heirs, successors and assigns forever, and the Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, his heirs and assigns, against Grantor and its successors and assigns and none other.

[Signatures Commence on Next Page]

WITNESS the Hand and Seal of the Grantor this 14 day of January, 2015.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

H 'n D Stables, LLC, a South Carolina limited  
liability company (successor to H 'n D Stables, Inc.)  
By: The R. Bruce Duchossois Revocable Trust u/a/d  
12/13/1989

Its: Sole Member

By: Thomas A. Smith (LS)  
Thomas A. Smith, not individually, but solely as  
Co-Trustee of the R. Bruce Duchossois  
Revocable Trust u/a/d 12/13/1989

Rosemarie Vincent  
Witness

Christine Murray  
Notary Public

STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

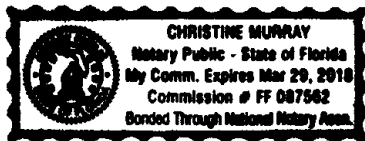
PERSONALLY appeared before me the undersigned witness and made oath that s/he saw  
the within named Thomas A. Smith, as Co-Trustee of The R. Bruce Duchossois Revocable Trust  
u/a/d 12/13/1989, as sole member of H 'n D Stables, LLC, sign, seal and as Grantor's act and  
deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he,  
with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this  
14 day of JANUARY, 2015.

Christine Murray  
Notary Public for STATE OF FLORIDA  
My Commission Expires: 3/29/2018

Rosemarie Vincent  
Witness

[NOTARY SEAL]



After recording return to Morris Rudnick, Esquire

EXHIBIT B  
PERMITTED EXCEPTIONS

1. Rights or claims of parties in possession not shown by the Public Records.
2. Any encroachment, encumbrance, violation or adverse circumstances affecting the Title that would be disclosed by an accurate and complete survey of the Land.
3. Easements, or claims of easement, not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore furnished, imposed by law and not shown by the Public Records.
5. Taxes and assessments for the year 2015, and subsequent years, which are a lien but are not yet due and payable.
6. Restrictive covenants and easements contained therein appearing of record in Deed Book 2512, page 200, Public Records of Aiken County, South Carolina.
7. Any taxes assessed under the rollback provision of Section 12-43-220(D-4) South Carolina Code of Laws 1976, as amended.

# EXHIBIT C

Settlement Agreement between JJD, JJDjr. and Four Siblings (the Parties):

1. Winsor, Graham, Garden, Tower, and Reeve properties will be sold through a controlled, luxury property auction process (Landvest, Sotharty's, JP King, etc). JJDjr. oversees the sales process. JJDjr., JJD and the Four Siblings release any and all claims to any mortgage or other property interests. All parties acknowledge that the Five Siblings are the sole owners, directly or indirectly, of all of the interests in the Properties. The proceeds will be allocated as follows: The amounts necessary to pay the capital gains taxes that are generated from the sales, 20% of remainder to JJD trust, and 80% of remainder to Four Siblings trust.
2. Three trusts will be established and funded as outlined below. The trustees will be instructed to invest the cash assets into U.S. Government Bonds and no distributions are allowed for the term of the trusts except as defined herein, and the beneficial interest can not be transferred, assigned or pledged during the term of the trust (except in the case of a death transfer). The Properties in trust may be sold at fair market value but all proceeds/cash shall remain in trust. After real estate taxes are paid, the Trustee may use interest income or rental income generated by the trust to pay for expenses related to the properties owned by the trust; the trustee can not make any payments from trust principle. Judge Martin may remove the trustee if he determines that the trustee has violated this agreement.

Trust 1 -- JJD:

- Beneficiary: JJD, or a trust for the benefit of JJD
- Trustee: JJDjr.
- Term: The sooner of: the time of JJD's death or 10 years or the term may be shortened to 6 years if Judge Martin (or his successor) finds that JJD has acted in good faith. Upon termination of the trust the assets of the trust shall be distributed to the beneficiary or its designee.
- Devon Glen
- Vermont
- 20,000 options in CellExchange, subject to approval from CellExchange.
- \$1.5M line of credit on Devon Glen (to be paid off using the 20% proceeds from paragraph #1).
- Sagamore land: 50% interest in an entity which owns all of the Hamilton land and a 7.4 acre parcel in Essex.
- All furniture, rugs, art, boats, cars, farm equipment, etc from any of the properties which are the subject of this agreement.
- Any property owned by the trust can be sold at any time for fair market value but all proceeds / cash shall remain in the trust; however, the trust may purchase replacement property at fair market value with the approval of the arbitrator.
- Cash: 20% of net proceeds from paragraph #1
- Distributions are limited to interest income after payment of the property taxes on properties owned by the trust and other expenses related to properties owned by the trust. The trustee can not make any distributions from trust principle.

**Trust 2 – Four Siblings:**

- Beneficiaries: 4 Siblings, or a trust for the benefit of the 4 Siblings.
- Trustee: Professional Trustee
- Term: 10 years, or the term may be shortened to 6 years if Judge Martin (or his successor) finds that the Four Siblings have acted in good faith. Upon termination of the trust the assets of the trust shall be distributed to the beneficiaries or its designees.
- Seignior land: All land in Ipswich and Essex, excepting a 7.4 acre parcel in Essex;
- Any property owned by the trust can be sold at any time for fair market value but all proceeds / cash shall remain in the trust; however, the trust may purchase replacement property at fair market value with the approval of the arbitrator.
- Cash: 60% of net proceeds from paragraph #1
- Distributions are limited to interest income after payment of the property taxes on properties owned by the trust and other expenses related to properties owned by the trust. The trustee can not make any distributions from trust principle.

**Trust 3 – JJD Jr.:**

- Beneficiary: JJD Jr. or a trust for the benefit of JJD Jr.
- Trustee: JJD Jr.
- Term: 10 years or the term may be shortened to 6 years if Judge Martin (or his successor) finds that JJD Jr. has acted in good faith. Upon termination of the trust the assets of the trust shall be distributed to the beneficiary or its designee.
- Seignior land: 50% interest in an entity which owns all of Hamilton land and a 7.4 acre parcel in Essex;
- Seagate Main House
- Any property owned by the trust can be sold at any time for fair market value but all proceeds / cash shall remain in the trust; however, the trust may purchase replacement property at fair market value with the approval of the arbitrator.
- Distributions are limited to interest income after payment of the property taxes on properties owned by the trust and other expenses related to properties owned by the trust. The trustee can not make any distributions from trust principle.

3. The approximately \$650,000 held on behalf of JJD will be paid out in the following manner: \$250,000 to pay the current and outstanding property tax bills that JJD is obligated to pay; \$150,000 to be paid to Judge Martin for current bills, to the Five Donovan Siblings for past bills from Judge Martin to JJD that were paid by the Five Donovan Siblings and to be held as a retainer by Judge Martin for future bills; \$100,000 to the Four Siblings; and \$150,000 held in escrow by Judge Martin to pay the taxes on the Winsor, Garden, Graham and Tower properties until such time they are sold and if such funds are exhausted prior to the sale of these properties, JJD obligations under the ISA to pay such taxes shall resume.

4. ISA, MSA, and FSA remain in effect, including the ISA, MSA and FSA releases remain in full force and effect and all claims are released except the Four Siblings' claims relating to sexual abuse. FSA is amended by the provisions herein.
5. JJD represents that he has no interest or claims in the Properties or Entities and, other than purported transfers to Linda, which he explicitly invalidates and agrees to take any such action as necessary to invalidate, he has not transferred, assigned, pledged or encumbered to anyone or in any way any claims or alleged interests.
6. All parties and counsel meet with Judge Martin and explain amendments and the parties' intentions. All parties shall swear under oath on the record before Judge Martin and a court reporter to the agreement as amended and the executable documents resulting from this agreement and all Parties' counsel shall acknowledge and represent to Judge Martin, on the record, that they have advised their clients and that their clients, to their knowledge, are acting of their own free will and consent. All parties and counsel shall make these same representations before Judge van Gestel or the justice then assigned to the first session of the Business Litigation Session.
7. All suits brought/caused by JJD dropped with prejudice (e.g., Bermuda.).  
  
All arbitration actions brought by the Four Siblings, JJDjr. or JJD will be withdrawn. The Four Siblings will explain to Judge Martin that they have no intention of bringing an action regarding the sex abuse unless they determine that JJD is acting in bad faith.
8. Judge Martin has discretion to award any remedy including sanctions, damages, attorneys' fees, out of any of the three trusts for any reason, including: a party causing a third party to bring a suit or other action against another party, or judgments or claims for damages by a party.
9. Linda, JJDjr. and the Four Siblings sign the attached settlement agreement.
10. JJDjr. will work in good faith to help settle the Rosenbaum divorce case and correct misinformation that JD or his attorneys supplied to Eric Rosenbaum or his attorneys.
11. The parties hereby agree that this is an enforceable, binding agreement. The Parties intend to prepare and sign the executable documents, which follow from this agreement, within 21 days. If the Parties cannot agree on what executable documents are required or the language therein, the arbitrator shall have all the same authority as stated in the Mediation Settlement Agreement relating to his determination of final settlement agreement documents, and the arbitrator shall determine such documents as are necessary and the language therein, and shall order the proper execution of those documents. If the arbitrator determines that any Party is not acting in good faith to implement this agreement, or if the arbitrator determines that Linda Donovan is not acting in good faith to implement the attached term sheet, the arbitrator may declare this agreement null and void, thereby returning the Parties to their respective legal positions as if this agreement never were signed.

12. The failure of any Party to meet his or her obligation in this agreement may be waived by the other Parties.

By signing below, each of the parties hereto acknowledges that this is a binding and enforceable contract.

Prof. John J. Donovan March 26, 2007 John J. Donovan, Jr. March 26, 2007  
John Donovan Date John Donovan, Jr. Date

Carolyn Rosenbaum Date

James Donovan Date

Maureen Lantz Date

Rebecca Brown Date

12. The failure of any Party to meet his or her obligation in this agreement may be waived by the other Parties.

By signing below, each of the parties hereto acknowledges that this is a binding and enforceable contract.

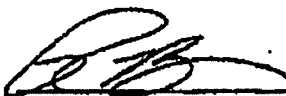
John Donovan \_\_\_\_\_ Date

John Donovan, Jr. \_\_\_\_\_ Date

Carolyn Rosenbaum \_\_\_\_\_ Date

James Donovan \_\_\_\_\_ Date

Maureen Lantz \_\_\_\_\_ Date

 3/24/07  
Rebecca Brown \_\_\_\_\_ Date

*JM*

12. The failure of any Party to meet his or her obligation in this agreement may be waived by the other Parties.

By signing below, each of the parties hereto acknowledges that this is a binding and enforceable contract.

\_\_\_\_\_  
John Donovan Date

\_\_\_\_\_  
John Donovan, Jr. Date

\_\_\_\_\_  
Carolyn Rosenbaum Date

*JM* 3/28/07  
\_\_\_\_\_  
James Donovan Date

\_\_\_\_\_  
Maureen Lantz Date

\_\_\_\_\_  
Rebecca Brown Date

12. The failure of any Party to meet his or her obligation in this agreement may be waived by the other Parties.

By signing below, each of the parties hereto acknowledges that this is a binding and enforceable contract.

John Donovan                      Date

John Donovan, Jr.                      Date

Carolyn Rosenbaum                      Date

James Donovan                      Date

 3-26-07  
Maureen Lantz                      Date

Rebecca Brown                      Date

12. The failure of any Party to meet his or her obligation in this agreement may be waived by the other Parties.

By signing below, each of the parties hereto acknowledges that this is a binding and enforceable contract.

John Donovan Date

John Donovan, Jr. Date

*Carolyn D. Rosenbaum* 03/01/07  
Carolyn Rosenbaum Date

James Donovan Date

Maureen Lantz Date

Rebecca Brown Date

3984727v.1

# EXHIBIT D

## TRUST AGREEMENT

John J. Donovan, Jr. of Manchester, Massachusetts, in his capacity as trustee (hereinafter with its successors in trust called the "Trustee") hereby declares and covenants that the Trustee has received the property described in Schedule A, in trust, and it will hold, manage, invest and reinvest the same, together with any other property hereafter purchased by, owned by, conveyed, assigned or transferred to the Trustee, as Trustee hereunder, or added to the Trust by gift or will, and accepted by the Trustee, and any other property however acquired by the Trustee hereunder, and, after paying or making provision for all proper expenses of administration, will dispose of the income and principal upon the trusts and subject to the terms, provisions and conditions hereinafter set forth. Such property shall be held in trust for the sole benefit of John J. Donovan.

### ARTICLE FIRST

#### NAME AND NATURE OF TRUST

1.1 Name. This Declaration of Trust may be referred to as the "Trust One JJD of \_\_\_\_\_, \_\_\_\_\_, 20\_\_." This Trust shall be irrevocable and not subject to amendment or alteration except as set forth in Section 1.2.

1.2 Trustee's Power to Amend. The Trustee may amend this Declaration of Trust if it is determined that such amendment is appropriate (a) to cure ambiguities, inconsistencies or defects in this Declaration of Trust, (b) to enable the Trustee more effectively to carry out a purpose or wish expressed in this Declaration of Trust, or (c) for the more convenient or efficient administration of any trust hereunder. Any such amendment shall be made by a writing signed by the Trustee and a copy delivered to the then beneficiaries. This power to amend shall be exercisable by the Trustee only in a fiduciary capacity and shall be exercisable (1) upon written approval of the Honorable John S. Martin, Jr., or his successors, (hereinafter, "Justice Martin") until the Transfer Date, as hereinafter defined in section 2.3; or (2) after the Transfer Date, upon consent of the Trustee.

**ARTICLE SECOND**  
**DISPOSITION OF TRUST PROPERTY**

2.1 **Disposition of Income and Principal.** The Trustee shall hold, manage, invest and reinvest the Trust assets and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

From the date of this Trust to the Transfer Date, so much of the net income of the Trust, as the Trustee deems advisable, shall be paid to or applied for the payment of real estate taxes and municipal assessments due and owing for any real property owned by the Trust. After the payment of real estate taxes and municipal assessments, and at the sole discretion of the Trustee, interest income may be paid to or applied for the benefit of the beneficiaries. Any income not so paid or applied may be added to principal or may be held for later payment to or application for each beneficiary, or addition to principal, as the Trustee determines in its sole discretion. From the date hereof to the Transfer Date, the Trustee shall invest any and all cash assets of the Trust in U.S. Government Bonds, unless authorized otherwise by Justice Martin. The Trustee shall not make any distributions of Trust principal to any beneficiary from the date hereof to the Transfer Date. The interests of any and all beneficiaries shall not and may not be transferred, pledged, assigned or sold until the Transfer Date, and thereafter only upon the written consent of the Trustee, which shall be in the Trustee's sole and exclusive discretion.

After the Transfer Date, The Trustee shall hold, manage, invest and reinvest the Trust assets and shall collect the income, if any, therefrom and shall dispose of the net income and principal as it determines, in its sole discretion.

2.2 **Disposition of Real Property.** Real property owned by the Trust may be sold, in whole or in part, by the Trustee in its discretion, provided, however, that from the date hereof to the Transfer Date, any such sale must be at fair market value and must have the prior written approval of Justice Martin, or his successor. All proceeds from such sale(s) shall remain in the Trust and shall be invested and may be distributed only as set forth herein. The Trust may

purchase replacement property at fair market value for any property sold, provided however, that from the date hereof to the Transfer Date, any such purchase of replacement property must have the prior written approval of Justice Martin, or his successor.

2.3 Transfer Date. The Transfer Date shall be the earliest of the following to occur: the date of the death of John J. Donovan, Sr.; ten years from the effective date of this Trust; or six years from the effective date of this Trust if, and only if, Justice Martin determines that the Trustee and beneficiaries have acted in good faith with respect to the management of this Trust and compliance with the terms of that certain Final Settlement Agreement of March 26, 2007 between John J. Donovan, Sr., John J. Donovan, Jr., James H. Donovan, Carolyn D. Rosenbaum, Maureen D. Lantz, Rebecca M. Donovan and Linda Donovan, as the same may be amended from time to time (hereinafter, the "FSA"). Upon the Transfer Date, the Trustee shall have the full power, authority and discretion to manage and administer this Trust and its assets, for the benefit of the beneficiaries, as permitted by law and the terms hereof without the requirement of any prior approvals from Justice Martin, or his successor.

2.4 Limitation Trustees' Discretionary Powers. A Trustee may not participate in any exercise of discretionary powers that would discharge a personal legal obligation of that Trustee.

### ARTICLE THIRD SUCCESSION OF TRUSTEES

3.1 Change of Trustees. A Trustee may resign at any time, such resignation to be effective when delivered to any co-trustee and/or to the designated independent manager for this Trust. Any vacancy in the office of trustee, whether created by resignation, removal or otherwise, may be filled only by the designated independent manager. The appointed Trustee must be a disinterested party with respect to the Trust assets and any beneficiaries and may not be the designated independent manager. The designated independent manager may remove and/or replace a Trustee at any time and this shall be the designated independent manager's sole power and authority with respect to this Trust, unless specifically stated otherwise herein. The

designated independent manager must be a disinterested party with respect to the Trust Assets and any beneficiaries and may not be the Trustee. The designated independent manager may resign at any time, such resignation to be effective when delivered to any Trustee and to the beneficiaries. The designated independent manager shall name its successor. If there shall be a vacancy in this position and no successor is named, the designated independent manager shall be appointed by a vote of the majority of the then beneficiaries of this Trust.

Any such removal and appointment, and the acceptance by such Trustee, shall be by an instrument in writing signed and acknowledged by each signatory before a notary public, and shall take effect simultaneously as of a date specified in said instrument which is not earlier than thirty days after delivery of a copy of such instrument to the trustee being so removed.

Until the Transfer Date, the independent manager shall be Justice Martin, or his successor. Upon the Transfer Date, Justice Martin, or his successor, shall resign as independent manager, and the next independent manager shall be determined by John J. Donovan, Jr.

3.2 Incapacity of Trustee. If the Trustee shall become incapable of performing the duties of trustee by reason of advanced age or mental or physical incapacity, the determination in writing of such incapacity, if made in good faith and if supported by a certificate to that effect by a physician, shall terminate such trusteeship and shall be binding upon all persons interested.

#### ARTICLE FOURTH GENERAL ADMINISTRATIVE PROVISIONS

4.1 Income. Except as otherwise provided, all accumulated, accrued and undistributed income of a deceased income beneficiary which has not been paid prior to the death of such person shall be income of the next succeeding estate.

4.2 Accounting. The Trustee hereunder shall from time to time render an

account to each income beneficiary and, if requested, to Justice Martin or his successor; provided, however, that if the Trustee has received notice that a guardian, conservator, executor or other fiduciary has been appointed for an income beneficiary, the account shall be rendered to such fiduciary. "Income beneficiary" shall mean each person who is eligible to receive income from the Trust during the period covered by the account. The assent to such account by a majority of such income beneficiaries and fiduciaries shall fully discharge the Trustee as to all matters included in such account or reflected thereby. The failure of any income beneficiary or fiduciary to object to any account by a writing received by the Trustee within sixty days after the delivery to such person of a copy of the account shall be deemed to be an assent by such person.

4.3 Spendthrift Clause. No person to whom any reversionary, future or expectant interest in this Trust, nor any person entitled to any income from this Trust, shall have power to alienate or dispose of such interest or income by anticipation or to subject the same to such person's debts or liabilities. The interest of a beneficiary in this Trust shall not be subject to be taken by his or her creditors by any process.

4.4 Disclaimers by Beneficiaries. A beneficiary, with the prior written consent of the Trustee, may disclaim all or any part of his or her interest in the Trust, before or after such interest is accepted, and before or after it is vested, for any period of time, by filing an appropriate writing with the Trustee. The Trustee shall not consent to such disclaimer if the Trustee in its discretion believes such disclaimer shall not be informedly made, not in the best interest of the beneficiary, not in accord with the purposes of this Trust, or an attempt to circumvent the provisions hereof prohibiting anticipation and alienation of interests, or if it imposes additional duties on the Trustee which the Trustee does not want to accept.

#### ARTICLE FIFTH TRUSTEE PROVISIONS

5.1 Discretionary Powers. Whenever in this Declaration of Trust the Trustee is empowered to make a determination, it shall have absolute discretion in making such determination, unless otherwise specifically provided. The exercise of any discretion by the

Trustee, if made in good faith, shall be conclusive and binding upon all persons interested.

5.2 Disclaimers and Releases by Trustee. The Trustee may at any time disclaim or release any power in whole or in part by an instrument in writing, signed and delivered to any co-trustee or if none, to the designated independent manager. Any disclaimer or release of a power by a Trustee may be upon such conditions as the Trustee specifies. In addition, the Trustee may disclaim any interest in property. A disclaimer or release by a Trustee shall be binding upon the successors to the Trustee unless the Trustee specifies otherwise. Such rights of the Trustee are subject to the prior written approval of Justice Martin until the Transfer Date.

5.3 Certificate by Trustee. A written statement by the Trustee at any time as to facts relative to this Trust may always be relied upon by, and shall always be conclusive evidence in favor of, any transfer agent or other person dealing in good faith with the Trustee in reliance upon such statement.

5.4 Bond. No Trustee shall be required to give bond or furnish surety on any bond required by law.

5.5 Liability of Trustee. No Trustee shall be liable for the acts or omissions of any co-trustee, prior trustee or person administering any estate. Unless requested in writing by a beneficiary, a Trustee shall not be obligated to inquire as to any such acts or omissions or to ascertain that the property transferred to him is the entire Trust property.

5.6 Delegation to Co-Trustees. Whenever there is more than one trustee hereunder, the Trustee may delegate any trustee powers and discretions to a co-trustee for such period or periods of time as the Trustees may agree; provided, however, that any powers or discretions withheld from any Trustee by the terms of this Declaration of Trust may not be delegated to such Trustee under this section.

5.7 Compensation. The Trustee shall be entitled to reasonable compensation,

which may be charged to income only.

**5.8 Powers of Trustee.** Except as may be specifically provided otherwise in this Declaration of Trust, the Trustee shall have wide discretion in matters of the management of Trust property, and the following enumeration of specific powers is not intended to exclude other powers reasonably incidental to such management. Except where specifically provided otherwise in this Declaration of Trust, the Trustee shall have in addition to those powers conferred by law or otherwise the following powers, privileges and exemptions, which may be exercised and invoked in the Trustee's absolute discretion:

(a) To invest and reinvest the cash assets of this Trust in U.S. Government Bonds, or other investments as may be approved by Justice Martin, prior to the Transfer Date and to invest and reinvest such cash assets of the Trust as the Trustee deems advisable, in its sole discretion, after the Transfer Date.

(b) To manage real property; including but not limited to the authority to sell, transfer or convey such property, to purchase replacement property, to lease such property and to collect and receive rents and income from such property, provided however, that from now until the Transfer Date the Trustee must receive the prior written approval of Justice Martin, or his successor, to sell, transfer or convey such property or purchase replacement property,

(c) To sell any Trust property at public or private sale upon such terms and conditions as the Trustee deems advisable; to exchange or partition all or any part of the property of any trust, real or personal, at any time held, to purchase or exercise any form of option or right to purchase securities or other property; to execute any and all deeds and other instruments necessary or appropriate to accomplish the foregoing, with or without covenants, warranties or representations. From the date hereof to the Transfer Date, no power in this paragraph can be exercised without the prior written approval of Justice Martin, or his successor,

(d) To receive additions to the Trust by gift or will, or otherwise, and to hold and administer the same under the provisions hereof, except that from the date hereof to the

Transfer Data, the trustee may not receive additions to the Trust by gift or will, or otherwise

(e) Pursuant to the terms herein, to make any division or distribution in cash or in kind or in undivided interests in specific property or partly in each, at then current values, without regard to the basis or other income tax attributes of specific property allocated to any beneficiary (including any trust which is a beneficiary).

(f) To make any payment or distribution directly to a beneficiary, who is a minor or who is otherwise incompetent, or to such beneficiary's guardian, conservator or custodian under the Uniform Transfers to Minors Act, or to a relative for such beneficiary's use or any trust then being held for such beneficiary.

(g) To employ accountants, attorneys-at-law and other professionals, and to rely upon their opinions; to employ a trustee or a firm in which a trustee has an interest to perform necessary services for the trust on customary terms.

(h) To determine in accordance with IRS tax rules what shall belong and be chargeable to principal and what shall belong and be chargeable to income; to amortize or not amortize bond premiums in accordance with IRS tax rules; to retain reserves out of income for expenses, taxes and other liabilities; if any trust property is subject to actual depreciation, depletion or obsolescence, to retain or not retain reasonable reserves out of income, irrespective of any change in the market value of such trust property.

(i) To settle, by compromise, arbitration or otherwise, any and all taxes on future interests and any and all other claims and demands in favor of or against or in any way relating to Trust property, upon such terms as the Trustee determines.

(j) To investigate, prevent and remediate violations or possible violations of Federal, state or local law regarding substances posing a hazard to the environment or to human health which may be applicable to any property held by the Trustee; to undertake such actions prior to the formal enforcement of such laws by any Federal, state or local agency against Trust

property; to charge all expenses associated with any such investigation, prevention or remediation, including the fees of consultants and counsel, against the income or principal of this Trust.

(k) 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 to exchange any such property for other properties and to retain such properties in exchange.

(l) To borrow money and to encumber, mortgage or pledge any asset of the Trust estate upon such terms and conditions as the Trustee deems advisable to carry out the intent of this Trust; except that from the date hereof to the Transfer Date, the Trustee may not encumber, mortgage or pledge any asset of the Trust estate

(m) To make ordinary or extraordinary repairs or alterations to the buildings or structures on any real property of the Trust, out of income.

(n) To compromise, adjust, arbitrate, sue on or defend, abandon or otherwise deal with and settle claims in favor of or against the Trust estate as the Trustee deems advisable, in its sole discretion. Except that from the date hereof to the Transfer Date the Trustee will not use any asset of the Trust estate to pay for the compromise, adjustment, arbitration, law suit or defense, abandonment or settlement of claims in favor of or against the Trust estate or John Donovan without the prior written approval of Justice Martin, or his successor.

(o) 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 prudent, and to do all acts which it may deem necessary or proper to reasonably maintain the assets of this Trust, whether personal or real, carry out the purpose of this Trust.

Notwithstanding anything to the contrary herein, from the date hereof until the Transfer

Date, the Trustee shall manage any assets transferred to and held by the Trustee in accordance with the terms of this document and the direction of Justice Martin, or his successor, and shall be required to make any payments, transfers, or demands, ordered by Judge Martin or his successor

**5.9 Trustee May Assume Investment Responsibility.** The Trustee may assume responsibility for the investment of all or part of the Trust property, and the Trustee shall have no liability with respect to such investments, except as may otherwise be directed by Justice Martin, or his successor.

**5.10 Acquisition and Retention of Certain Assets.** The Trustee is authorized to use trust principal, including the entire principal of the Trust, to purchase any property or interest in property, real or personal, in which the Trustee has an interest. The Trustee may retain indefinitely or for such other period as the Trustee may determine any such property or interest in property so purchased by the Trustee, or any property given to the Trustee by any other person, or received from any estate, whether or not the property is income producing and without regard to the proportion which the value of the property may bear to the total value of the Trust even if such retention involves business or financial risks that trustees would not ordinarily incur. The Trustee shall have no liability for any depreciation or loss as a result of the retention of any property retained or acquired under the authority of this section.

From the date hereof to the Transfer Date, no power in this paragraph can be exercised without the prior written approval of Justice Martin, or his successor.

**5.11 Real Estate.** The Trustee may acquire or retain real property, whether or not income producing, for long term investment or the rent free use of one or more of the beneficiaries eligible to receive the income from that trust, upon such equitable terms as the Trustee determines.. The Trustee may execute, assume or redeem any note or mortgage on such real property, with the Trust income or principal or both, and may pay taxes, insurance premiums and general expenses of upkeep, maintenance and repair with respect to such property

From the date hereof to the Transfer Date, no power in this paragraph can be exercised

without the prior written approval of Justice Martin.

**5.12 Investment Advisors.** The Trustee may employ investment advisors and consult with them on all matters relating to the purchase, retention or sale of trust property. The Trustee may act upon the advice of such advisors in whole, or to such extent as he determines, and to the extent that the Trustee follows the advice of such advisors, the Trustee shall not be liable for losses or other consequences therefrom. The Trustee may pay any investment advisor reasonable compensation as a Trust expense, which may be charged to income only. An appropriate adjustment shall be made in the compensation of the Trustee to reflect the change in his/her duties which results from such employment.

**ARTICLE SIXTH**  
**MISCELLANEOUS PROVISIONS**

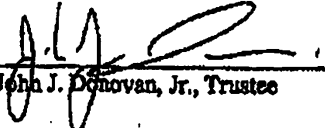
6.1 **Applicable Law.** This Declaration of Trust shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts, and its validity and administration shall be governed by said laws except with respect to such assets as are required by the law controlling to be governed by the laws of some other jurisdiction.

6.2 **References.** References in this Declaration of Trust to the masculine shall include the feminine and the plural the singular, and vice versa, unless the context requires otherwise. References to provisions of the Internal Revenue Code mean provisions of the Internal Revenue Code of 1986 as amended from time to time or the corresponding provisions of any subsequent Federal tax law. The term "state" shall include the District of Columbia.

6.3 **Delivery.** A document or notice shall be deemed delivered when it is mailed first class, postage prepaid, to the addressee's last known address, or, if not mailed, when actually delivered to the addressee in person or to the addressee's last known address.

6.4 **Effective Date of Trust.** This Declaration of Trust shall be the date stated in Section 1.1.

IN WITNESS WHEREOF, John J. Donovan, Jr., as Trustee, has executed this Declaration of Trust under seal the day and year first above written.

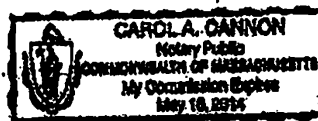
  
John J. Donovan, Jr., Trustee

COMMONWEALTH OF MASSACHUSETTS

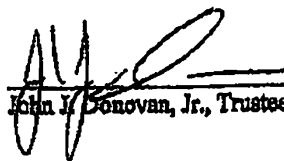
COUNTY OF Essex

On this 12 day of January 2010, before me, the undersigned notary public, personally appeared John J. Donovan, Jr., proved to me through satisfactory evidence of identification which was Known to me, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Carol A. Cannon  
Notary Public  
My commission expires:



The office and duties of trustee as above described are hereby accepted by the undersigned.

  
John J. Donovan, Jr., Trustee

# EXHIBIT E

## AMENDMENT

The undersigned parties to the Settlement Agreement Between JJD, JJD, Jr. and Four Siblings (the "Parties"), dated March 26, 2007 (hereafter the "March 2007 Agreement") hereby agree as of December 10, 2014, that the March 2007 Agreement is amended as follows:

1. ABBREVIATIONS. For clarity and convenience, all abbreviations used in the March 2007 Agreement are incorporated and used herein and shall have the same meaning in this Amendment.
2. TRUST 1-JJD TERM. The term of Trust 1-JJD (also known as "Trust One" and "Trust One JJD") in the March 2007 Agreement is extended to the lifetime or incapacity, of JJD, as determined by Judge Martin, or his successor, in his sole discretion.
3. TRUST 1-JJD GIFTS. JJD may request that the Trustee of Trust 1-JJD (the "Trustee") propose a gift of Trust 1-JJD assets to any public 26 U.S.C. § 501(c) charity or non-profit organization. The Trustee may thereafter propose the terms of any proposed transfer, pledge, gift or conveyance of Trust 1-JJD assets (the "Gift") and submit the proposal to Judge Martin, or his successor, for approval. No Gift shall be made without the prior written approval of Judge Martin, or his successor. Whether to approve the proposal shall be in the sole discretion of Judge Martin or his successor. Prior to submission to Judge Martin, or his successor, the Trustee shall disclose to all Parties all material terms of any proposed Gift. Judge Martin, or his successor, may consult anyone and may request any additional information which in his sole discretion he determines to be necessary or desirable in determining whether to approve the Gift.
4. TRUST 1-JJD GIFT RESTRICTIONS. JJD may suggest, the Trustee may propose, and Judge Martin, or his successor, in his sole discretion, may approve, reasonable and customary conditions on the Gift from Trust 1-JJD of the same nature and type commonly used for comparable charitable gifts, except that in no event shall the Gift provide for or result in any direct or indirect payment, benefit, remuneration, compensation or monetary value to anyone other than Trust 1-JJD. Any tax benefit as a result of the Gift shall belong to Trust 1-JJD.
5. TRUST 1-JJD MAY PAY CERTAIN JJD EXPENSES. Trust 1-JJD may pay ordinary personal and customary living expenses of JJD up to a total annual amount of \$200,000, subject to Judge Martin's, or his successor's prior written approval (the "Expenses"). Expenses shall not include attorneys' fees or costs. Whether to approve payment of the Expenses shall be in the sole discretion of Judge Martin, or his successor. Trust 1-JJD shall pay the Expenses from available liquid cash accounts only. Trust 1-JJD shall not borrow funds, incur debt or mortgage, pledge or collateralize any assets to pay the Expenses or for any other purpose. The Trustee shall submit to Judge Martin, or his successor, a quarterly written statement of proposed Expense payments. Judge Martin, or his successor, may consult anyone and may request any additional documentation of information which in his sole discretion he determines to be necessary or desirable in determining whether to approve the Expenses. Notwithstanding anything else to the contrary in this Amendment or the March 2007 Agreement, no Expense shall be paid without the prior written approval of Judge Martin.
6. TRUST 1-JJD CONFORMANCE WITH THIS AMENDMENT. This Amendment is subject to the written acknowledgement of this Amendment by the Trustee of Trust 1-JJD and delivery of all signed, executed and final Trust 1-JJD and other documents,

*JJD*

including all of its governing documents, sufficient to conform Trust 1-JJD to this Amendment including, without limitation, to extend the term of Trust 1-JJD for the life, or incapacity, of JJD as stated in paragraph 2. JJD shall deliver complete copies of all such Trust 1-JJD related documents to all Parties and Judge Martin, within 15 days of this Amendment.

7. **ENFORCEABLE AND BINDING AGREEMENT.** The Parties agree this is an enforceable and binding agreement. If the Parties cannot agree on what executable documents are required or the language therein to amend the Trust documents in accordance with paragraph 6, Judge Martin or his successor as Arbitrator shall have all the same authority as stated in the March 2007 Agreement relating to his determination of final settlement agreement documents, and the Arbitrator shall determine such documents as are necessary and the language therein, and shall order the proper execution of those documents.

8. **MARCH 2007 AGREEMENT.** All provisions of the March 2007 Agreement remain in full force and effect.

9. **TRUST 1-JJD REPLACEMENT PROPERTY.** The Four Siblings acknowledge that JJD has provided by emails dated November 29 and December 5, 2014 copies of certain documents related to the proposed purchase of a replacement property for Devon Glen by Trust 1-JJD, consisting of approximately 76 acres of real estate and improvements located in Aiken, South Carolina (the "Replacement Property"). In entering this Amendment, the Four Siblings are relying on those documents and JJD's emails of November 29 and December 5, 2014. Subject to the terms of the March 2007 Agreement, as amended by this Amendment, upon receipt of the Trustee's written statement that the Replacement Property is being purchased at fair market value, as required by the March 2007 Agreement, the Four Siblings and JJD, Jr. stipulate they have no objection to Judge Martin's approval of Trust 1-JJD's proposed purchase of the Replacement Property. The Replacement Property shall be owned solely by Trust 1-JJD. Trust 1-JJD shall use only its available liquid funds available as of December 10, 2014 toward the purchase price for the Replacement Property. Trust 1-JJD shall not borrow funds, incur debt or mortgage, pledge or collateralize any assets to pay for the purchase price of the Replacement Property.

10. **STIPULATION.** This Amendment may be signed in counterpart, which when signed by all Parties and acknowledged by the Trustee of Trust 1-JJD, together shall constitute a final and complete Amendment. The Parties shall submit the final Amendment to Judge Martin as a Stipulation of the Parties.

[Remainder of Page Intentionally Left Blank]

John J. Donovan  
John Donovan

Dec 11, 2014  
Date

John Donovan, Jr.

                      
Date

Rebecca Brown

                      
Date

Carolyn Donovan (f/k/a Carolyn Rosenbaum)

                      
Date

James Donovan

                      
Date

Maureen McLaughlin (f/k/a Maureen Lantz)

                      
Date

Acknowledged for Trust 1-JJD

Trustee, Trust 1-JJD

                      
Date

# EXHIBIT F

DECLARATION OF TRUST  
ESTABLISHING  
**AIKEN PROPERTY TRUST**

I, William T. Hurley, Jr. JD CPA, of Verdolino & Lowey, Foxborough, Massachusetts (the "Trustee"), hereby declare that Ten Dollars (\$10.00) is held in trust hereunder and any and all additional property and interest in property, real and personal, that may be acquired hereunder (the "Trust Estate") shall be held in trust, for the sole benefit of the individuals or entities listed in the Schedule of Beneficiaries in the proportions stated in said Schedule, which Schedule has this day been executed by the Beneficiaries and filed with the Trustee with receipt acknowledged by at least one Trustee (hereafter, as it may be amended, "Schedule of Beneficiaries").

SECTION ONE

Name and Purpose

1.1 This Trust shall be known as the **Aiken Property Trust** and is intended to be a nominee trust, so-called, for federal and state income tax purposes and to hold the record legal title to the Trust Estate and such functions as are necessarily incidental thereto.

SECTION TWO

Trustees

2.1 In the event there are two Trustees at any time, both trustees shall be required to execute any and all instruments and certificates necessary to carry out the provisions of the trust. In the event there are more than two Trustees at any time, any two trustees, except as otherwise provided in Paragraph 7.2, may execute such instruments and certificates necessary to carry out the provisions of the Trust.

2.2 No Trustee shall be required to furnish bond. No Trustee hereunder shall be liable for any action taken at the direction of the Beneficiaries, nor for any error of judgment nor for any loss arising out of any acts or omissions in the execution of the Trust so long as acting in good faith, but shall be responsible only for his or her own willful breach of trust. No license of court shall be requisite to the validity of any transaction entered into by the Trustees. No purchaser, transferee, pledgee, mortgagee or other lender shall be under any liability to see the application of the purchase money or of any money or property loaned or delivered to any Trustee or to see that the terms and conditions of this Trust have been complied with. Every agreement, lease, deed, mortgage, note or other instrument or document executed or action taken by the person or persons appearing from the records of the Registry of Deeds to be Trustees, as required in Paragraph 2.1, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof or of the taking of such action this Trust was in full force and effect, that the execution and delivery thereof or taking of such action was duly authorized, empowered and directed by the Beneficiaries, and that such instrument or document or action is valid, binding, effective and

legally enforceable.

2.3 Any person dealing with the Trust Estate or the Trustees may always rely without further inquiry on a certificate signed by the person or persons appearing from the records of the Registry of Deeds to be Trustees, as required in paragraph 2.1, as to who are the Trustees or the Beneficiaries hereunder or as to the authority of the Trustees to act or as to the existence or nonexistence of any fact or facts which constitute conditions precedent to action by the Trustees or which are in any other manner germane to the affairs of the Trust. Execution, delivery or recording of such certificate shall not be a condition precedent to the validity of any transaction of the Trust.

### SECTION THREE

#### Beneficiaries

3.1 The term "Beneficiaries" shall mean the persons and entities listed as Beneficiaries in the Schedule of Beneficiaries and in such revised Schedules of Beneficiaries, from time to time hereafter executed and delivered as provided above and the respective interests of the Beneficiaries shall be as therein stated.

3.2 Decisions made and action taken hereunder (including without limitation, amendment and termination of this Trust; appointment and removal of a Trustee; directions and notices to Trustee(s); and execution of documents) shall be made or taken, as the case may be, by all of the Beneficiaries.

3.3 Any Trustee may without impropriety become a Beneficiary hereunder and exercise all rights of a Beneficiary with the same effect as though he or she or it were not a Trustee. The parties hereunder recognize that if a sole Trustee and a sole Beneficiary are one and the same person, legal and equitable title hereunder shall merge as a matter of law.

### SECTION FOUR

#### Powers of Trustees

4.1 The Trustees shall hold the principal of this Trust and receive the income therefrom for the benefit of the Beneficiaries, and shall pay over the principal and income pursuant to the direction of all of the Beneficiaries and without such direction shall pay the income to the Beneficiaries in proportion to their respective interests.

4.2 Except as hereinafter provided in case of termination of this Trust, the Trustees shall have no power to deal in or with the Trust Estate except as directed by all of the Beneficiaries. When, as, if and to the extent specifically directed by all of the Beneficiaries, the Trustee shall have the following powers:

- 4.2.1 to buy, sell, convey, assign, mortgage or otherwise dispose of all or any part of the Trust Estate and as landlord or tenant execute and deliver leases and subleases;
- 4.2.2 to execute and deliver notes for borrowing for the Beneficiaries;
- 4.2.3 to grant easements or acquire rights or easements and enter into agreements and arrangements with respect to the Trust Estate;
- 4.2.4 to endorse and deposit checks in an account for the benefit of the Beneficiaries;

Any and all instruments executed pursuant to such direction may create obligations extending over any periods of time, including periods extending beyond the date of any possible termination of the Trust. A direction to the Trustees by the Beneficiaries may be by a Durable Power of Attorney.

4.3 Notwithstanding any provisions contained herein, no Trustee shall be required to take any action which will, in the opinion of such Trustee, involve the Trustee in any personal liability unless first satisfactorily indemnified.

4.4 All persons extending credit to, contracting with or having any claims against the Trustees shall look only to the funds and property of this Trust for payment of any contract, or claim or for the payment of any debt, damage, judgment, or decree, or for any money that may otherwise become due or payable to them from the Trustee, so that neither the Trustees nor the Beneficiaries shall be personally liable therefore. If any Trustee shall at any time for any reason (other than for willful breach of trust) be held to be under any personal liability as such Trustee, then such Trustee shall be held harmless and indemnified by the Beneficiaries, jointly and severally, against all loss, costs, damage, or expense by reason of such liability.

## SECTION FIVE

### Termination

5.1 This Trust may be terminated at any time by notice in writing from all of the Beneficiaries, provided that such termination shall be effective only when a certificate thereof signed by the Trustees shall be recorded with the Registry of Deeds. Notwithstanding any other provision of this Declaration of Trust, and consistent with the intention of the undersigned that this Trust not violate the Rule Against Perpetuities, this Trust shall terminate in the event TWENTY (20) years from the date of the death of the last surviving Trustee of the original Trustees named in this instrument.

5.2 In the case of any termination of the Trust, the Trustees shall transfer and convey the specific assets constituting the Trust Estate, subject to any leases, mortgages, contracts or other encumbrances on the Trust Estate, to the Beneficiaries as tenants in common in proportion to their

respective interests hereunder, or as otherwise directed by all of the Beneficiaries, provided, however, the Trustees may retain such portion thereof as in their opinion necessary to discharge any expense or liability, determined or contingent, of the Trust.

## SECTION SIX

### Amendments

6.1 This Declaration of Trust may be amended from time to time by an instrument in writing signed by all of the Beneficiaries and delivered to the Trustees, provided in each case that the amendment shall not become effective until the instrument of amendment or a certificate setting forth the terms of such amendment, signed by all Trustees, is recorded with the Registry of Deeds.

## SECTION SEVEN

### Resignation and Successor Trustee

7.1 Any Trustee hereunder may resign at any time by an instrument in writing and acknowledged by such Trustee and delivered to all remaining Trustees and to each Beneficiary. Such resignation shall take effect on the later of the dates specified therein or upon the date of the recording of such instrument with the Registry of Deeds.

7.2 Succeeding or additional Trustees may be appointed or any Trustee may be removed by an instrument or instruments in writing signed by all of the Beneficiaries, provided in each case that a certificate signed by any Trustee naming the Trustee or Trustees appointed or removed and, in the case of an appointment, the acceptance in writing by the Trustee or Trustees appointed, shall be recorded in the Registry of Deeds. Upon the recording of such instrument, the legal title to the Trust Estate shall, without the necessity of any conveyance, be vested in said succeeding or additional Trustee or Trustees, with all the rights, powers, authority and privileges as if named as an original Trustee hereunder.

7.3 In the event that there is no Trustee, either through the death or resignation of a sole Trustee without prior appointment of a successor Trustee or for any other cause, a person purporting to be a successor Trustee hereunder may record in the Registry of Deeds an affidavit, under pains and penalties of perjury, stating he or she has been appointed by all of the Beneficiaries a successor Trustee. Such affidavit when recorded together with an attorney's certificate under M.G.L. c. 183 Section 5B, stating that such attorney has knowledge of the affairs of the Trust and that the person signing the affidavit has been appointed a Trustee by all of the Beneficiaries, shall have the same force and effect as if the certificate of a Trustee or Trustees required or permitted hereunder had been recorded and persons dealing with the Trust or Trust Estate may always rely without further inquiry upon such an affidavit as so executed and recorded as to the matters stated herein.

## SECTION EIGHT

Governing Law

8.1 This Declaration of Trust shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

## SECTION NINE

Registry of Deeds

9.1 The term "Registry of Deeds" shall mean the Registry of Deeds or Registry District of the Land Court for the district in which any real estate included in the Trust Estate is located.

Executed as a sealed instrument this 14<sup>th</sup> day of January, 2015.

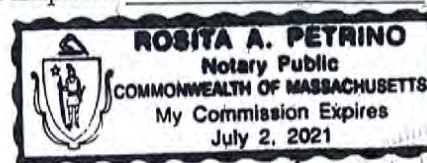
William T. Hurley, Jr., Trustee  
William T. Hurley, Jr., JD CPA, Trustee

## COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

On this 14<sup>th</sup> day of January, 2015, before me, the undersigned notary public, personally appeared William T. Hurley, Jr., JD CPA, **as aforesaid**, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, or ☒ personal knowledge of the undersigned, and acknowledged to me that he signed it voluntarily for its stated purpose.

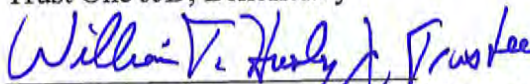
Rosita A. Petrino  
Notary Public  
My Comm. Expires: \_\_\_\_\_



# SCHEDULE OF BENEFICIARIES OF THE AIKEN PROPERTY TRUST

The Beneficiary of the Aiken Property Trust is Trust One JJD, whose sole beneficiary is John J. Donovan, II.

Trust One JJD, Beneficiary

  
William T. Hurley, Jr., JD CPA, Trustee

Acknowledged:

Aiken Property Trust

  
William T. Hurley, Jr., JD CPA, Trustee

Dated: January 14, 2015

# EXHIBIT G

3

STATE OF SOUTH CAROLINA) LIFE ESTATE, WILL, AND OPTION TO  
PURCHASE REAL ESTATE  
COUNTY OF AIKEN )

WHEREAS, FOR GOOD AND VALUABLE CONSIDERATION John J. Donovan, Jr., (aka Professor Donovan) his heirs and assigns, sole beneficiary of Trust One JJD which is sole beneficiary of Aiken Property Trust (hereinafter Aiken Property Trust) and Linda Donovan, her heirs and assigns, (hereinafter Donovan), agrees to grant, the sole, and exclusive right, privilege to Linda Donovan: 1. an option to purchase Aiken Property Trust properties on the terms and conditions hereinafter set forth, 2. an exclusive life estate allowing Linda Donovan to live as if she has free title including, but not limited to renting, farming, paying all expenses, in peaceful enjoyment for her entire life, 3. at the death of John J. Donovan Jr, (aka Professor Donovan), Linda Donovan is to receive clear title, in the following described real property, to wit:

All that certain piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in the County of Aiken, State of South Carolina, West of and adjoining Banks Mill Road (S.C. Highway No. S-2-79), approximately 4.37 miles South of the City limits of the City of Aiken, County and State aforesaid, **containing 40.00 acres**, more or less, as shown and designated upon a plat prepared for Cornelius Debonte by Charles M. Jones, dba, Jones and Murphy dated April 14, 1997, recorded May 16, 1997, in the Office of the RMC of Aiken County, South Carolina, in Plat Book 36 at Page 258-1. Reference is hereby made to said plat for a more complete and accurate description of said property as to metes, bounds and location.

Tax Parcel No. 139-19-01-002

All that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being in Southeast of the City of Aiken, in the County of Aiken, State of South Carolina, West of and adjoining Banks Mill Road (S.C. Highway No. S-2-79), **containing 36.68 acres**, more or less, as shown and designated upon a plat prepared for Ira E. Coward, et. al, by Southern Partners, Inc. dated December 30, 2004, and recorded February 14, 2005, in the Office of the RMC of Aiken County, South Carolina, in Plat Book 49 at Page 9-2. Reference is hereby made to said plat for a more complete and accurate description of said property as to metes, bounds and location.

Tax Parcel No. 140-08-04-001

Option to Purchase

WHEREAS, the Option to Purchase price of the property shall be Three hundred seventy five thousand dollars (\$375,000.00).

WHEREAS, this Option may be exercised by the tender of the purchase price as noted above in any lawful money of the United States, which may be made conditioned upon the delivery by the Seller of a Warranty Deed to the properties described herein.

Right of First Refusal

WHEREAS, within sixty (60) days after personally receiving in-hand written notification of a bona fide offer to purchase the Aiken Property Trust's subject properties, Donovan shall elect to exercise her right to acquire the subject properties according to the terms and conditions in the bona fide offer to purchase; if Donovan does not state in writing her intention to exercise the Right of First Refusal within sixty (60) days after personally receiving in-hand written notification of Aiken Property Trust's receipt of a bona fide offer, such failure to respond shall be deemed a forfeiture of the right to purchase the subject properties subject to the Right of First Refusal, and

Whereas, Donovan shall close the property within an additional sixty (60) days after exercising the Right of First Refusal, and

WHEREAS, upon exercise of the Option to Purchase or exercise of the Right of First Refusal, the parties agree that Aiken Property Trust, its successors and assigns, shall provide good, marketable, fee simple title free and clear of any liens and encumbrances. Aiken Property Trust agrees to provide deed and deed stamps. Donovan shall pay all other closing costs.

WHEREAS, any party to this Option to Purchase and Right of First Refusal Contract is entitled to specific performance of the obligations of the other under this option, and shall be entitled to recovery of attorney fees should such party prevail if such an action to obtain specific performance is required.

WHEREAS, this Option Contract shall become null and void January 1, 2050, but until such date this Option Contract shall run with the land.

Done this 27 day of April, 2015.

Witnesses:

[Signature]  
[Signature]

[Signature]  
John J. Donovan, Jr. sole Beneficiary  
of Trust One JJD which is sole Beneficiary  
of Aiken Property Trust

State of SC )  
County of Aiken )

Acknowledgement

I, Jennifer Bice, a Notary Public of the State of SC, do  
hereby certify that John J. Donovan, Jr. (Professor Donovan) personally appeared before  
me this day and acknowledge the due execution of the foregoing instrument.

Witness my hand and official seal this 27<sup>th</sup> day of April, 2015.

[Signature] (L.S.)  
Notary Public for SC  
My Commission Expires: \_\_\_\_\_

**JENNIFER BICE**  
Notary Public - State of South Carolina  
My Commission Expires July 8, 2024

**2015009529**

OPTION  
RECORDING FEES \$10.00  
PRESENTED & RECORDED:

**04-27-2015 03:15 PM**

JUDITH WARNER  
REGISTER OF MESNE CONVEYANCE  
AIKEN COUNTY, SC  
BY: LYNN STEMBRIDGE DEPUTY

**BK: RB 4549**

**PG: 2386 - 2388**

Book 4549 Page 2388

# EXHIBIT H

**IN RE ARBITRATION AMONG  
REBECCA M. DONOVAN, JAMES H. DONOVAN,  
MAUREEN DONOVAN LANTZ, AND CAROLYN DONOVAN ROSENBAUM**

**AND**

**JOHN J. DONOVAN, SR.**

**AND**

**JOHN J. DONOVAN JR.**

*Jurisdiction retained in the Business Litigation  
Session of the Suffolk Superior Court,  
Commonwealth of Massachusetts No. 03-4247*

**STIPULATION BY JOHN J. DONOVAN, SR.**

I, John J. Donovan, Sr. (a.k.a Professor Donovan), being duly sworn, stipulate as follows:

1. On November 30, 2015, I filed a series of documents with the Town Clerk in Pomfret, Vermont relating to property owned by Trust One Realty Trust and Pomfret Farm Realty Trust (hereinafter referred to as the "Vermont Filings" attached at Tab 1). On April 27, 2015, I filed certain documents with the Register for Aiken County, South Carolina (the "Aiken Filings" attached at Tab 2). I did not disclose the Vermont Filings or Aiken Filings to Judge Martin or Rebecca M. Brown, James H. Donovan, Maureen K. McLaughlin and Carolyn Donovan Rosenbaum (the "Donovan Siblings") or John J. Donovan, Jr.'s Estate (the "Estate") at the arbitration hearing in October 2016 or at any time thereafter. I did not disclose the Vermont Filings or Aiken Filings to Trust One Trustee William Hurley, Jr. at any time. These actions violated the Settlement Agreement between JJD, JJD Jr. and Four Siblings (the Parties), dated March 26, 2007 (the "FSA") (as amended) and the terms of the Trust I-JJD ("Trust One") Trust Agreement. The Aiken Filings and the Vermont Filings are invalid, of no force and effect, and are void ab initio.

2. Without prejudice to my rights in my pending criminal trial in Essex County, Massachusetts, I am not now, and will not in the future, challenge the validity of the parties' settlement agreements, including the FSA, MSA, ISA and all amendments thereto. Except in my current criminal case in Essex County, I will not assert anywhere and in any forum that I have a valid or enforceable power of attorney from John J. Donovan, Jr. or any other grant of authority from John J. Donovan, Jr. to take any actions of any kind on his behalf or on behalf of his estate or his family.

3. I have only used the purported Special Power of Attorney (SPA) contained in the Vermont Filings on the occasions disclosed during this proceeding in Essex County, Aiken

County, and Pomfret, Vermont. Without prejudice to my rights in my pending criminal trial, other than as disclosed above, I have not, and will not at any time in the future, use, direct anyone else to use, or attempt to use the SPA in any way for any purpose, including but not limited to (a) selling, purchasing, transferring, conveying, pledging, gifting, disposing of, or assigning assets; (b) mortgaging, borrowing funds, or otherwise incurring debt; (c) discharging any debts, judgments, or mortgages owed to John J. Donovan, Jr. or his estate; or (d) taking any other action in regards to John J. Donovan, Jr., his estate, the assets of his estate, any trusts established by John J. Donovan, Jr., and any assets held by the family of John J. Donovan, Jr., or the Donovan Siblings.

4. I have only used the purported Codicil to the Last Will and Testament of John J. Donovan III, dated August 3, 2013 ("Codicil," attached at Tab 3) in September 2016 as described during this proceeding. Without prejudice to my rights in my pending criminal trial in Essex County, Massachusetts, other than as disclosed above, I have not, and will not at any time in the future, use, direct anyone else to use, or attempt to use the purported Codicil in any way for any purpose, including but not limited to (a) submitting any voluntary disclosure to the IRS; (b) executing any legal or accounting matters or any other documents with the IRS; (c) taking any action in regards to properties, limited liability corporations, trusts, limited partnerships, corporations, or any other entities; (d) selling, purchasing, transferring, pledging, gifting, conveying, disposing of, or assigning assets; (e) mortgaging, borrowing funds, or otherwise incurring debt; (f) discharging any debts, judgments, or mortgages owed to John J. Donovan, Jr. or his estate; or (g) taking any other action in regards to John J. Donovan, Jr., his estate, the assets of his estate, any trusts established by John J. Donovan, Jr., and any assets held by the family of John J. Donovan, Jr., or the Donovan Siblings.

5. As beneficiary of Trust One, I did not and do not have the right or authority to transfer, assign or pledge any assets held by or for the benefit of Trust One.

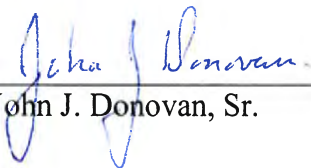
6. Other than the filings disclosed above, I have not, and will not at any time in the future, take any action on behalf of Trust One or as beneficiary of Trust One, or direct anyone to take action on my behalf, including but not limited to (a) selling, purchasing, transferring, pledging, gifting, conveying, assigning, disposing of, or mortgaging Trust One assets; (b) selling, transferring, pledging, gifting, conveying, assigning, disposing of, or mortgaging my beneficial interest in Trust One or Trust One assets; (c) using Trust One assets as collateral or otherwise to secure a loan or borrow money; (d) agreeing, allowing, suggesting or assisting a creditor or any other individual or entity to attach, reach and apply, obtain or execute on a lien, levy, or otherwise pursue or obtain assets held by Trust One; or (e) to attempt to do any of the foregoing.

7. As sanction for the aforementioned breaches of the FSA, pursuant to Paragraph 8 of the FSA, I stipulate and agree that the Arbitrator will order sanctions as follows:

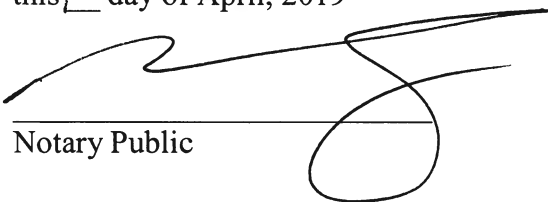
- a. All reasonable attorneys' fees incurred by the Estate or the Donovan Siblings to address and correct the Vermont Filings, the Aikin Filings, or the Essex County Registry Filings will be paid from Trust One.
- b. All of the Arbitrator's fees incurred in addressing or correcting the Vermont Filings, the Aiken Filings, or the Essex County Registry Filings will be paid from Trust One.
- c. All attorneys' fees incurred in the future by the Estate or the Donovan Siblings to oppose any claims by any of my creditors against Trust One will be paid by Trust One.
- d. If any of the foregoing statements in this stipulation are subsequently found by the Arbitrator to be intentionally false or misleading in any way, the Arbitrator will order the Trustee of Trust One to sell the Devon Glen property and, pursuant to the authority of the Arbitrator under Paragraph 8 and other provisions of the FSA, may order all proceeds from the sale to be forfeited by me and distributed to Rebecca M. Brown, James H. Donovan, Maureen K. McLaughlin, Carolyn Donovan Rosenbaum, and the estate of John J. Donovan, Jr. in equal proportion.
- e. If the Arbitrator determines that I have intentionally made, directed someone else to make, or attempted to make use of the SPA or the Codicil not otherwise disclosed in this affidavit, or in the future intentionally make any use of the SPA or Codicil (without prejudice to my rights in my pending criminal trial), the Arbitrator will order the Trustee of Trust One to sell the Devon Glen property and, pursuant to the authority of the Arbitrator under Paragraph 8 and other provisions of the FSA, may order all proceeds from the sale to be forfeited by me and distributed to Rebecca M. Brown, James H. Donovan, Maureen K. McLaughlin, Carolyn Donovan Rosenbaum, and the estate of John J. Donovan, Jr. in equal proportion.
- f. If at any time the balance of cash assets in Trust One goes below five hundred thousand dollars (\$500,000), pursuant to the authority of the Arbitrator under Paragraph 8 and other provisions of the FSA, the Arbitrator may order any remaining assets be held in Trust One to pay for future attorney's fees incurred by the Estate or the Donovan Siblings to address any future misconduct by me (or anyone acting on my behalf) or creditor claims against Trust One. Nothing in this or any other paragraph of this Stipulation shall limit or restrict the Arbitrator's powers or authority, including, but not limited to, awarding sanctions and remedies under the FSA.

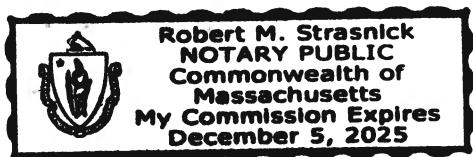
- g. Separate and apart from the foregoing paragraph, following my death, three hundred thousand dollars (\$300,000) will be reserved exclusively to pay for attorneys' fees incurred by the Estate or the Donovan Siblings to address any misconduct by me, or anyone acting on my or my estate's behalf, intended to harm the Estate, John J. Donovan, Jr.'s family, the Donovan Siblings, or the families of the Donovan Siblings after John J. Donovan, Sr.'s death. These funds can only be distributed to John J. Donovan, Sr.'s estate after the later of (i) any potential misconduct has been addressed in the judgment of the Arbitrator or, at a minimum, (ii) two years after my death. Nothing in this or any other paragraph of this Stipulation shall limit or restrict the Arbitrator's powers or authority, including, but not limited to, awarding sanctions and remedies under the FSA.
- h. I will fully cooperate and execute any and all documents requested by the attorneys for the Estate or the Donovan Siblings with language to be mutually agreed upon by the parties' attorneys to remedy the Vermont Filings, the Aiken Filings and the Essex County Registry Filings. Any dispute regarding the reasonableness of the language in the documents shall be resolved by the Arbitrator.
- i. If the Arbitrator determines that I, or anyone acting on my behalf, intentionally violates any of the terms of the ISA, MSA, or FSA going forward, the Arbitrator will order the Trustee of Trust One to sell the Devon Glen property and, pursuant to the authority of the Arbitrator under Paragraph 8 and other provisions of the FSA, the Arbitrator may order all proceeds from the sale to be forfeited by me and distributed to Rebecca M. Brown, James H. Donovan, Maureen K. McLaughlin, Carolyn Donovan Rosenbaum, and the estate of John J. Donovan, Jr. in equal proportion.
- j. If Linda Donovan, or anyone acting for her or on her behalf, violates or challenges in any way any of the terms of the "Settlement Agreement between Linda, JJD Jr., and the Four Siblings" dated March 26, 2006 or the "General Release of Linda Donovan to Rebecca M. Brown, James H. Donovan, John J. Donovan, Jr., Maureen Donovan Lantz, Carolyn D. Rosenbaum and Specified Entities" dated October 29, 2007, the property owned by Aiken Property Trust (sole beneficiary of which is Trust One), pursuant to the Arbitrator's authority under Paragraph 8 and other provisions of the FSA, will be forfeited and ownership will revert to Rebecca M. Brown, James H. Donovan, Maureen K. McLaughlin, Carolyn Donovan Rosenbaum, and the Estate in equal proportion. The foregoing sanctions do not in any way limit or foreclose any of the Arbitrator's authority under the FSA or any additional future sanctions for any additional misconduct by John J. Donovan, Sr. or Linda Donovan.

- k. I confirm and acknowledge that the orders contained in Separate Final Judgment Confirming the Arbitrator's January 25, March 2 and March 7, 2017 Awards in Favor of John J. Donovan, Jr.'s Estate and Separate Final Judgment Confirming the Arbitrator's January 25 and March 2, 2017 Awards in Favor of the Donovan Siblings, entered on the Suffolk Superior Court docket on March 21, 2017, remain in full force and effect.

  
\_\_\_\_\_  
John J. Donovan, Sr.

Sworn to before me  
this 1<sup>st</sup> day of ~~April~~<sup>May</sup>, 2019

  
\_\_\_\_\_  
Notary Public



# EXHIBIT I

**IN RE ARBITRATION AMONG****REBECCA M. DONOVAN, JAMES H. DONOVAN,  
MAUREEN DONOVAN LANTZ AND  
CAROLYN DONOVAN ROSENBAUM****AND****JOHN J. DONOVAN, JR.****AND****JOHN J. DONOVAN, SR.***Jurisdiction retained in the Business Litigation  
Session of the Suffolk Superior Court,  
Commonwealth of Massachusetts No. 03-424***[PROPOSED] ORDER AND AWARD**

By letter dated November 19, 2018 (Exhibit A hereto), the Donovan Siblings and the Estate of John J. Donovan, Jr. raised concerns regarding fraudulent filings made by John J. Donovan, Sr. (a.k.a. Professor Donovan) with (1) the Town Clerk in Pomfret, Vermont relating to property owned by Trust One Realty Trust and Pomfret Farm Realty Trust, and (2) the Register for Aiken County, South Carolina relating to property owned by Aiken Property Trust (sole beneficiary of which is Trust 1-JJD). These filings are attached at Exhibits B(1) and B(2) respectively. Based on submissions from the parties, several conferences where all parties were heard, and pursuant to the Stipulation by Professor Donovan ("Stipulation" Exhibit B hereto), the Arbitrator has determined that Professor Donovan has violated the terms of the Final Settlement Agreement (FSA) by making these fraudulent filings with the Town of Pomfret and the Register for Aiken County. Pursuant to Paragraph 8 and other provisions of the FSA, the Arbitrator hereby ORDERS:

- a. All reasonable attorneys' fees incurred by the Estate or the Donovan Siblings to address and correct the Vermont Filings, the Aikin Filings, or the Essex County Registry Filings will be paid from Trust One.
- b. All of the Arbitrator's fees incurred in addressing or correcting the Vermont Filings, the Aiken Filings, or the Essex County Registry Filings will be paid from Trust One.
- c. All attorneys' fees incurred in the future by the Estate or the Donovan Siblings to oppose any claims by any of Professor Donovan's creditors against Trust One will be paid by Trust One.
- d. If any of the statements in the Stipulation are subsequently found by the Arbitrator to be intentionally false or misleading in any way, the Arbitrator

will order the Trustee of Trust One to sell the Devon Glen property and, pursuant to the authority of the Arbitrator under Paragraph 8 and other provisions of the FSA, may order all proceeds from the sale to be forfeited by Professor Donovan and distributed to Rebecca M. Brown, James H. Donovan, Maureen K. McLaughlin, Carolyn Donovan Rosenbaum, and the estate of John J. Donovan, Jr. in equal proportion.

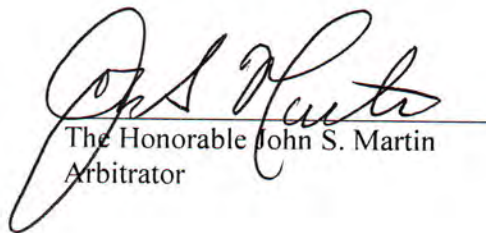
- e. If the Arbitrator determines that Professor Donovan intentionally made, directed someone else to make, or attempted to make use of the SPA or the Codicil not otherwise disclosed in the Stipulation, or in the future intentionally makes any use of the SPA or Codicil (without prejudice to Professor Donovan's rights in his pending criminal trial), the Arbitrator will order the Trustee of Trust One to sell the Devon Glen property and, pursuant to the authority of the Arbitrator under Paragraph 8 and other provisions of the FSA, may order all proceeds from the sale to be forfeited by Professor Donovan and distributed to Rebecca M. Brown, James H. Donovan, Maureen K. McLaughlin, Carolyn Donovan Rosenbaum, and the estate of John J. Donovan, Jr. in equal proportion.
- f. If at any time the balance of cash assets in Trust One goes below five hundred thousand dollars (\$500,000), pursuant to the authority of the Arbitrator under Paragraph 8 and other provisions of the FSA, the Arbitrator may order any remaining assets be held in Trust One to pay for future attorney's fees incurred by the Estate or the Donovan Siblings to address any future misconduct by Professor Donovan (or anyone acting on his behalf) or creditor claims against Trust One.
- g. Separate and apart from the foregoing paragraph, following Professor Donovan's death, three hundred thousand dollars (\$300,000) will be reserved exclusively to pay for attorneys' fees incurred by the Estate or the Donovan Siblings to address any misconduct by Professor Donovan, or anyone acting on his or his estate's behalf, intended to harm the Estate, John J. Donovan, Jr.'s family, the Donovan Siblings, or the families of the Donovan Siblings after John J. Donovan, Sr.'s death. These funds can only be distributed to John J. Donovan, Sr.'s estate after the later of (i) any potential misconduct has been addressed in the judgment of the Arbitrator or, at a minimum, (ii) two years after Professor Donovan's death.
- h. The documents executed by Professor Donovan (Exhibit C hereto) and Linda Donovan (Exhibit D hereto) to correct the fraudulent registry filings are hereby endorsed and shall be filed with the Town Clerk in Pomfret and the Register for Aiken County. The Arbitrator shall have the authority to order Professor Donovan and/or Linda Donovan to execute any additional documents necessary to remedy the fraudulent registry filings.

- i. If the Arbitrator determines that Professor Donovan, or anyone acting on his behalf, intentionally violates any of the terms of the ISA, MSA, or FSA going forward, the Arbitrator will order the Trustee of Trust One to sell the Devon Glen property and, pursuant to the authority of the Arbitrator under Paragraph 8 and other provisions of the FSA, the Arbitrator may order all proceeds from the sale to be forfeited by Professor Donovan and distributed to Rebecca M. Brown, James H. Donovan, Maureen K. McLaughlin, Carolyn Donovan Rosenbaum, and the estate of John J. Donovan, Jr. in equal proportion.
- j. If Linda Donovan, or anyone acting for her or on her behalf, violates or challenges in any way any of the terms of the "Settlement Agreement between Linda, JJD Jr., and the Four Siblings" dated March 26, 2006 or the "General Release of Linda Donovan to Rebecca M. Brown, James H. Donovan, John J. Donovan, Jr., Maureen Donovan Lantz, Carolyn D. Rosenbaum and Specified Entities" dated October 29, 2007, the property owned by Aiken Property Trust (sole beneficiary of which is Trust One), pursuant to the Arbitrator's authority under Paragraph 8 and other provisions of the FSA, will be forfeited and ownership will revert to Rebecca M. Brown, James H. Donovan, Maureen K. McLaughlin, Carolyn Donovan Rosenbaum, and the Estate in equal proportion.
- k. The foregoing sanctions and the Stipulation do not in any way limit or foreclose any of the Arbitrator's authority under the FSA or any additional future sanctions for any additional misconduct by John J. Donovan, Sr. or Linda Donovan.

The Estate and the Siblings are hereby ORDERED to submit their petitions for attorneys' fees within thirty days (30) of the date of this Order.

SO ORDERED.

~~October~~  
September, 1, 2019

  
The Honorable John S. Martin  
Arbitrator

# EXHIBIT J

NOTICE

10/30

1 1

ELECTRONICALLY FILED - 2023 Apr 25 11:32 AM - AIKEN - COMMON PLEAS - CASE#2022CPO0202654

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

REBECCA M. BROWN, et. al

Plaintiffs,

v.

JOHN J, DONOVAN, SR., et. al

Defendants.

Civil Action No. 03-4247 BLS  
*Jurisdiction*  
*retained in the Business*  
*Litigation Session of the*  
*Suffolk Superior Court,*

**SEPARATE FINAL ORDER CONFIRMING THE ARBITRATOR'S**  
**OCTOBER 1, 2019 ORDER**

This matter came before the Court on a Motion to Confirm October 1, 2019 Arbitration Order as a final order and award. It is hereby ORDERED AND ADJUDGED, there being no just reason for delay, that the October 1, 2019 Order is confirmed pursuant to G.L. c. 251, 11.

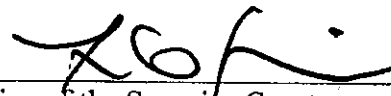
SO ORDERED.

Dated at Boston, Suffolk County, this 30<sup>th</sup> day of October, 2019.

Notice sent  
(JRB)

10/30/19  
PH/C.G.S.  
BTS/M.R.P.  
B.A.S.  
RG/R.M.G.  
DP/B.C.K.  
MLC/H.A.S.  
S.C.F.

SEATL/J.D.L.  
A-LLP/S.B.H.



Justice of the Superior Court  
Business Litigation Session

I HEREBY ATTEST AND CERTIFY ON  
12/4/19 THAT THE  
FOREGOING DOCUMENT IS A FULL  
TRUE AND CORRECT COPY OF THE  
ORIGINAL ON FILE IN MY OFFICE,  
AND IN MY LEGAL CUSTODY.

MICHAEL JOSEPH DONOVAN  
CLERK / MAGISTRATE  
SUFFOLK SUPERIOR CIVIL COURT  
DEPARTMENT OF THE TRIAL COURT

BY   
FIRST ASSISTANT CLERK

# EXHIBIT K

2020002069



DEED  
RECORDING FEES  
STATE TAX  
COUNTY TAX  
PRESENTED & RECORDED:

\$1.00  
\$9.00  
\$0.00

01-28-2020 12:30 PM

JUDITH WARNER  
REGISTER OF MESNE CONVEYANCE  
AIKEN COUNTY, SC  
BY: VIRGINIA DUNN DEPUTY

BK: RB 4824

PG: 1247 - 1249

FILED FROM OFFICE - 2023 Apr 25 11:32 AM - AIKEN - COMMON PLEAS - CASE#2022CP0202654

STATE OF SOUTH CAROLINA )

COUNTY OF AIKEN )

QUITCLAIM DEED AND RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That John J. Donovan, Sr., individually and as sole beneficiary of Trust One JJD, which is the sole beneficiary of Aiken Property Trust, and Linda Donovan, for and in consideration of the sum of One and xx/100 (\$1.00) Dollar, the receipt and sufficiency of which are hereby acknowledged, hereby grant, bargain, sell and release to William T. Hurley, Jr., Trustee of Aiken Property Trust under declaration of trust dated January 14, 2015, the following described real estate:

All that certain piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in the County of Aiken, State of South Carolina, West of and adjoining Banks Mill Road (S.C. Highway No. S-2-79), approximately 4.37 miles South of the City limits of the City of Aiken, County and State aforesaid, containing 40.00 acres, more or less, as shown and designated upon a plat prepared for Cornelius Debonte by Charles M. Jones, dba, Jones and Murphy dated April 14, 1997, recorded May 16, 1997, in the Offices of the RMC of Aiken County, South Carolina, in Plat Book 36 at Page 258-1. Reference is hereby made to said plat for a more complete and accurate description of said property as to metes, bounds and location.

Grantee address: Trust one JJD

Tax Parcel No. 139-19-01-002.

William T. Hurley Trustee  
c/o Verdolino and Lowery PC  
124 Washington Street  
Foxborough, MA 02035

All that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being in Southeast of the City of Aiken, in the County of Aiken, State of South Carolina, West of and adjoining Banks Mill Road (S.C. Highway No. S-2-79), containing 36.68 acres, more or less, as shown and designated upon a plat prepared for Ira E. Coward, et. al, by Southern Partners, Inc. dated December 30, 2004, and recorded February 14, 2005, in the Office of the RMC of Aiken County, South Carolina, in Plat Book 49 at Page 9-2. Reference is hereby made to said plat for a more complete and accurate description of said property as to metes, bounds and location.

Tax Parcel No. 140-08-04-001.

By this grant, the undersigned hereby release and terminate any and all right, title and interest that may have been granted in the Option to Purchase and Right of First Refusal stated in a certain Life Estate, Will and Option to Purchase Real Estate dated April 27, 2015 and recorded in the Office of the RMC of Aiken County, South Carolina in Book RB 4549, Pages 2386 – 2388.

Witness our hands and seals this 9<sup>th</sup> day of January, 2020

Signed, sealed and delivered in the presence of:

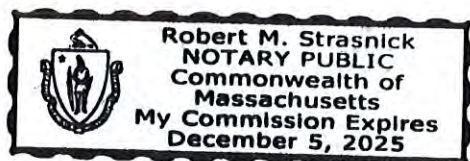
Nicole Romanelli  
Witness

Amy Gambino  
Witness

John J. Donovan  
John J. Donovan, Sr., individually and as sole beneficiary of Trust One JJD, which is the sole beneficiary of Aiken Property Trust  
a/k/a John J. Donovan, Jr.  
a/k/a Professor Donovan

State of  
County of

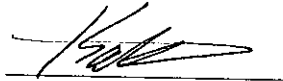
On this 9<sup>th</sup> day of January, 2020 before me, the undersigned notary public, personally appeared John J. Donovan, Sr., proved to me through satisfactory evidence of identification, which was ☒ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, or ☒ personal knowledge of the undersigned, and acknowledged to me that he signed it voluntarily for its stated purpose.

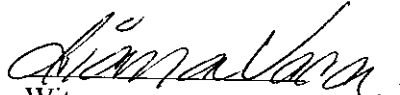


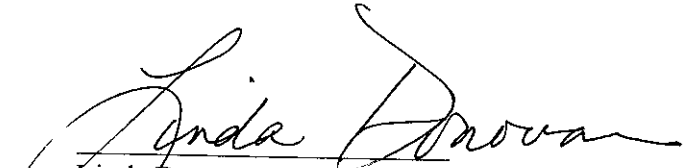
Robert M. Strasnick  
Notary Public

My Comm. Expires: 12/5/25

Signed, sealed and delivered in the presence of:

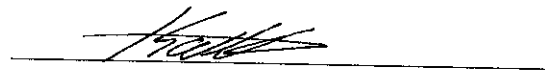
  
Witness

  
Witness

  
Linda Donovan

State of  
County of

On this 10 day of January, 2020 before me, the undersigned notary public, personally appeared Linda Donovan, proved to me through satisfactory evidence of identification, which was [X] photographic identification with signature issued by a federal or state governmental agency, [ ] oath or affirmation of a credible witness, or [ ] personal knowledge of the undersigned, and acknowledged to me that she signed it voluntarily for its stated purpose.

  
Notary Public

My Comm. Expires: 04/03/2029

**KAITLIN VANCAMP**  
Notary Public - State of South Carolina  
My Commission Expires April 3, 2029

# EXHIBIT L

IN RE ARBITRATION AMONG  
 REBECCA M. DONOVAN, JAMES H. DONOVAN,  
 MAUREEN DONOVAN LANTZ, AND CAROLYN DONOVAN ROSENBAUM  
 AND  
 JOHN J. DONOVAN, Sr.  
 AND  
 JOHN J. DONOVAN JR.  
*Jurisdiction retained in the Business Litigation  
 Session of the Suffolk Superior Court,  
 Commonwealth of Massachusetts No. 03-4247*

#### AWARD

The present proceedings might properly be characterized as “ Déjà vu - all over again.” In October 2016, the Donovan siblings brought an application before me challenging a series of filings and recordings of documents made by Professor Donovan in the Essex County Massachusetts South District Registry of Deeds. In response, Professor Donovan asserted that the filings at issue were proper because he was acting pursuant to a codicil to the last will and testament of his son John Jr. and a special power of attorney and certain proxies also obtained from John Jr.

To resolve this dispute, I conducted an evidentiary hearing. Several witnesses testified and the siblings offered a report by an expert in handwriting analysis concluding the signature of John Jr. was a forgery. I subsequently issued detailed Findings of Fact setting forth my conclusion that the testimony of Professor Donovan that John Jr. signed the contested documents was unworthy of belief and the documents on which he relied were fraudulent.

Almost four years to the date after my decision holding that the documents offered by Professor Donovan were fraudulent, a new lawyer acting on his behalf commenced an action to set aside all the prior proceedings before me. This “new” action rested, at its core, on the assertion that the documents that I had determined to be fraudulent were genuine. Professor Donovan’s lawyer alleged John Jr. had given the codicil and power of attorney to Professor Donovan because he feared he or his estate might be prosecuted for tax evasion in connection with a series of trusts established in Bermuda for the benefit of himself and his siblings.

In view of this unwarranted attack on John Jr. which has been aided and abetted by an accountant and two lawyers, who have touted their experience as Department of Justice prosecutors to support their slander of John Jr, it seems appropriate to repeat what I said at the outset of my Findings of Fact and Conclusions of Law dated January 25, 2017:

For over 12 years I have served as a mediator and arbitrator of disputes between Professor John Donovan and his children. During that time, four of those children, Rebecca, James, Maureen and Carolyn. were always at odds with their father. His youngest son, John, often found himself in the middle — sympathetic to the views of his siblings but also supportive of his father and concerned for his welfare. John worked with his siblings and his father to resolve disputes and

was instrumental in forging an agreement which resulted in the creation of a trust for Professor Donovan which John hoped would provide his father with financial security for the remainder of his life. It is, therefore, particularly sad that the dispute at issue arises from a blatant attempt by Professor Donovan to defraud John's estate.

Before turning to the specific facts, it is worth noting that, while Professor Donovan is a highly intelligent man who has had substantial academic and business success, he apparently thinks the rest of us are devoid of intelligence or common sense. It was obviously with that mindset that he conceived a fraud that had him representing that all he wanted to do was fulfill John's dying wishes, when in fact he was doctoring videotapes, audiotapes and legal documents in a manner that was so childish that even the least intelligent of us would never believe that what he was proposing was anything that John would have wanted. The fact that he used the claim that all he was doing was attempting to carry out John's wishes to defraud John's wife and children of millions of dollars evidences a total lack of respect and appreciation for all that John attempted to do for him during his life.

Given these findings it is hard to understand how Professor Donovan, or his attorneys, or his aiders and abettors could possibly believe that anyone with common sense would accept the story that they have tried to foist upon this tribunal.

The claim is that John, Jr. prepared the codicil and gave it to his father because he feared the consequences of an alleged tax evasion scheme that he engaged in with his siblings involving the use of sham grantor trusts in Bermuda. This claim is bolstered by the expert reports of an accountant and a lawyer, as well as a slide show by his current lawyer. While both lawyers tout their experience as Justice Department prosecutors to lend credibility to the charges that they level against John, Jr., and his siblings, they apparently left behind at the Justice Department a prosecutor's skepticism when confronted with claims that make no sense, as well as the ability to conduct even a minimal investigation of critical facts.

At the heart of the tax evasion claim is the assertion that the siblings used two fraudulent grantor trusts, the Appleby Trust and the Geneva Trust, as part of a tax evasion scheme. It is alleged that John Jr. acting as the point man, forged a series of documents in connection with The Appleby Trust which had been established in Bermuda by an Irish citizen named James McEniry. In support of this claim, Professor Donovan and his aiders and abettors cite an affidavit from Mr. McEniry in which he stated he did not know Professor Donovan until well after the Appleby Trust was established, he never met the Donovan children and many of the documents relating to the trust bearing his name were forgeries. This affidavit was apparently executed in Ireland and there is no indication that Mr. McEniry is willing to come to the United States where his sworn statement could subject him to a perjury prosecution if what it states proves to be untrue.

It is also alleged that the Donovan children made use of a similar fraudulent grantor trust, the Geneva Trust, which had been established by an individual named Shridhar Submaranian and included as its beneficiaries Shridhar's brother, Sundar. No evidence is offered to sustain the claim that this Trust was fraudulent. The experts simply assume that those involved in the Geneva Trust had no connection with Professor Donovan or his family.

Central to the “experts” assertion that the two trusts were fraudulent are the assumptions that Professor Donovan was unaware of these activities at the time and the grantors of the Trusts were strangers to the Donovan family.

It is surprising that professionals giving opinions that charge serious crimes to several individuals would make those charges with apparently little investigation to determine the validity of the assumptions underlying their opinions. The most glaring example is their accepting without question Professor Donovan's assertions that the codicil and power of attorney were genuine. What investigation did these alleged experts do that allowed them to base their opinions on the claim that these documents were legitimate, given my prior opinion finding them to be fraudulent and Professor Donovan's testimony to be unworthy of belief, as well as the decision of the Essex County District Attorney to bring criminal charges against Professor Donovan relating to these documents.

Given the questionable credibility of the source of the basic allegations of the claims of tax evasion, one would hope that experts with Justice Department experience would make some effort to investigate the facts on which they rely when accusing others of serious crime,

Although the experts did not hesitate to opine that the Geneva Trust was fraudulent, they apparently made no effort to determine who the individuals involved with this trust were and what relationship they may have had with Professor Donovan and his children. The assumption that the Geneva Trust was fraudulent and unknown to Professor Donovan was apparently made with no factual basis or investigation. Why did the experts do nothing to check on any connection Shadhir Subramanian or his brother Sundar might have had with Professor Donovan and his family?

One would have to look no further than Exhibit E to the Graylin affidavit to find that Sundar Subramanian had submitted an affidavit in support of a motion of John J Donovan Sr. to disqualify the Mintz Levin law firm. Had they gone a step further and looked at the website maintained by Professor Donovan, they would have found an accolade about the Professor from the same Sundar Submaranian, who identified himself as a colleague of Professor Donovan. Could any responsible expert give an opinion that Geneva trust was fraudulent and was established by people who had no connection with the Donovan family without doing some investigation? Could any reasonable former prosecutor accept without question Professor Donovan's representation that he knew nothing about a trust set up by the brother of his close friend?

Turning to the Appleby trust we find Professor Donovan's experts charging that John Donovan Jr. submitted a fraudulent letter to the Appleby firm falsely representing that McEniry was a family friend. To quote for Mr. Neiman's report at page 9:

Donovan, Jr. states that “Jim is a very close friend of my family, whom we have known for some time.” Further, “I am personally very close to Jim ( I've always known him as “Uncle Jim”) and it has been somewhat typical of his nature to give generous gifts to myself and my family over the years.” These statements according to both Professor Donovan and McEniry himself are simply false McEniry has never met the Donovan children, has no relationship with the family, and was not the source of the funds referenced in the letter.”

It appears that Mr. Neiman and the other experts did not inquire to determine whether Professor Donovan and Mr. McEniry had any other associations or had been involved in any other litigation. Such inquiry might have revealed that the same Mr. McEniry who claimed to have met Professor Donovan only after the Trust was established and denied knowing John Jr., had signed an affidavit in connection with litigation in Bermuda concerning the Appleby Trust stating:

Relationship with Professor Donovan

2. I wish first to explain the relationship between Professor John Donovan and myself.
3. Professor Donovan has been a friend of mine for many years. It was because of the close relationship between Professor Donovan and myself that I offered to become involved in the funding of the Appleby Trust. That was clearly stated in a letter dated 18 August 1993 I wrote to Marten Collins of Appleby Spurling & Kempe ("AS&K"), the attorneys for the former trustee of the Appleby Trust.

My Involvement in the Funding of the Trust

Professor Donovan requested that I participate in the funding of the trust. When I did so, I believed that I was creating the trust. I have now been informed by those advising Indigo that in fact the Appleby Trust already existed on the day I wired the sum of US\$145,000 to the former Trustee, Appleby Trust (Bermuda) Limited ("ATBL") then called "Harrington Trust Limited".

4. I agreed with Professor Donovan in 1993 to settle money on the trust and it was arranged that I would meet with AS&K in Bermuda. I was unfamiliar with the establishment and operation of trusts and at the suggestion of Professor Donovan I liaised with and was helped by his son, John Donovan Jr. ("JDJ") with regard to all of the technical details.

Even without his sworn statement of Mr. McEniry, one would hope that a former prosecutor, giving an expert opinion accusing several with serious crimes, would ask himself, if John Jr. did not know McEniry, how did he even know about the Appleby Trust and gain the ability to forge McEniry's signature? But there are none so blind as those who would not see.

In opposition to Professor Donovan's current motion, counsel for his children submitted an expert report signed by Steven Toscher, Sandra R Brown- Bodner and Robert Horowitz, sometimes referred to as the Toscher Report. That report stated, "Based on our review of the exhibits and appendices to the Edelstein letter and other documents that are appended to this letter there is no evidence that any of the Donovan children had the intent necessary to constitute tax fraud." That report also noted that the Donovan children had acted on the advice of well-respected accounting firms that their conduct was appropriate under existing law.

It is interesting that Mr. Neiman concludes in his Report:

Despite the Toscher letter's tone there is not much difference between the conclusions offered in the Toscher report and those offered by myself and Koplowitz. Rather the dispute appears evidentiary. This report describes a scheme (1) to steal James McEniry's identity; (2) forge correspondence and trust documents in McEniry's name; (3) misrepresent McEniry as a bona fide foreign grantor of a trust he in fact had nothing to do with; (4) lie about this to tax advisors and other professionals to obtain favorable opinions concerning the Structure's tax treatment. . . .

The only thing Mr. Neiman got right was that the dispute is evidentiary. The evidence is overwhelming in establishing that Professor Donovan and Mr. McEniry lied about their relationship and the purpose of the Trust and there is no reason to believe that the Donovan children believed that the actions they took, with the advice of highly skilled professionals constituted tax fraud. Professor Donovan's claims that John Jr. executed the codicil and power of attorney are no less fraudulent today than they were in 2016 and 2017.

In short, the only sham involved in these proceedings is the claim that the Appleby and Geneva Trusts were created without the knowledge of Professor Donovan by people who had no connection with the Donovan family. I noted in 2017 findings that Professor Donovan: "thinks the rest of us are devoid of intelligence or common sense." Apparently, he was able to find lawyers and accountants who shared that view. In the federal courts lawyers are required to make a reasonable inquiry before making assertions to the court and can be sanctioned if they do not. Unfortunately, the same standards do not apply in arbitrations.

### CONCLUSION

We have come to a sad end of a long and somewhat tragic journey. Repeated attempts to resolve the conflicts between Professor Donovan and his children have fallen apart, in large measure because Professor Donovan has refused to abide by agreements that he has made.

Over the course of my service as mediator and Arbitrators of the disputes between Professor Donovan and his children, I have been told that the children wanted to keep Professor Donovan from having control of substantial assets because they feared that he would use whatever assets he had to do them harm. The sad course of these proceedings has demonstrated that the children have substantial basis for that fear. Professor Donovan has been convicted of shooting himself so that he could falsely place the blame for his injury on his son James. He has used a fraudulent codicil and power of attorney to try to strip assets from the estate of John Jr. He has employed several, no doubt, high priced experts in the current proceedings to charge his children with forgery and tax fraud.

In the past I have resisted the entreaties of counsel for the Donovan children to forfeit Professor Donovan's rights in the existing trust. I resisted those efforts out of respect for the memory of John Jr and his concern for the welfare of his father. None of this has deterred Professor Donovan from hiring experts and charging them with the mission to attack his son John as a forger and tax cheat.

I have warned Professor Donovan that any further wrongdoing would result in the forfeiture of his interest in the Trust One. Despite those warnings, he has brought before me another fraudulent application. Enough is enough. I have concluded that Professor Donovan deserve to be sanctioned to the fullest extent possible and that his interest in Trust One should be forfeited.

To some it may seem cruel to strip Professor Donovan of assets that have been derived from his efforts. It may be argued that in doing so, he will be left in poverty. But his alleged poverty has not prevented him from instituting what must have been costly litigation attacking his children. To extent that it is claimed that this litigation has been financed by friends of Professor Donovan who are concerned for his welfare, those friends might better use their wealth to provide financial support to Professor Donovan rather than waste their money funding frivolous litigation.

Counsel for the parties are directed to confer to develop a plan for the winding up of Trust One and to bring to my attention any disputes or questions relating to that process.

I previously advised the parties that I was retiring from practice and they should consider finding someone to replace me. These most recent proceedings had convinced me, however, that this would be unfair to the Donovan siblings, and any new mediator/arbitrator. To the extent there are likely to be future proceedings, there is a substantial likelihood that, like the present application, there will be attempts to relitigate what I have already decided. At a minimum, the appropriate disposition of any application will require a deep understanding of all that has gone before. In these circumstances, I feel it would be irresponsible for me to withdraw and I will not.

November 10, 2021



John S. Martin

# EXHIBIT M

# NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK,SS

SUPERIOR COURT DEPARTMENT

Rebecca M. Brown, et al.,

Plaintiffs,

Civil Action No.: 0384CV4247-BLS1

v.

John J Donovan, Sr. et al,

Defendants

## FINAL JUDGMENT

Upon consideration by Peter Krupp, Associate Justice of the Superior Court IT IS  
HEREBY ORDERED and ADJUDGED that:

1. Defendant's Motion to Vacate Arbitration Award of November 10, 2021, is  
DENIED. The Arbitrator's Award dated November 10, 2021, is CONFIRMED  
pursuant to G.L. c. 251, Sec. 12(d).

Final judgment shall enter accordingly.

August 17, 2022



Assistant Clerk Magistrate  
Office of the Civil Clerk  
Michael J. Donovan

Noted  
SMP  
8-18-22

JUDGMENT ENTERED ON DOCKET Aug 18 2022  
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 106(b)  
AND NOTICE SENT TO PARTIES PURSUANT TO THE PRO- 42  
VISIONS OF MASS. R. CIV. P. 170 AS FOLLOWS

# EXHIBIT N

132

ELECTRONICALLY FILED - 2023 Apr 25 11:32 AM - AIKEN - COMMON PLEAS - CASE#2022CP0202654

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT  
CRIMINAL ACTION  
NO. ESCR2017-0672

COMMONWEALTH

vs.

JOHN DONOVAN

SUMMARY DECISION AND ORDER ON DEFENDANT'S  
EMERGENCY MOTION FOR STAY OF SENTENCE

INTRODUCTION

John Donovan ("Donovan") is before the court seeking a stay of his sentence under Mass. R. Crim. P. 31(a) and Mass. R. App. P, 6. After review, and for the reasons stated below, Donovan's motion in **DENIED**.

Traditionally, a stay of sentence requires a defendant to prove that he has a likelihood of success on appeal and that he poses no security risk if released. *Commonwealth v. Nash*, 486 Mass. 402-412 (2020). See *Commonwealth v. Kalila*, 102 Mass. App. Ct. 108, 112 (2023). As to the first factor, "the defendant must show that there is at least one appellate issue of sufficient heft that would give an appellate court pause -- in other words, one or more issues that require a legitimate evaluation, that would engender a dialectical discussion among an appellate panel where both sides find some substantive support, and that would, if successful, lead to a favorable outcome for the defendant." *Nash*, 486 Mass. at 404. As to the second factor, a judge should consider such things as the possibility of flight to avoid punishment, the potential danger to any other person or to the community, and the likelihood a defendant will reoffend while awaiting his appeal. *Commonwealth v. Hodge (No. 1)*, 380 Mass. 851, 855 (1980).

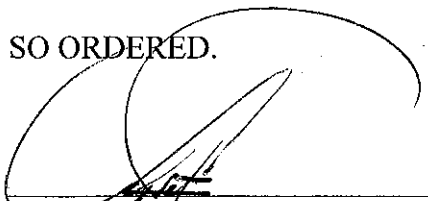
During the height of the COVID-19 pandemic, sentencing judges were also encouraged to consider COVID-19 as another variable when deciding whether to stay a defendant's sentence pending appeal. *Nash*, 486 Mass. at 405-406. COVID-19, however, is not an independent factor to be considered by the sentencing judge and does not alter the two-factor test traditionally used by our courts. *Kalila*, 102 Mass. App. Ct. at 113-114.

Here, after review of Donovan's motion and accompanying memorandum, the court determines that Donovan has failed to establish that the issues raised in his motion present some reasonable possibility of success. See *Nash*, 486 Mass. at 403. As such, the court need not consider the security risk factors identified in *Hodge (No. 1)*, 380 Mass. at 855. But even if this court were to consider the security risks posed by Donovan under factor two, he would fair no better. Donovan has proven himself to be nothing short of a charlatan. He cannot be believed; either about his health, where he would live, or that he would somehow abandon his twenty-year quest to destroy his family. Finally, to the extent this court must still consider COVID-19 as a consideration in releasing convicts that fail to meet the traditional test for staying a sentence, nothing in Donovan's history tips the scale towards a stay. The court has already issued a lengthy decision on Donovan's motion to revise and revoke his sentence that identifies Donovan's health history. The court has considered COVID-19 at every relevant stage in Donovan's case. There is nothing new in this motion that alters the court's opinion that Donovan is at no greater risk from COVID-19 or its effects than any other inmate.

**CONCLUSION AND ORDER**

For the reasons stated above, Donovan's motion is **DENIED**.

SO ORDERED.

A handwritten signature in black ink, appearing to read 'Salim Rodriguez Tabit', is written over a horizontal line.

Salim Rodriguez Tabit  
Associate Justice of the Superior Court

Dated: April 3, 2023

|                                    |   |                                        |
|------------------------------------|---|----------------------------------------|
| STATE OF SOUTH CAROLINA            | ) | IN THE COURT OF COMMON PLEAS           |
|                                    | ) | SECOND JUDICIAL CIRCUIT                |
| COUNTY OF AIKEN                    | ) |                                        |
|                                    | ) | CASE NO: 2022-CP-02-02654              |
| William T. Hurley, Jr., as Trustee | ) |                                        |
| of the Aiken Property Trust,       | ) |                                        |
|                                    | ) |                                        |
| Plaintiff,                         | ) | <b>MEMORANDUM OF LAW IN OPPOSITION</b> |
|                                    | ) | <b>OF PLAINTIFF'S MOTION FOR</b>       |
| vs.                                | ) | <b>SUMMARY JUDGMENT</b>                |
|                                    | ) |                                        |
| Linda Donovan,                     | ) |                                        |
|                                    | ) |                                        |
| Defendant.                         | ) |                                        |
| _____                              | ) |                                        |

TO: THE ABOVE-NAMED PLAINTIFF AND HIS ATTORNEY, MATTHEW L. JEPERTINGER, ESQ.:

Defendant Linda Donovan ("Defendant"), by and through her undersigned counsel, respectfully submits this Memorandum of Law in opposition to Plaintiff's Motion for Summary Judgment. As discussed more fully below, Plaintiff William T. Hurley, Jr. ("Plaintiff") alleged causes of action contain issues of fact to be dealt with in regards to the beneficiary of Trust One- JJD, and subsequently the Aiken Property Trust. Accordingly, this Court should stay the proceedings until the Massachusetts Superior Court has come to a final determination of the ongoing appeal of the final arbitration order against John J. Donovan. Sr.

### **STATEMENT OF FACTS**

This action arises from Plaintiff's attempts to eject Defendant from the Aiken Properties (Tax Map Nos.: 139-19-01-002 and 140-08-04-001). The Aiken Property Trust, of which Plaintiff is the current acting Trustee, purchased the Aiken Properties on January 14, 2015 for \$457,500.00 and \$1,042,500.00. A copy of the two deeds are attached hereto and incorporated herein as Exhibit A. The Aiken Properties were purchased for the benefit of John J. Donovan, Sr., and his wife, who is the Defendant. John J. Donovan, Sr. is the sole beneficiary of Trust One- JJD, which is the sole beneficiary of the Aiken Property Trust. John J. Donovan, Sr. was

and is still the sole beneficiary of Trust One- JJD as the arbitration award from November 10, 2021 that purported to extinguish John J. Donovan, Sr.'s entire beneficiary interest in Trust One- JJD is undergoing an appeal with the Massachusetts court system.

### **STANDARD OF REVIEW**

Under the South Carolina Rules of Civil Procedure ("SCRCP"), Rule 56(c) states that "the judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on files, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." To determine if there is a genuine issue of material fact, "the evidence and all reasonable inferences must be viewed in the light most favorable to the nonmoving party." *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). To withstand a motion for summary judgment, "the nonmoving party is only required to submit a mere scintilla of evidence. . . ." *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Further, Rule 56(e), SCRCP, "requires a party opposing summary judgment to come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial." *Doe ex rel. Doe v. Batson*, 345 S.C. 316, 320, 548 S.E.2d 854, 854 (S.C. 2001).

### **ARGUMENT**

Rule 56(c), SCRCP, requires that there is no genuine issue of material fact. There are several issues of fact when looking at the face of the complaint. First, the November 10, 2021 arbitration order is not a final judgment of the Massachusetts Superior Court. John J. Donovan, Sr. is currently appealing the arbitration order. A copy of the Appeals Court Case Docket, Defendant's Emergency Motion to Enjoin the Dissipation of Trust Assets Pending Appeal, and Appellant's Motion to Enlarge Time to File Brief are attached hereto and incorporated herein as Exhibits B, C, and D, respectively. As of June 13, 2023, Appellant John J. Donovan, Sr. has filed

his Appellant Brief and Appendix. On the same date, the Suffolk Superior Court accepted John J. Donovan's brief and appendix and dismissed the Appellee's Motion to Dismiss.

This arbitration order is attempting to remove John J. Donovan, Sr. 's beneficiary interest in Trust One- JJD, which is the sole beneficiary of the Aiken Property Trust. There are no other beneficiaries named in either Trust besides John J. Donovan, Sr. A copy of Trust One- JJD and a copy of the Aiken Property Trust are attached hereto and incorporated herein as Exhibits E and F, respectively.

Additionally, Plaintiff's Motion for Summary Judgment contends that the four-corners of the two deeds for the Aiken Properties establishes that Defendant has no right or interest to possess, use or occupy the Aiken Properties. This is incorrect. Defendant's Answer and Counterclaim outlines Defendant's argument that Plaintiff as Trustee of the Aiken Property Trust owed duties to the Defendant. Regardless, John J. Donovan, Sr. is named sole beneficiary for Trust One- JJD and subsequently the Aiken Property Trust. As his wife, Defendant is able to occupy the property and has spent her own money in the purchase and maintenance of the Aiken Properties.

Plaintiff refers to the 2020 Corrective Deed signed by both Defendant and her husband. Pl.'s Mem. 5. Plaintiff states that "[t]he 2015 Deeds, which are unambiguous on their face, conveyed all rights, title, and interest to the Aiken Properties solely to Plaintiff." Pl.'s Mem. 5. This is incorrect as the 2020 Corrective Deed states "the undersigned hereby release and terminate any and all right, title and interest that may have been granted in the Option to Purchase and Right of First Refusal stated in a certain Life Estate, Will and Option to Purchase Real Estate . . . ." Pl.'s Compl. Ex. K. Defendant and her husband only relinquished any right or interest that may have been created in the referenced Life Estate document, not any currently existing right, title or interest in the Aiken Properties or John J. Donovan, Sr.'s interest as sole beneficiary of Trust One- JJD, which is the sole beneficiary of the Aiken Property Trust. A copy of the 2020 Corrective Deed is attached hereto and incorporated herein as Exhibit G.

Plaintiff contends that Defendant's counterclaim for a Constructive or Resulting Trust fails because of the 2020 Corrective Deed. As stated above, by executing the 2020 Corrective Deed, Defendant and her husband only relinquished any additional rights or interest that may have been created by the alleged Life Estate, Will & Option to Purchase Real Estate executed by John J. Donovan, Sr. John J. Donovan, Sr. still retained all the rights to the property as sole beneficiary of Trust One- JJD, which is the sole beneficiary of the Aiken Property Trust. Defendant retained her interest in the property under a Constructive or Resulting Trust.

At the very least, a resulting trust has been established. The evidence to establish a resulting trust "must be definite, clear, unequivocal and convincing." *Moore v. McKelvey*, 221 S.E.2d 780, 781, 266 S.C. 95, 95 (S.C. 1976), citing *Green v. Green*, 237 S.C. 424, 430, 117 S.E.2d 583, 586; *Hodges v. Hodges*, supra, 243 S.C. 299, 306, 133 S.E.2d 816, 819. In order for a resulting trust to arise, it must arise at the time of purchase. *Hodges v. Hodges*, 133 S.E.2d 816, 819, 243 S.C. 299, 307 (S.C. 1963). At the time of purchase, "[t]he funds must then, or prior thereto, be advanced and invested. A trust will not result from funds subsequently furnished." *Id.* at 819-820, 243 S.C. at 307. Said payment "must be clearly and unmistakably shown to have been so made at or before the time of purchase." *Green v. Green*, 237 S.C. 424, 430-431, 117 S.E.2d 583, 586 (S.C. 1960), citing *Hutto v. Hutto*, 187 S.C. 36, 196 S.E. 369.

Defendant contributed \$19,974.24 in her own funds towards the purchase of the Aiken Properties. Defendant was to make up any shortage in the wire for the purchase of the Aiken Properties as evidenced by a letter by the Closing Attorney, Morris Rudnick, Esquire, of Rudnick & Rudnick. A copy of the wire transfer statement is attached as Exhibit H and a copy of the letter from the Closing Attorney Morris Rudnick, Esquire, to Plaintiff is attached as Exhibit I.

Regarding Plaintiff's argument that Plaintiff owes no fiduciary duty to Defendant as she is not a beneficiary of the Aiken Property Trust or Trust One- JJD, Defendant is married to the beneficiary and the Aiken Properties were purchased for Defendant and John J. Donovan, Sr. to live in. John J. Donovan, Sr.'s beneficiary status has been litigated over for many years but until

a final judgment in the ongoing appeal in the Massachusetts court system is filed, then this issue cannot come to a final judgment either.

**CONCLUSION**

Defendant respectfully requests that the Court deny Plaintiff's Motion for Summary Judgment, or in the alternative, stay the proceedings until a final judgment is rendered in the Massachusetts court system.

Respectfully submitted,

s/Brad A. Brodie

Brad A. Brodie, ID 8632  
Smith, Massey, Brodie, Gynn & Mayes, LLC  
P.O. Box 519  
Aiken, SC 29802  
(803) 643-4110  
brodielawfirm@gmail.com

Attorneys for Defendant

July 14, 2023  
Aiken, South Carolina



2015001023  
DEED  
RECORDING FEES \$10.00  
STATE TAX \$1189.50  
COUNTY TAX \$503.25  
PRESENTED & RECORDED  
01-16-2015 08:30 AM  
JUDITH WARNER  
REGISTER OF MORTGAGE CONVEYANCE  
AIKEN COUNTY, SC  
BY: MARILYN SEIGLER DEPUTY  
BK: RB 4536  
PG: 790 - 793

ELECTRONICALLY FILED - 2023 Jul 14 2:02 PM - AIKEN - COMMON PLEAS - CASE#2022CP0202654

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN ) LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That H 'N D STABLES, LLC, a South Carolina limited liability company (successor to H 'n D Stables, Inc.), (hereinafter called "Grantor"), for and in consideration of the sum of FOUR HUNDRED FIFTY-SEVEN THOUSAND FIVE HUNDRED AND NO/100 Dollars (\$457,500.00), to it in hand paid at and before the sealing of these presents by WILLIAM T. HURLEY, JR. TRUSTEE OF AIKEN PROPERTY TRUST U/D JANUARY 14, 2015 (hereinafter called "Grantee"), the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto Grantee, his heirs, successors and assigns, the following described real estate, to wit:

All that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being in Southeast of the City of Aiken, in the County of Aiken, State of South Carolina, West of and adjoining Banks Mill Road (S.C. Highway No. S-2-79), containing 36.68 acres, more or less, as shown and designated upon a plat prepared for Ira E. Coward, et. al, by Southern Partners, Inc. dated December 30, 2004, and recorded February 14, 2005, in the Office of the RMC of Aiken County, South Carolina, in Plat Book 49 at Page 9-2. Reference is hereby made to said plat for a more complete and accurate description of said property as to metes, bounds and location.

This being the same property conveyed to H n' D Stables, Inc. by deed of Ira E. Coward, II, William L. Coward and Edgar A. Coward dated April 18, 2005, recorded May 12, 2005, in Title Book 2512 at Page 200, records of Aiken County, South Carolina. Thereafter, H 'n D Stables,

Inc. filed Articles of Amendment with the South Carolina Secretary of State (a copy of which are attached hereto and incorporated herein as Exhibit A) converting said entity to H 'n D Stables, LLC.

Tax Parcel No. 140-08-04-001

Grantee's Address: Trust One JDD  
William T. Hurley, Trustee  
c/o Verdolino and Lowery PC  
124 Washington Street  
Foxborough, MA 02035

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions as set forth on Exhibit B attached hereto and incorporated herein.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining thereto,

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Grantee, his heirs, successors and assigns forever, and the Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, his heirs and assigns, against Grantor and its successors and assigns and none other.

[Signatures Commence on Next Page]

WITNESS the Hand and Seal of the Grantor this 14 day of January, 2015.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

H 'n D Stables, LLC, a South Carolina limited  
liability company (successor to H 'n D Stables, Inc.)  
By: The R. Bruce Duchossois Revocable Trust u/a/d  
12/13/1989  
Its: Sole Member

By: Thomas A. Smith (LS)  
Thomas A. Smith, not individually, but solely as  
Co-Trustee of the R. Bruce Duchossois  
Revocable Trust u/a/d 12/13/1989

Rosemarie Vincent  
Witness

Christine Murray  
Notary Public

STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

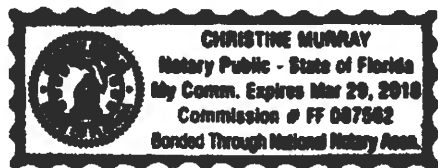
PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Thomas A. Smith, as Co-Trustee of The R. Bruce Duchossois Revocable Trust u/a/d 12/13/1989, as sole member of H 'n D Stables, LLC, sign, seal and as Grantor's act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this  
14 day of JANUARY, 2015.

Christine Murray  
Notary Public for STATE OF FLORIDA  
My Commission Expires: 3/29/2018

Rosemarie Vincent  
Witness

[NOTARY SEAL]



After recording return to Morris Rudnick, Esquire

**EXHIBIT B  
PERMITTED EXCEPTIONS**

1. Rights or claims of parties in possession not shown by the Public Records.
2. Any encroachment, encumbrance, violation or adverse circumstances affecting the Title that would be disclosed by an accurate and complete survey of the Land.
3. Easements, or claims of easement, not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore furnished, imposed by law and not shown by the Public Records.
5. Taxes and assessments for the year 2015, and subsequent years, which are a lien but are not yet due and payable.
6. Restrictive covenants and easements contained therein appearing of record in Deed Book 2512, page 200, Public Records of Aiken County, South Carolina.
7. Any taxes assessed under the rollback provision of Section 12-43-220(D-4) South Carolina Code of Laws 1976, as amended.

2015001022  
DEED  
RECORDING FEES \$10.00  
STATE TAX \$2710.50  
COUNTY TAX \$1146.75  
PRESENTED & RECORDED  
01-16-2015 08:30 AM  
JUDITH WARNER  
REGISTER OF MESSE CONVEYANCE  
AIKEN COUNTY, SC  
BY: MARILYN SEIGLER DEPUTY  
BK: RB 4536  
PG: 786 - 789

ELECTRONICALLY FILED - 2023 Jul 14 2:02 PM - AIKEN - COMMON PLEAS - CASE#2022CP0202654

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN ) LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS:

That H 'N D STABLES, LLC, a South Carolina limited liability company (successor to H 'n D Stables, Inc.), (hereinafter called "Grantor"), for and in consideration of the sum of ONE MILLION FORTY-TWO THOUSAND FIVE HUNDRED AND NO/100 Dollars (\$1,042,500.00), to it in hand paid at and before the sealing of these presents by WILLIAM T. HURLEY, JR. TRUSTEE OF AIKEN PROPERTY TRUST U/D JANUARY 14, 2015 (hereinafter called "Grantee"), the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto Grantee, his heirs, successors and assigns, the following described real estate, to wit:

All that certain piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in the County of Aiken, State of South Carolina, West of and adjoining Banks Mill Road (S.C. Highway No. S-2-79), approximately 4.37 miles South of the City limits of the City of Aiken, County and State aforesaid, containing 40.00 acres, more or less, as shown and designated upon a plat prepared for Cornelius Debonte by Charles M. Jones, dba, Jones and Murph dated April 14, 1997, recorded May 16, 1997, in the Office of the RMC of Aiken County, South Carolina, in Plat Book 36 at Page 258-1. Reference is hereby made to said plat for a more complete and accurate description of said property as to metes, bounds and location.

This being the same property conveyed to H 'n D Stables, Inc. by deed of Debonte Family Limited Partnership dated July 20, 1998, recorded July 21, 1998, in Title Book 1795 at Page 127, records of Aiken County, South Carolina. Thereafter, H 'n D Stables, Inc. filed Articles of

Amendment with the South Carolina Secretary of State (a copy of which are attached hereto and incorporated herein as Exhibit A) converting said entity to H 'n D Stables, LLC.

Tax Parcel No. 139-19-01-002

Grantee's Address: Trust One JDD  
William T. Hurley, Trustee  
c/o Verdolino and Lowery PC  
124 Washington Street  
Foxborough, MA 02035

This conveyance is made subject to Easements, Restrictions, Covenants, and Conditions as set forth on Exhibit B attached hereto and incorporated herein.

TOGETHER with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining thereto,

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the said Grantee, his heirs, successors and assigns forever, and the Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantee, his heirs and assigns, against Grantor and its successors and assigns and none other.

[Signatures Commence on Next Page]

WITNESS the Hand and Seal of the Grantor this 14 day of January, 2015.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

H 'n D Stables, LLC, a South Carolina limited  
liability company (successor to H 'n D Stables, Inc.)  
By: The R. Bruce Duchossois Revocable Trust u/a/d  
12/13/1989  
Its: Sole Member

By: Thomas A. Smith (LS)  
Thomas A. Smith, not individually, but solely as  
Co-Trustee of the R. Bruce Duchossois  
Revocable Trust u/a/d 12/13/1989

Rosemarie Vincent  
Witness

Christine Murray  
Notary Public

STATE OF FLORIDA )  
COUNTY OF PALM BEACH )

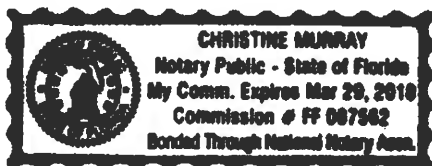
PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named Thomas A. Smith, as Co-Trustee of The R. Bruce Duchossois Revocable Trust u/a/d 12/13/1989, as sole member of H 'n D Stables, LLC, sign, seal and as Grantor's act and deed, deliver the within-written Deed for the uses and purposes therein mentioned and that s/he, with the other witness whose signature appears above witnessed the execution thereof.

SWORN to before me this  
14 day of JANUARY, 2015.

Christine Murray  
Notary Public for STATE OF FLORIDA  
My Commission Expires: 3/29/2018

Rosemarie Vincent  
Witness

[NOTARY SEAL]



After recording return to Morris Rudnick, Esquire

**EXHIBIT B  
PERMITTED EXCEPTIONS**

1. Rights or claims of parties in possession not shown by the Public Records.
2. Any encroachment, encumbrance, violation or adverse circumstances affecting the Title that would be disclosed by an accurate and complete survey of the Land.
3. Easements, or claims of easement, not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore furnished, imposed by law and not shown by the Public Records.
5. Taxes and assessments for the year 2015, and subsequent years, which are a lien but are not yet due and payable.
6. Any taxes assessed under the rollback provision of Section 12-43-220(D-4) South Carolina Code of Laws 1976, as amended.

APPEALS COURT  
Full Court Panel Case  
Case Docket



ELECTRONICALLY FILED - 2023 Jul 14 2:02 PM - AIKEN - COMMON PLEAS - CASE#2022CP0202654

REBECCA M. BROWN & others vs. JOHN J. DONOVAN SR. & another  
2022-P-1075

CASE HEADER

|                |                        |               |             |
|----------------|------------------------|---------------|-------------|
| Case Status    | Blue brief filed       | Status Date   | 06/13/2023  |
| Nature         | Business/Commercial    | Entry Date    | 11/02/2022  |
| Appellant      | Defendant              | Case Type     | Civil       |
| Brief Status   | Awaiting red brief     | Brief Due     | 07/13/2023  |
| Arg/Submitted  |                        | Decision Date |             |
| Panel          |                        | Citation      |             |
| Lower Court    | Suffolk Superior Court | TC Number     | 0384CV04247 |
| Lower Ct Judge | Peter B. Krupp, J.     | TC Entry Date | 09/04/2003  |
| SJ Number      |                        | FAR Number    |             |
| SJC Number     |                        |               |             |

INVOLVED PARTY

Rebecca M. Brown  
Plaintiff/Appellee  
Awaiting red brief  
Due 07/13/2023

James H. Donovan  
Plaintiff/Appellee  
Awaiting red brief  
Due 07/13/2023

Maureen Donovan  
Plaintiff/Appellee  
Awaiting red brief  
Due 07/13/2023

Carolyn Donovan Rosenbaum  
Plaintiff/Appellee  
Awaiting red brief  
Due 07/13/2023

John J. Donovan Sr.  
Pro Se Defendant/Appellant  
Blue brief & appendix filed  
3 Enls, 182 Days

John J. Donovan Jr.  
Defendant

John Berry  
Other interested party

Peter E. Fleming Jr.  
Other interested party

Mitchell Hurley  
Other interested party

T Barry Kingham  
Other interested party

Douglas B. Maynard  
Other interested party

Richard Zabel  
Other interested party

ATTORNEY APPEARANCE

[Joseph D. Lipchitz, Esquire](#) - Withdrawn  
[Henry A. Sullivan, Esquire](#)  
[Scott C. Ford, Esquire](#) - Withdrawn  
[Damien C. Powell, Esquire](#)  
[Catherine S. Lombardo, Esquire](#)  
[Bruce A. Singal, Esquire](#)

[Joseph D. Lipchitz, Esquire](#) - Withdrawn  
[Henry A. Sullivan, Esquire](#)  
[Scott C. Ford, Esquire](#) - Withdrawn  
[Damien C. Powell, Esquire](#) - Withdrawn  
[Catherine S. Lombardo, Esquire](#)

[Joseph D. Lipchitz, Esquire](#) - Withdrawn  
[Henry A. Sullivan, Esquire](#)  
[Scott C. Ford, Esquire](#) - Withdrawn  
[Damien C. Powell, Esquire](#) - Withdrawn  
[Catherine S. Lombardo, Esquire](#)

[Joseph D. Lipchitz, Esquire](#) - Withdrawn  
[Henry A. Sullivan, Esquire](#)  
[Scott C. Ford, Esquire](#) - Withdrawn  
[Damien C. Powell, Esquire](#) - Withdrawn  
[Catherine S. Lombardo, Esquire](#)

[Bruce A. Singal, Esquire](#)  
[Michelle R. Peirce, Esquire](#) - Withdrawn  
[Damien C. Powell, Esquire](#)

DOCKET ENTRIES

Entry Date Paper Entry Text

11/02/2022 #1 Lower Court Assembly of the Record Package

11/02/2022 Notice of entry sent.

11/02/2022 #2 Affidavit of indigency (IMPOUNDED) filed for John J. Donovan Sr..

11/02/2022 #3 Civil Appeal Entry Form filed by John J. Donovan

11/02/2022 RE#2 ALLOWED FORTHWITH. The appellant's Affidavit of Indigency appears regular and complete on its face, and indicates that the appellant is indigent. The court hereby allows the Motion to Waive entry fee. Notice sent.

11/09/2022 #4 Notice of appearance filed for Rebecca M. Brown, James H. Donovan, Maureen Donovan and Carolyn Donovan Rosenbaum by Attorney Catherine Lombardo.

11/14/2022 #5 Docketing Statement received from John J. Donovan Sr.

11/17/2022 Returned Mail: Notice of Case Entry sent to Mitchel Hurley returned as VACANT--Unable to Forward. Notice not resent as no updated address is on file.

11/17/2022 Returned Mail: Notice of Case Entry sent to Henry A. Sullivan returned as VACANT--Unable to Forward. Notice not resent as no updated address is on file.

11/21/2022 Returned Mail: Notice of entry of appeal sent to Peter B. Krupp returned as return to sender, not deliverable as addressed unable to forward. Notice not resent as no current address is available .

11/22/2022 Returned Mail: Notice of entry of appeal sent to John Berry returned as return to sender, not deliverable as addressed unable to forward. Notice not resent as no current address is available .

11/25/2022 Returned Mail: Notice of Docket Entry sent to John Berry returned as return to sender, not deliverable as addressed unable to forward. Notice not resent as no current address is available .

12/12/2022 Returned Mail: Notice of docket entry re #2 sent to Mitchell Hurley returned as return to sender, not deliverable as addressed unable to forward . Notice not resent as no current address is available.

12/12/2022 Returned Mail: Notice of docket entry re#2 sent to Douglas B. Maynard returned as return to sender, not deliverable as addressed unable to forward . Notice not resent as no current address is available .

12/12/2022 Returned Mail: Notice of docket entry re#2 sent to Richard Zabel returned as return to sender, not deliverable as addressed unable to forward . Notice not resent as no current address is available .

12/12/2022 #6 MOTION to extend brief & appendix due date, filed by John J. Donovan Sr.

12/13/2022 #7 RESPONSE filed for Rebecca M. Brown, James H. Donovan, Maureen Donovan, Carolyn Donovan Rosenbaum and John J. Donovan Jr. by Attorney Henry Sullivan.

12/13/2022 [VACATED AS HAVING BEEN ENTERED IN ERROR. (By the Court 12/13/2022) RE#6: Allowed to 03/15/2023 . \*Notice.

12/13/2022 [VACATED AS HAVING BEEN ENTERED IN ERROR. (By the Court 12/13/2022) ORDER: Attorneys Robert M. Strasnik, Barry C. Klickstein, Bruce A. Singal and Michele R. Pierce are withdrawn from this matter. The court's docket is updated accordingly. \*Notice

12/13/2022 ORDER: The action entered this date on paper #6 and the ORDER regarding withdrawal of counsel are vacated as having entered in error. \*Notice

12/13/2022 RE#6: No action taken pending clarification by Attorneys Robert M. Strasnik, Barry C. Klickstein, Bruce A. Singal and Michele R. Pierce as to their representation status. As the docket reflects the defendant as being represented by counsel in this matter only filings from counsel will be considered. Counsel are cautioned that the defendant's brief was due on or before 12/12/2022 and the court is not in receipt of a motion from counsel for an enlargement, subjecting the appeal to possible dismissal. \*Notice.

12/15/2022 #8 Statement of Atty Strasnick regarding representation filed for John J. Donovan Sr. by Attorney Robert Strasnick.

12/16/2022 RE#8: Attorney Strasnick is withdrawn from this matter. The court's docket is updated accordingly. \*Notice.

12/19/2022 #9 Notice re status of Attorneys Bruce A. Singal and Michele R. Pierce filed for John J. Donovan Jr. by Attorney Damien Powell.

12/22/2022 #10 Letter from Attorney Barry C. Klickstein re: Retired from Practice

12/23/2022 RE#9: Noted that Attorney Michelle Pierce is withdrawn from this matter and Attorney Bruce A. Singal represents the Estate of John J. Donovan, Jr., and Rebecca M. Brown as Trustee. \*Notice.

12/23/2022 RE#10: Noted that Attorney Klickstein does not represent John J. Donovan, Sr. Appellant is proceeding pro se in this matter. \*Notice.

12/23/2022 RE#6 (Revised): Allowed to 03/15/2023. In (22-P-1075) view of appellee's response, appellant is not to anticipate any further enlargements. \*Notice.

03/15/2023 #11 Notice of appearance filed for John J. Donovan Sr. by Attorney Patricia Davidson.

03/15/2023 #12 Motion of Appellant to extend date for filing brief and appendix filed for John J. Donovan Sr. by Attorney Patricia Davidson.

03/16/2023 #13 RESPONSE filed for Rebecca M. Brown, James H. Donovan, Maureen Donovan, Carolyn Donovan Rosenbaum and John J. Donovan Jr. by Attorney Henry Sullivan.

03/17/2023 RE#12 & #13: After review of papers #12 & 13, the motion to enlarge is allowed, in part, for 45 days, or to 04/28/2023. No further enlargements. (Meade, J.). Notice sent.

04/13/2023 #14 Status Report filed for John J. Donovan Sr. by Attorney Patricia Davidson.

04/14/2023 RE#14: Noted. Absent the filing of a motion to enlarge and allowance of the motion by the court, the brief and record appendix remain due on or before 04/28/2023 per order of the single justice on 03/17/2023. \*Notice. **382**

04/28/2023 #15 Notice of withdrawal as counsel filed for John J. Donovan Sr. by Attorney Patricia Davidson.

05/01/2023 #16 MOTION to Dismiss filed for Rebecca M. Brown, James H. Donovan, Maureen Donovan, Carolyn Donovan Rosenbaum and John J. Donovan Jr. by Attorney Damien Powell.

05/03/2023 RE#16: A response is requested and due on or before 05/10/2023. \*Notice.

05/10/2023 #17 Response to paper #16, filed for John J. Donovan Sr.

05/11/2023 #18 RESPONSE filed for Rebecca M. Brown, James H. Donovan, Maureen Donovan, Carolyn Donovan Rosenbaum and John J. Donovan Jr. by Attorney Damien Powell.

05/25/2023 #19 Objection to Motion to Dismiss received from John J. Donovan Sr..

05/30/2023 #20 Motion to accept late brief and appendix, to accept filing on thumb drive, and accept substantially compliant filings., filed for John J. Donovan Sr.

06/13/2023 RE#20: The appellant's brief and appendix are accepted for filing, subject to possible further action by the panel designated to decide this appeal. The appellees' motion to dismiss is, consequently, denied. The appellees' brief is due thirty days from the date of this order. (Brennan, J.). \*Notice.

06/13/2023 #21 Appellant brief filed for John J. Donovan Sr.

06/13/2023 #22 Appendix (Volume I of VIII) filed for John J. Donovan Sr.

06/13/2023 #23 Appendix (Volume II of VIII) filed for John J. Donovan Sr.

06/13/2023 #24 Appendix (Volume III of VIII) filed for John J. Donovan Sr.

06/13/2023 #25 Appendix (Volume IV of VIII) filed for John J. Donovan Sr.

06/13/2023 #26 Appendix (Volume V of VIII) filed for John J. Donovan Sr.

06/13/2023 #27 Appendix (Volume VI of VIII) filed for John J. Donovan Sr.

06/13/2023 #28 Appendix (Volume VII of VIII) filed for John J. Donovan Sr.

06/13/2023 #29 Appendix (Volume VIII of VIII) filed for John J. Donovan Sr.

06/13/2023 RE#16: See action on paper #20. \*Notice.

As of 06/20/2023 12:15pm



COMMONWEALTH OF MASSACHUSETTS  
TRIAL COURT

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT  
C.A. No. 03-04247

|                            |   |                                                   |
|----------------------------|---|---------------------------------------------------|
| REBECCA M. BROWN, JAMES H. | ) |                                                   |
| DONOVAN, MAUREEN DONOVAN   | ) |                                                   |
| LANTZ, AND CAROLYN DONOVAN | ) |                                                   |
| ROSENBAUM,                 | ) |                                                   |
|                            | ) | <i>Jurisdiction Retained in the Business</i>      |
| Plaintiffs,                | ) | <i>Litigation Session of the Suffolk Superior</i> |
|                            | ) | <i>Court, C.A. No. 03-04247</i>                   |
| V.                         | ) |                                                   |
|                            | ) |                                                   |
| JOHN J. DONOVAN, SR.,      | ) |                                                   |
| Defendant                  | ) |                                                   |
|                            | ) |                                                   |
| And                        | ) |                                                   |
|                            | ) |                                                   |
| THE ESTATE OF JOHN J.      | ) |                                                   |
| DONOVAN, JR.               | ) |                                                   |

**DEFENDANT’S EMERGENCY MOTION TO ENJOIN THE  
DISSIPATION OF TRUST ASSETS PENDING APPEAL**

Now comes the defendant, through counsel, and respectfully moves this Honorable Court to enjoin the dissipation of the assets of Trust 1-JJD (“the Trust”) pending appeal.

As reasons therefor, and in support whereof, the defendant states as follows:

1. An Order (Krupp, J.) entered on July 29, 2022 in this matter in which the court denied Professor Donovan’s petition to vacate an arbitration award that stripped him of his entire interest in the Trust that is the subject of this action.

2. Judgment entered on Judge Krupp's Order on August 18, 2022. A notice of appeal was timely filed and the case will be entered in the Appeals Court after the Superior Court Clerk assembles the record.
3. The plaintiffs in this action, along with parties in the matter of Brining v. Donovan, C.A. No. 2184 CV 00349, are seeking court approval for a settlement in that matter that would permit them to dissipate the assets of the Trust even though the appeal in this matter is still pending.
4. The defendant opposed the request for settlement approval in both the arbitration proceeding and in the other Suffolk Superior Court case. The court is scheduled to hear oral argument on that matter today.
5. Allowance of the plaintiff's request for settlement approval and/or the right to dissipate assets before the judgment in this matter is final, and before an appeal can be heard, would not be proper. Indeed, the contemplated settlement requires the Trust to sell its real estate which would, if Professor Donovan is successful on appeal, constitute irreparable harm because the properties – two of which have been in his family for years and one of which his wife resides in – could not be recovered.<sup>1</sup>

**WHEREFORE:** The defendant requests that the within motion be allowed.

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<sup>1</sup> The settlement would also divest the trust of liquid assets as well.

Respectfully submitted,

John J. Donovan, Defendant,  
By his attorneys,

*Robert Strasnick*

Dated: 9/29/2022

---

Robert M. Strasnick – B.B.O. #637598  
Principe & Strasnick, P.C.  
17 Lark Avenue  
Saugus, MA 01906  
(781)-231-9191  
rob@psbostonlaw.com

**Certificate of Service**

I, Robert M. Strasnick, attorney for the defendant, do hereby certify that I have served a true copy of the foregoing document upon all counsel of record, by e-mail, on this 29<sup>th</sup> day of September, 2022.

*Robert Strasnick*

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Robert M. Strasnick



COMMONWEALTH OF MASSACHUSETTS  
APPEALS COURT

DOCKET NO: 2022-P-1075

JOHN J. DONOVAN, SR. et al.,  
Appellant

v.

REBECCA M. BROWN et al.,  
Appellees.

**APPELLANT'S MOTION TO ENLARGE TIME TO FILE BRIEF**

The Appellant, John J. Donovan, Sr., moves for an extension of time to file his brief and appendix. The current due date is March 15, 2023. The Appellant seeks an additional approximate 120 days, to about July 17, 2023.

In support of this Motion, the Appellant states as follows:

1. This matter concerns the appeal of a Superior Court's (Krupp, J.) order that confirmation of an arbitration award.
2. The appeal was entered in this Court on November 2, 2022.
3. On December 12, 2022, the Appellant filed a motion to extend the deadline for filing the brief and appendix. This Court allowed the motion, setting a deadline of March 15, 2023.
4. Subsequently to filing the motion, counsel for the Appellant withdrew. The docket notes that the Appellant was proceeding *pro se*.
5. On March 14, 2023, the Appellant engaged counsel to represent him in the appeal.

6. Preparation of brief of the Appellant requires review of many years' worth of evidence and transcripts related to proceedings in the arbitration and ultimately in the Superior Court.

7. New counsel is committed to working collaboratively with the Appellees to assemble the appendix and prepare the brief in this matter.

8. The Appellant has many good faith bases for the appeal, including whether the arbitrator improperly refused to hear evidence material to the controversy in a way that substantially prejudiced the rights of the Appellant. G.L. c. 251, §12(a)(4).

9. The arbitration award dispossessed the Appellant of significant assets, including his real estate. Concepts of justice and fair play require that the Appellant have every good faith opportunity for appellate review of issues that are fundamental to the Appellant's rights as legal and beneficial owner of real estate and as an individual who needs some place to live.

10. Even though this Court granted a prior extension, the Appellant had challenges obtaining successor counsel in view of his incarceration. Nevertheless, extensions of time in this Court are common, promoting the concept that parties have a right to have good faith appeals fully briefed and adjudicated on the merits. This Court has a long history of granting parties and appellate counsel time to brief the issues comprehensively and in accordance with the Rules of Appellate Procedure.

11. The disputes among the parties have continued for numerous years. A few additional months to permit the completion of the briefs will not prejudice the Appellees.

12. An additional 120 or so days is necessary in view of appellate counsel's schedule, including at least three trials between now and the end of July.

13. The Appellant acknowledges that this Court previously noted that “Appellant is not to anticipate any further enlargements.” However, more than one extension of time is not unprecedented. Justice and equity, and the spirit of fair play, should permit the Appellant to proceed with this appeal with new counsel and to have a reasonable amount of time to do so.

WHEREFORE, the Appellant request that his brief in this matter be due on or before July 17, 2023.

JOHN J. DONOVAN, SR.

By his attorney,



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Patricia L. Davidson, Esq.  
BBO #556647  
Mirick, O’Connell, DeMallie & Lougee, LLP  
100 Front Street  
Worcester, MA 01608-1477  
Phone: (508) 791-8500  
Fax: (508) 791-8502

Dated: March 15, 2023

CERTIFICATE OF SERVICE

I, Patricia L. Davidson, hereby certify that I have this day served a copy of the foregoing document, by mailing a copy, first class mail, postage prepaid, to:

Scott Carter Ford, Esq.  
Henry A. Sullivan, Esq.  
Bruce A. Singal, Esq.  
Mintz Levin Cohn Ferris Glovsky et al.  
One Financial Center  
Boston, MA 02111

Damien Powell, Esq.  
Hinckley Allen  
28 State Street  
Boston, MA 02109

Barry C. Klickstein, Esq.  
95 Front Street, Unit 5  
Marblehead, MA 01945

Robert M. Strasnick, Esq.  
Principe and Strasnick, PC  
17 Lark Ave.  
Saugus, MA 01906



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Patricia L. Davidson, Esq.

Dated: March 15, 2023



## TRUST AGREEMENT

John J. Donovan, Jr. of Manchester, Massachusetts, in his capacity as trustee (hereinafter with its successors in trust called the “Trustee”) hereby declares and covenants that the Trustee has received the property described in Schedule A, in trust, and it will hold, manage, invest and reinvest the same, together with any other property hereafter purchased by, owned by, conveyed, assigned or transferred to the Trustee, as Trustee hereunder, or added to the Trust by gift or will, and accepted by the Trustee, and any other property however acquired by the Trustee hereunder, and, after paying or making provision for all proper expenses of administration, will dispose of the income and principal upon the trusts and subject to the terms, provisions and conditions hereinafter set forth. Such property shall be held in trust for the sole benefit of John J. Donovan.

### ARTICLE FIRST

#### NAME AND NATURE OF TRUST

1.1 Name. This Declaration of Trust may be referred to as the “Trust One JJD of \_\_\_\_\_, \_\_\_\_\_, 20\_\_.” This Trust shall be irrevocable and not subject to amendment or alteration except as set forth in Section 1.2.

1.2 Trustee’s Power to Amend. The Trustee may amend this Declaration of Trust if it is determined that such amendment is appropriate (a) to cure ambiguities, inconsistencies or defects in this Declaration of Trust, (b) to enable the Trustee more effectively to carry out a purpose or wish expressed in this Declaration of Trust, or (c) for the more convenient or efficient administration of any trust hereunder. Any such amendment shall be made by a writing signed by the Trustee and a copy delivered to the then beneficiaries. This power to amend shall be exercisable by the Trustee only in a fiduciary capacity and shall be exercisable (1) upon written approval of the Honorable John S. Martin, Jr., or his successors, (hereinafter, “Justice Martin”) until the Transfer Date, as hereinafter defined in section 2.3; or (2) after the Transfer Date, upon consent of the Trustee.

ARTICLE SECOND  
DISPOSITION OF TRUST PROPERTY

2.1 Disposition of Income and Principal. The Trustee shall hold, manage, invest and reinvest the Trust assets and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

From the date of this Trust to the Transfer Date, so much of the net income of the Trust, as the Trustee deems advisable, shall be paid to or applied for the payment of real estate taxes and municipal assessments due and owing for any real property owned by the Trust. After the payment of real estate taxes and municipal assessments, and at the sole discretion of the Trustee, interest income may be paid to or applied for the benefit of the beneficiaries. Any income not so paid or applied may be added to principal or may be held for later payment to or application for each beneficiary, or addition to principal, as the Trustee determines in its sole discretion. From the date hereof to the Transfer Date, the Trustee shall invest any and all cash assets of the Trust in U.S. Government Bonds, unless authorized otherwise by Justice Martin. The Trustee shall not make any distributions of Trust principal to any beneficiary from the date hereof to the Transfer Date. The interests of any and all beneficiaries shall not and may not be transferred, pledged, assigned or sold until the Transfer Date, and thereafter only upon the written consent of the Trustee, which shall be in the Trustee's sole and exclusive discretion.

After the Transfer Date, The Trustee shall hold, manage, invest and reinvest the Trust assets and shall collect the income, if any, therefrom and shall dispose of the net income and principal as it determines, in its sole discretion.

2.2 Disposition of Real Property. Real property owned by the Trust may be sold, in whole or in part, by the Trustee in its discretion, provided, however, that from the date hereof to the Transfer Date, any such sale must be at fair market value and must have the prior written approval of Justice Martin, or his successor. All proceeds from such sale(s) shall remain in the Trust and shall be invested and may be distributed only as set forth herein. The Trust may

purchase replacement property at fair market value for any property sold, provided however, that from the date hereof to the Transfer Date, any such purchase of replacement property must have the prior written approval of Justice Martin, or his successor.

2.3 Transfer Date. The Transfer Date shall be the earliest of the following to occur: the date of the death of John J. Donovan, Sr.; ten years from the effective date of this Trust; or six years from the effective date of this Trust if, and only if, Justice Martin determines that the Trustee and beneficiaries have acted in good faith with respect to the management of this Trust and compliance with the terms of that certain Final Settlement Agreement of March 26, 2007 between John J. Donovan, Sr., John J. Donovan, Jr., James H. Donovan, Carolyn D. Rosenbaum, Maureen D. Lantz, Rebecca M. Donovan and Linda Donovan, as the same may be amended from time to time (hereinafter, the "FSA"). Upon the Transfer Date, the Trustee shall have the full power, authority and discretion to manage and administer this Trust and its assets, for the benefit of the beneficiaries, as permitted by law and the terms hereof without the requirement of any prior approvals from Justice Martin, or his successor.

2.4 Limitation Trustees' Discretionary Powers. A Trustee may not participate in any exercise of discretionary powers that would discharge a personal legal obligation of that Trustee.

### ARTICLE THIRD SUCCESSION OF TRUSTEES

3.1 Change of Trustees. A Trustee may resign at any time, such resignation to be effective when delivered to any co-trustee and/or to the designated independent manager for this Trust. Any vacancy in the office of trustee, whether created by resignation, removal or otherwise, may be filled only by the designated independent manager. The appointed Trustee must be a disinterested party with respect to the Trust assets and any beneficiaries and may not be the designated independent manager. The designated independent manager may remove and/or replace a Trustee at any time and this shall be the designated independent manager's sole power and authority with respect to this Trust, unless specifically stated otherwise herein. The

designated independent manager must be a disinterested party with respect to the Trust Assets and any beneficiaries and may not be the Trustee. The designated independent manager may resign at any time, such resignation to be effective when delivered to any Trustee and to the beneficiaries. The designated independent manager shall name its successor. If there shall be a vacancy in this position and no successor is named, the designated independent manager shall be appointed by a vote of the majority of the then beneficiaries of this Trust.

Any such removal and appointment, and the acceptance by such Trustee, shall be by an instrument in writing signed and acknowledged by each signatory before a notary public, and shall take effect simultaneously as of a date specified in said instrument which is not earlier than thirty days after delivery of a copy of such instrument to the trustee being so removed.

Until the Transfer Date, the independent manager shall be Justice Martin, or his successor. Upon the Transfer Date, Justice Martin, or his successor, shall resign as independent manager, and the next independent manager shall be determined by John J. Donovan, Jr.

3.2 Incapacity of Trustee. If the Trustee shall become incapable of performing the duties of trustee by reason of advanced age or mental or physical incapacity, the determination in writing of such incapacity, if made in good faith and if supported by a certificate to that effect by a physician, shall terminate such trusteeship and shall be binding upon all persons interested.

#### ARTICLE FOURTH

##### GENERAL ADMINISTRATIVE PROVISIONS

4.1 Income. Except as otherwise provided, all accumulated, accrued and undistributed income of a deceased income beneficiary which has not been paid prior to the death of such person shall be income of the next succeeding estate.

4.2 Accounting. The Trustee hereunder shall from time to time render an

account to each income beneficiary and, if requested, to Justice Martin or his successor; provided, however, that if the Trustee has received notice that a guardian, conservator, executor or other fiduciary has been appointed for an income beneficiary, the account shall be rendered to such fiduciary. "Income beneficiary" shall mean each person who is eligible to receive income from the Trust during the period covered by the account. The assent to such account by a majority of such income beneficiaries and fiduciaries shall fully discharge the Trustee as to all matters included in such account or reflected thereby. The failure of any income beneficiary or fiduciary to object to any account by a writing received by the Trustee within sixty days after the delivery to such person of a copy of the account shall be deemed to be an assent by such person.

4.3 Spendthrift Clause. No person to whom any reversionary, future or expectant interest in this Trust, nor any person entitled to any income from this Trust, shall have power to alienate or dispose of such interest or income by anticipation or to subject the same to such person's debts or liabilities. The interest of a beneficiary in this Trust shall not be subject to be taken by his or her creditors by any process.

4.4 Disclaimers by Beneficiaries. A beneficiary, with the prior written consent of the Trustee, may disclaim all or any part of his or her interest in the Trust, before or after such interest is accepted, and before or after it is vested, for any period of time, by filing an appropriate writing with the Trustee. The Trustee shall not consent to such disclaimer if the Trustee in its discretion believes such disclaimer shall not be informedly made, not in the best interest of the beneficiary, not in accord with the purposes of this Trust, or an attempt to circumvent the provisions hereof prohibiting anticipation and alienation of interests, or if it imposes additional duties on the Trustee which the Trustee does not want to accept.

## ARTICLE FIFTH

### TRUSTEE PROVISIONS

5.1 Discretionary Powers. Whenever in this Declaration of Trust the Trustee is empowered to make a determination, it shall have absolute discretion in making such determination, unless otherwise specifically provided. The exercise of any discretion by the

Trustee, if made in good faith, shall be conclusive and binding upon all persons interested.

5.2 Disclaimers and Releases by Trustee. The Trustee may at any time disclaim or release any power in whole or in part by an instrument in writing, signed and delivered to any co-trustee or if none, to the designated independent manager. Any disclaimer or release of a power by a Trustee may be upon such conditions as the Trustee specifies. In addition, the Trustee may disclaim any interest in property. A disclaimer or release by a Trustee shall be binding upon the successors to the Trustee unless the Trustee specifies otherwise. Such rights of the Trustee are subject to the prior written approval of Justice Martin until the Transfer Date.

5.3 Certificate by Trustee. A written statement by the Trustee at any time as to facts relative to this Trust may always be relied upon by, and shall always be conclusive evidence in favor of, any transfer agent or other person dealing in good faith with the Trustee in reliance upon such statement.

5.4 Bond. No Trustee shall be required to give bond or furnish surety on any bond required by law.

5.5 Liability of Trustee. No Trustee shall be liable for the acts or omissions of any co-trustee, prior trustee or person administering any estate. Unless requested in writing by a beneficiary, a Trustee shall not be obligated to inquire as to any such acts or omissions or to ascertain that the property transferred to him is the entire Trust property.

5.6 Delegation to Co-Trustee. Whenever there is more than one trustee hereunder, the Trustee may delegate any trustee powers and discretions to a co-trustee for such period or periods of time as the Trustees may agree; provided, however, that any powers or discretions withheld from any Trustee by the terms of this Declaration of Trust may not be delegated to such Trustee under this section.

5.7 Compensation. The Trustee shall be entitled to reasonable compensation,

which may be charged to income only.

5.8 Powers of Trustee. Except as may be specifically provided otherwise in this Declaration of Trust, the Trustee shall have wide discretion in matters of the management of Trust property, and the following enumeration of specific powers is not intended to exclude other powers reasonably incidental to such management. Except where specifically provided otherwise in this Declaration of Trust, the Trustee shall have in addition to those powers conferred by law or otherwise the following powers, privileges and exemptions, which may be exercised and invoked in the Trustee's absolute discretion:

(a) To invest and reinvest the cash assets of this Trust in U.S. Government Bonds, or other investments as may be approved by Justice Martin, prior to the Transfer Date and to invest and reinvest such cash assets of the Trust as the Trustee deems advisable, in its sole discretion, after the Transfer Date.

(b) To manage real property; including but not limited to the authority to sell, transfer or convey such property, to purchase replacement property, to lease such property and to collect and receive rents and income from such property, provided however, that from now until the Transfer Date the Trustee must receive the prior written approval of Justice Martin, or his successor, to sell, transfer or convey such property or purchase replacement property,

(c) To sell any Trust property at public or private sale upon such terms and conditions as the Trustee deems advisable; to exchange or partition all or any part of the property of any trust, real or personal, at any time held, to purchase or exercise any form of option or right to purchase securities or other property; to execute any and all deeds and other instruments necessary or appropriate to accomplish the foregoing, with or without covenants, warranties or representations. From the date hereof to the Transfer Date, no power in this paragraph can be exercised without the prior written approval of Justice Martin, or his successor.

(d) To receive additions to the Trust by gift or will, or otherwise, and to hold and administer the same under the provisions hereof; except that from the date hereof to the

Transfer Date, the trustee may not receive additions to the Trust by gift or will, or otherwise

(e) Pursuant to the terms herein, to make any division or distribution in cash or in kind or in undivided interests in specific property or partly in each, at then current values, without regard to the basis or other income tax attributes of specific property allocated to any beneficiary (including any trust which is a beneficiary).

(f) To make any payment or distribution directly to a beneficiary, who is a minor or who is otherwise incompetent, or to such beneficiary's guardian, conservator or custodian under the Uniform Transfers to Minors Act, or to a relative for such beneficiary's use or any trust then being held for such beneficiary.

(g) To employ accountants, attorneys-at-law and other professionals, and to rely upon their opinions; to employ a trustee or a firm in which a trustee has an interest to perform necessary services for the trust on customary terms.

(h) To determine in accordance with IRS tax rules what shall belong and be chargeable to principal and what shall belong and be chargeable to income; to amortize or not amortize bond premiums in accordance with IRS tax rules; to retain reserves out of income for expenses, taxes and other liabilities; if any trust property is subject to actual depreciation, depletion or obsolescence, to retain or not retain reasonable reserves out of income, irrespective of any change in the market value of such trust property.

(i) To settle, by compromise, arbitration or otherwise, any and all taxes on future interests and any and all other claims and demands in favor of or against or in any way relating to Trust property, upon such terms as the Trustee determines.

(j) To investigate, prevent and remediate violations or possible violations of Federal, state or local law regarding substances posing a hazard to the environment or to human health which may be applicable to any property held by the Trustee; to undertake such actions prior to the formal enforcement of such laws by any Federal, state or local agency against Trust

property; to charge all expenses associated with any such investigation, prevention or remediation, including the fees of consultants and counsel, against the income or principal of this Trust.

(k) 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 to exchange any such property for other properties and to retain such properties in exchange.

(l) To borrow money and to encumber, mortgage or pledge any asset of the Trust estate upon such terms and conditions as the Trustee deems advisable to carry out the intent of this Trust; except that from the date hereof to the Transfer Date, the Trustee may not encumber, mortgage or pledge any asset of the Trust estate

(m) To make ordinary or extraordinary repairs or alterations to the buildings or structures on any real property of the Trust, out of income.

(n) To compromise, adjust, arbitrate, sue on or defend, abandon or otherwise deal with and settle claims in favor of or against the Trust estate as the Trustee deems advisable, in its sole discretion. Except that from the date hereof to the Transfer Date the Trustee will not use any asset of the Trust estate to pay for the compromise, adjustment, arbitration, law suit or defense, abandonment or settlement of claims in favor of or against the Trust estate or John Donovan without the prior written approval of Justice Martin, or his successor.

(o) 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 prudent, and to do all acts which it may deem necessary or proper to reasonably maintain the assets of this Trust, whether personal or real, carry out the purpose of this Trust.

**Notwithstanding anything to the contrary herein, from the date hereof until the Transfer**

**Date, the Trustee shall manage any assets transferred to and held by the Trustee in accordance with the terms of this document and the direction of Justice Martin, or his successor, and shall be required to make any payments, transfers, or demands, ordered by Judge Martin or his successor**

5.9 Trustee May Assume Investment Responsibility. The Trustee may assume responsibility for the investment of all or part of the Trust property, and the Trustee shall have no liability with respect to such investments, except as may otherwise be directed by Justice Martin, or his successor.

5.10 Acquisition and Retention of Certain Assets. The Trustee is authorized to use trust principal, including the entire principal of the Trust, to purchase any property or interest in property, real or personal, in which the Trustee has an interest. The Trustee may retain indefinitely or for such other period as the Trustee may determine any such property or interest in property so purchased by the Trustee, or any property given to the Trustee by any other person, or received from any estate, whether or not the property is income producing and without regard to the proportion which the value of the property may bear to the total value of the Trust even if such retention involves business or financial risks that trustees would not ordinarily incur. The Trustee shall have no liability for any depreciation or loss as a result of the retention of any property retained or acquired under the authority of this section.

From the date hereof to the Transfer Date, no power in this paragraph can be exercised without the prior written approval of Justice Martin, or his successor.

5.11 Real Estate. The Trustee may acquire or retain real property, whether or not income producing, for long term investment or the rent free use of one or more of the beneficiaries eligible to receive the income from that trust, upon such equitable terms as the Trustee determines.. The Trustee may execute, assume or redeem any note or mortgage on such real property, with the Trust income or principal or both, and may pay taxes, insurance premiums and general expenses of upkeep, maintenance and repair with respect to such property

From the date hereof to the Transfer Date, no power in this paragraph can be exercised

without the prior written approval of Justice Martin.

5.12 Investment Advisors. The Trustee may employ investment advisors and consult with them on all matters relating to the purchase, retention or sale of trust property. The Trustee may act upon the advice of such advisors in whole, or to such extent as he determines, and to the extent that the Trustee follows the advice of such advisors, the Trustee shall not be liable for losses or other consequences therefrom. The Trustee may pay any investment advisor reasonable compensation as a Trust expense, which may be charged to income only. An appropriate adjustment shall be made in the compensation of the Trustee to reflect the change in his/her duties which results from such employment.

ARTICLE SIXTH  
MISCELLANEOUS PROVISIONS

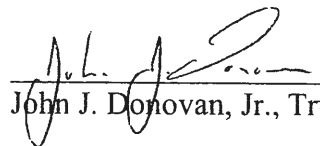
6.1 Applicable Law. This Declaration of Trust shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts, and its validity and administration shall be governed by said laws except with respect to such assets as are required by the law controlling to be governed by the laws of some other jurisdiction.

6.2 References. References in this Declaration of Trust to the masculine shall include the feminine and the plural the singular, and vice versa, unless the context requires otherwise. References to provisions of the Internal Revenue Code mean provisions of the Internal Revenue Code of 1986 as amended from time to time or the corresponding provisions of any subsequent Federal tax law. The term "state" shall include the District of Columbia.

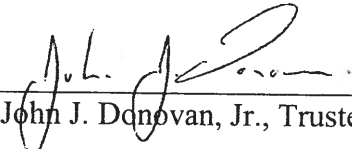
6.3 Delivery. A document or notice shall be deemed delivered when it is mailed first class, postage prepaid, to the addressee's last known address, or, if not mailed, when actually delivered to the addressee in person or to the addressee's last known address.

6.4 Effective Date of Trust. This Declaration of Trust shall be the date stated in Section 1.1.

IN WITNESS WHEREOF, John J. Donovan, Jr., as Trustee, has executed this Declaration of Trust under seal the day and year first above written.

  
\_\_\_\_\_  
John J. Donovan, Jr., Trustee

The office and duties of trustee as above described are hereby accepted by the undersigned.

  
\_\_\_\_\_  
John J. Donovan, Jr., Trustee

DECLARATION OF TRUST  
ESTABLISHING  
AIKEN PROPERTY TRUST



I, William T. Hurley, Jr. JD CPA, of Verdolino & Lowey, Foxborough, Massachusetts (the "Trustee"), hereby declare that Ten Dollars (\$10.00) is held in trust hereunder and any and all additional property and interest in property, real and personal, that may be acquired hereunder (the "Trust Estate") shall be held in trust, for the sole benefit of the individuals or entities listed in the Schedule of Beneficiaries in the proportions stated in said Schedule, which Schedule has this day been executed by the Beneficiaries and filed with the Trustee with receipt acknowledged by at least one Trustee (hereafter, as it may be amended, "Schedule of Beneficiaries").

SECTION ONE

Name and Purpose

1.1 This Trust shall be known as the **Aiken Property Trust** and is intended to be a nominee trust, so-called, for federal and state income tax purposes and to hold the record legal title to the Trust Estate and such functions as are necessarily incidental thereto.

SECTION TWO

Trustees

2.1 In the event there are two Trustees at any time, both trustees shall be required to execute any and all instruments and certificates necessary to carry out the provisions of the trust. In the event there are more than two Trustees at any time, any two trustees, except as otherwise provided in Paragraph 7.2, may execute such instruments and certificates necessary to carry out the provisions of the Trust.

2.2 No Trustee shall be required to furnish bond. No Trustee hereunder shall be liable for any action taken at the direction of the Beneficiaries, nor for any error of judgment nor for any loss arising out of any acts or omissions in the execution of the Trust so long as acting in good faith, but shall be responsible only for his or her own willful breach of trust. No license of court shall be requisite to the validity of any transaction entered into by the Trustees. No purchaser, transferee, pledgee, mortgagee or other lender shall be under any liability to see the application of the purchase money or of any money or property loaned or delivered to any Trustee or to see that the terms and conditions of this Trust have been complied with. Every agreement, lease, deed, mortgage, note or other instrument or document executed or action taken by the person or persons appearing from the records of the Registry of Deeds to be Trustees, as required in Paragraph 2.1, shall be conclusive evidence in favor of every person relying thereon or claiming thereunder that at the time of the delivery thereof or of the taking of such action this Trust was in full force and effect, that the execution and delivery thereof or taking of such action was duly authorized, empowered and directed by the Beneficiaries, and that such instrument or document or action is valid, binding, effective and

legally enforceable.

2.3 Any person dealing with the Trust Estate or the Trustees may always rely without further inquiry on a certificate signed by the person or persons appearing from the records of the Registry of Deeds to be Trustees, as required in paragraph 2.1, as to who are the Trustees or the Beneficiaries hereunder or as to the authority of the Trustees to act or as to the existence or nonexistence of any fact or facts which constitute conditions precedent to action by the Trustees or which are in any other manner germane to the affairs of the Trust. Execution, delivery or recording of such certificate shall not be a condition precedent to the validity of any transaction of the Trust.

### SECTION THREE

#### Beneficiaries

3.1 The term "Beneficiaries" shall mean the persons and entities listed as Beneficiaries in the Schedule of Beneficiaries and in such revised Schedules of Beneficiaries, from time to time hereafter executed and delivered as provided above and the respective interests of the Beneficiaries shall be as therein stated.

3.2 Decisions made and action taken hereunder (including without limitation, amendment and termination of this Trust; appointment and removal of a Trustee; directions and notices to Trustee(s); and execution of documents) shall be made or taken, as the case may be, by all of the Beneficiaries.

3.3 Any Trustee may without impropriety become a Beneficiary hereunder and exercise all rights of a Beneficiary with the same effect as though he or she or it were not a Trustee. The parties hereunder recognize that if a sole Trustee and a sole Beneficiary are one and the same person, legal and equitable title hereunder shall merge as a matter of law.

### SECTION FOUR

#### Powers of Trustees

4.1 The Trustees shall hold the principal of this Trust and receive the income therefrom for the benefit of the Beneficiaries, and shall pay over the principal and income pursuant to the direction of all of the Beneficiaries and without such direction shall pay the income to the Beneficiaries in proportion to their respective interests.

4.2 Except as hereinafter provided in case of termination of this Trust, the Trustees shall have no power to deal in or with the Trust Estate except as directed by all of the Beneficiaries. When, as, if and to the extent specifically directed by all of the Beneficiaries, the Trustee shall have the following powers:

- 4.2.1 to buy, sell, convey, assign, mortgage or otherwise dispose of all or any part of the Trust Estate and as landlord or tenant execute and deliver leases and subleases;
- 4.2.2 to execute and deliver notes for borrowing for the Beneficiaries;
- 4.2.3 to grant easements or acquire rights or easements and enter into agreements and arrangements with respect to the Trust Estate;
- 4.2.4 to endorse and deposit checks in an account for the benefit of the Beneficiaries;

Any and all instruments executed pursuant to such direction may create obligations extending over any periods of time, including periods extending beyond the date of any possible termination of the Trust. A direction to the Trustees by the Beneficiaries may be by a Durable Power of Attorney.

4.3 Notwithstanding any provisions contained herein, no Trustee shall be required to take any action which will, in the opinion of such Trustee, involve the Trustee in any personal liability unless first satisfactorily indemnified.

4.4 All persons extending credit to, contracting with or having any claims against the Trustees shall look only to the funds and property of this Trust for payment of any contract, or claim or for the payment of any debt, damage, judgment, or decree, or for any money that may otherwise become due or payable to them from the Trustee, so that neither the Trustees nor the Beneficiaries shall be personally liable therefore. If any Trustee shall at any time for any reason (other than for willful breach of trust) be held to be under any personal liability as such Trustee, then such Trustee shall be held harmless and indemnified by the Beneficiaries, jointly and severally, against all loss, costs, damage, or expense by reason of such liability.

## SECTION FIVE

### Termination

5.1 This Trust may be terminated at any time by notice in writing from all of the Beneficiaries, provided that such termination shall be effective only when a certificate thereof signed by the Trustees shall be recorded with the Registry of Deeds. Notwithstanding any other provision of this Declaration of Trust, and consistent with the intention of the undersigned that this Trust not violate the Rule Against Perpetuities, this Trust shall terminate in the event TWENTY (20) years from the date of the death of the last surviving Trustee of the original Trustees named in this instrument.

5.2 In the case of any termination of the Trust, the Trustees shall transfer and convey the specific assets constituting the Trust Estate, subject to any leases, mortgages, contracts or other encumbrances on the Trust Estate, to the Beneficiaries as tenants in common in proportion to their

respective interests hereunder, or as otherwise directed by all of the Beneficiaries, provided, however, the Trustees may retain such portion thereof as in their opinion necessary to discharge any expense or liability, determined or contingent, of the Trust.

## SECTION SIX

### Amendments

6.1 This Declaration of Trust may be amended from time to time by an instrument in writing signed by all of the Beneficiaries and delivered to the Trustees, provided in each case that the amendment shall not become effective until the instrument of amendment or a certificate setting forth the terms of such amendment, signed by all Trustees, is recorded with the Registry of Deeds.

## SECTION SEVEN

### Resignation and Successor Trustee

7.1 Any Trustee hereunder may resign at any time by an instrument in writing and acknowledged by such Trustee and delivered to all remaining Trustees and to each Beneficiary. Such resignation shall take effect on the later of the dates specified therein or upon the date of the recording of such instrument with the Registry of Deeds.

7.2 Succeeding or additional Trustees may be appointed or any Trustee may be removed by an instrument or instruments in writing signed by all of the Beneficiaries, provided in each case that a certificate signed by any Trustee naming the Trustee or Trustees appointed or removed and, in the case of an appointment, the acceptance in writing by the Trustee or Trustees appointed, shall be recorded in the Registry of Deeds. Upon the recording of such instrument, the legal title to the Trust Estate shall, without the necessity of any conveyance, be vested in said succeeding or additional Trustee or Trustees, with all the rights, powers, authority and privileges as if named as an original Trustee hereunder.

7.3 In the event that there is no Trustee, either through the death or resignation of a sole Trustee without prior appointment of a successor Trustee or for any other cause, a person purporting to be a successor Trustee hereunder may record in the Registry of Deeds an affidavit, under pains and penalties of perjury, stating he or she has been appointed by all of the Beneficiaries a successor Trustee. Such affidavit when recorded together with an attorney's certificate under M.G.L. c. 183 Section 5B, stating that such attorney has knowledge of the affairs of the Trust and that the person signing the affidavit has been appointed a Trustee by all of the Beneficiaries, shall have the same force and effect as if the certificate of a Trustee or Trustees required or permitted hereunder had been recorded and persons dealing with the Trust or Trust Estate may always rely without further inquiry upon such an affidavit as so executed and recorded as to the matters stated herein.

## SECTION EIGHT

Governing Law

8.1 This Declaration of Trust shall be construed in accordance with the laws of the Commonwealth of Massachusetts.

## SECTION NINE

Registry of Deeds

9.1 The term "Registry of Deeds" shall mean the Registry of Deeds or Registry District of the Land Court for the district in which any real estate included in the Trust Estate is located.

Executed as a sealed instrument this 14<sup>th</sup> day of January, 2015.

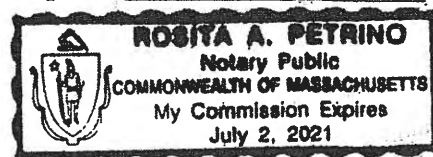
William T. Hurley, Jr., Trustee  
William T. Hurley, Jr., JD CPA, Trustee

## COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

On this 14<sup>th</sup> day of January, 2015, before me, the undersigned notary public, personally appeared William T. Hurley, Jr., JD CPA, as **aforsaid**, proved to me through satisfactory evidence of identification, which was ☐ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, or ☒ personal knowledge of the undersigned, and acknowledged to me that he signed it voluntarily for its stated purpose.

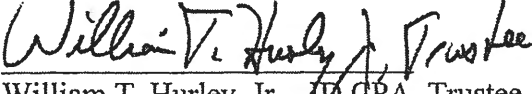
Rosita A. Petrino  
Notary Public  
My Comm. Expires: \_\_\_\_\_



SCHEDULE OF BENEFICIARIES OF THE AIKEN PROPERTY TRUST

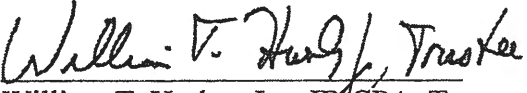
The Beneficiary of the Aiken Property Trust is Trust One JJD, whose sole beneficiary is John J. Donovan, II.

Trust One JJD, Beneficiary

  
William T. Hurley, Jr., JD CPA, Trustee

Acknowledged:

Aiken Property Trust

  
William T. Hurley, Jr., JD CPA, Trustee

Dated: January 14, 2015

AIKEN COUNTY ASSESSOR  
Tax Map:  
139-19-01-002  
Date: 02/04/2020

AIKEN COUNTY AUDITOR  
Charles T. Barton  
Endorsed 03/31/2020



2020002069  
DEED  
RECORDING FEES \$15.00  
STATE TAX \$0.00  
COUNTY TAX \$0.00  
PRESENTED & RECORDED  
01-28-2020 12:30 PM  
JUDITH WARNER  
REGISTER OF MESNE CONVEYANCE  
AIKEN COUNTY, SC  
BY: VIRGINIA DUNN DEPUTY  
BK: RB 4824  
PG: 1247 - 1249

STATE OF SOUTH CAROLINA )  
COUNTY OF AIKEN )

QUITCLAIM DEED AND RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That John J. Donovan, Sr., individually and as sole beneficiary of Trust One JJD, which is the sole beneficiary of Aiken Property Trust, and Linda Donovan, for and in consideration of the sum of One and xx/100 (\$1.00) Dollar, the receipt and sufficiency of which are hereby acknowledged, hereby grant, bargain, sell and release to William T. Hurley, Jr., Trustee of Aiken Property Trust under declaration of trust dated January 14, 2015, the following described real estate:

All that certain piece, parcel or tract of land, together with any improvements thereon, situate, lying and being in the County of Aiken, State of South Carolina, West of and adjoining Banks Mill Road (S.C. Highway No. S-2-79), approximately 4.37 miles South of the City limits of the City of Aiken, County and State aforesaid, containing 40.00 acres, more or less, as shown and designated upon a plat prepared for Cornelius Debonte by Charles M. Jones, dba, Jones and Murphy dated April 14, 1997, recorded May 16, 1997, in the Offices of the RMC of Aiken County, South Carolina, in Plat Book 36 at Page 258-1. Reference is hereby made to said plat for a more complete and accurate description of said property as to metes, bounds and location.

Tax Parcel No. 139-19-01-002.

Grantee address: Trust one JJD  
William T. Hurley Trustee  
c/o Verdolino and Lowery PC  
124 Washington Street  
Foxborough, MA 02035

All that certain piece, parcel or tract of land, together with improvements thereon, situate, lying and being in Southeast of the City of Aiken, in the County of Aiken, State of South Carolina, West of and adjoining Banks Mill Road (S.C. Highway No. S-2-79), containing 36.68 acres, more or less, as shown and designated upon a plat prepared for Ira E. Coward, et. al, by Southern Partners, Inc. dated December 30, 2004, and recorded February 14, 2005, in the Office of the RMC of Aiken County, South Carolina, in Plat Book 49 at Page 9-2. Reference is hereby made to said plat for a more complete and accurate description of said property as to metes, bounds and location.

Tax Parcel No. 140-08-04-001.

By this grant, the undersigned hereby release and terminate any and all right, title and interest that may have been granted in the Option to Purchase and Right of First Refusal stated in a certain Life Estate, Will and Option to Purchase Real Estate dated April 27, 2015 and recorded in the Office of the RMC of Aiken County, South Carolina in Book RB 4549, Pages 2386 – 2388.

Witness our hands and seals this 9<sup>th</sup> day of January, 2020

Signed, sealed and delivered in the presence of:

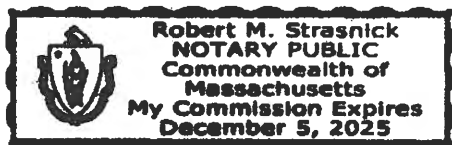
Nicole Romanello  
Witness

Amy Gambino  
Witness

John J. Donovan  
John J. Donovan, Sr., individually and as sole beneficiary of Trust One JJD, which is the sole beneficiary of Aiken Property Trust  
a/k/a John J. Donovan, Jr.  
a/k/a Professor Donovan

State of  
County of

On this 9<sup>th</sup> day of January, 2020 before me, the undersigned notary public, personally appeared John J. Donovan, Sr., proved to me through satisfactory evidence of identification, which was ☒ photographic identification with signature issued by a federal or state governmental agency, ☐ oath or affirmation of a credible witness, or ☒ personal knowledge of the undersigned, and acknowledged to me that he signed it voluntarily for its stated purpose.

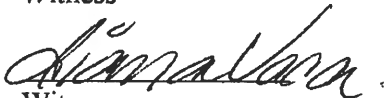


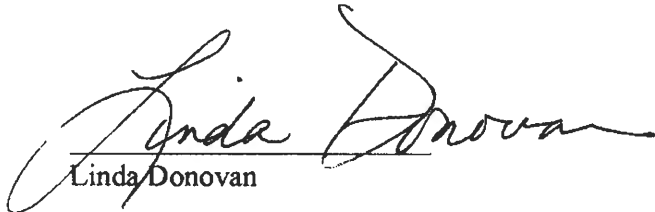
Robert M. Strasnick  
Notary Public

My Comm. Expires: 12/5/25

Signed, sealed and delivered in the presence of:

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Linda Donovan

State of  
County of

On this 10 day of January, 2020 before me, the undersigned notary public, personally appeared Linda Donovan, proved to me through satisfactory evidence of identification, which was [☒] photographic identification with signature issued by a federal or state governmental agency, [☐] oath or affirmation of a credible witness, or [☐] personal knowledge of the undersigned, and acknowledged to me that she signed it voluntarily for its stated purpose.

  
\_\_\_\_\_  
Notary Public

My Comm. Expires: 04/03/2029

**KAITLIN VANCAMP**  
Notary Public - State of South Carolina  
My Commission Expires April 3, 2029

Bank of America

EXHIBIT

PAGE 1 OF 1

BANK OF AMERICA, N.A.  
WIRE TRANSFER ADVICE  
1 FLEET WAY  
SCRANTON, PA  
PA6-580-04-0  
18507

WX 0000 569 008565 #001 SP 0.406

RUDNICK & RUDNICK ATTYS  
TRUST ACCT  
PO BOX 544  
AIKEN, SC

29802-0544

DATE: 01/14/15  
DIRECT INQUIRIES TO:  
800.729.9473 OPTION 2

THE FOLLOWING WIRE WAS CREDITED TODAY:

USD AMOUNT \$8,000.00

TRANSACTION REF: [REDACTED]  
SENDER'S REF: [REDACTED]  
IMAD: [REDACTED]  
ORIGINATOR: JOHN JOSEPH DONOVAN  
SENDING BANK: PEOPLE'S UNITED BANK  
BENEFICIARY: RUDNICK & RUDNICK TRUST ACCOUNT

SERVICE REF: 000675

ID: 6500404204  
ID: 221172186  
ID: [REDACTED]

PAYMENT DETAIL: PURPOSE - PARTIAL PAYMENT OF PROPERTY

THE FOLLOWING WIRE WAS CREDITED TODAY:

USD AMOUNT \$19,974.24

TRANSACTION REF: [REDACTED]  
SENDER'S REF: [REDACTED]  
ORIGINATOR: LINDA J DONOVAN  
INSTRUCTING BANK: BANK OF AMERICA NA - MMM

ID: [REDACTED]  
ID: MMML

PAYMENT DETAIL: Linda Donovan

FILED 01/14/15 BY 2023JAN14 02:02 PM AAIKEN-COMMON PLEAS - CASE#2022CP00202524



FILED CRIMINAL FILED - 2023 Jan 02 02:28 PM - ANKENI - COMMON PLEAS - CASE#2022257002020664

BANK OF AMERICA, N.A.  
WIRE TRANSFER ADVICE  
1 FLEET WAY  
SCRANTON, PA

WX 0000 755 008944 #001 SP 0.406

RUDNICK & RUDNICK ATTYS  
TRUST ACCT  
PO BOX 544  
AIKEN, SC

1

DATE: 01/15/15  
DIRECT INQUIRIES TO:  
800.729.9473 OPTION 2  
XXXXXXXXXXXXXXXXXXXX

USD AMOUNT \$1,282,953.49

TRANSACTION REF: [REDACTED]  
SENDER'S REF: [REDACTED]  
IMAD: [REDACTED]  
ORIGINATOR: TRUST ONE JJD  
SENDING BANK: SANTANDER BANK, N.A.  
BENEFICIARY: RUDNICK & RUDNICK TRUST ACCOUNT

SERVICE REF: 001011  
RELATED REF: N611130 NONE

30000130765  
 30000130765  
 30000130765

**Rudnick & Rudnick**  
Attorneys at Law  
Post Office Box 544 (29802)  
135 Pendleton Street NW (29801)  
Aiken, SC



**Telephone (803) 648-2565**  
**Fax (803) 648-6705**

January 19, 2015

Mr. William T. Hurley, Jr.  
Attorney at Law  
124 Washington Street  
Foxborough, MA 02035

Re: 3320 Banks Millll Road, Aiken, SC

Dear Bill:

In connection with the above-referenced matter, I enclose herewith a check for \$2,173.84 which represents the amount of the wire overage concerning the above property. As you know, Linda Donovan was to make up any shortage in the wire concerning the purchase of the property. Because I did not know the exact amount of the wire until approximately 4:00 PM of the closing day, I was not able to adjust the Settlement Statement. If I could have adjusted the Settlement Statement, I would have reduced the amount Linda contributed by the amount of the enclosed check. I hope that you will consider forwarding this amount to Linda. She questioned why she was not receiving any overage and I explained that the wire came from the Trust and I was obligated to send any overage to you as Trustee.

I would like to thank you for your help and guidance in this matter. I will forward the recorded deeds and title policies in the near future.

With kind regards, I am

Sincerely yours,

A handwritten signature in black ink, appearing to be "Morris Rudnick".

RUDNICK & RUDNICK  
By: Morris Rudnick

Encls.

ELECTRONICALLY FILED 2023 JAN 19 3 02 PM AIKEN - COMMON PLEAS - CASE#2022CP0202854

|                                    |   |                                   |
|------------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA            | ) | IN THE COURT OF COMMON PLEAS      |
|                                    | ) | SECOND JUDICIAL CIRCUIT           |
| COUNTY OF AIKEN                    | ) |                                   |
|                                    | ) | CASE NO: 2022-CP-02-02654         |
| William T. Hurley, Jr., as Trustee | ) |                                   |
| of the Aiken Property Trust,       | ) |                                   |
|                                    | ) |                                   |
| Plaintiff,                         | ) | <b>AFFIDAVIT OF LINDA DONOVAN</b> |
|                                    | ) |                                   |
| vs.                                | ) |                                   |
|                                    | ) |                                   |
| Linda Donovan,                     | ) |                                   |
|                                    | ) |                                   |
| Defendant.                         | ) |                                   |
| _____                              | ) |                                   |

PERSONALLY appeared before me, Linda Donovan, who being duly sworn, deposes and says:

My name is Linda Donovan, and I have personal knowledge of the information in this Affidavit. I am 69 years old. I am married to John J. Donovan, II a/k/a John J. Donovan, Sr ("John Donovan, Sr."). John Donovan, Sr. is the sole beneficiary of Trust One- JJD. Trust One- JJD is the sole beneficiary of the Aiken Property Trust which holds legal title to the Aiken Properties (Tax Map Nos.: 139-19-01-002 and 140-08-04-001). This is for the sole benefit of Trust One- JJD of which my husband is sole beneficiary. My husband does not want me to be removed from the Aiken Properties, and he is about to be released from incarceration. My husband is 81 years old.

I have lived in the home since 2015 and continue to do so. I claim an interest in the Aiken Properties as described in Defendant's Answer & Counterclaim based on the money I have spent and continue to spend on the Aiken Properties. I personally expended funds towards the purchase of the Aiken Properties which is shown by Exhibit A attached herein. I have also expended money on improvements along with my husband as shown by the partial itemization which is attached as Exhibit B to this Affidavit. Exhibit C to this Affidavit also shows copies of

checks and paid invoices showing the money I and my husband have personally expended on improvements.

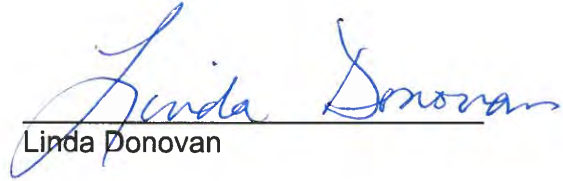
Plaintiff, William T. Hurley, Jr., was involved in the closing of the Aiken Properties which were purchased for my husband and I to live in. The Arbitration Order dated November 10, 2021 in Massachusetts, which is egregious and a violation of the terms of the Trust One- JJD and the Aiken Property Trust, is under appeal and is not a final judgment of the State of Massachusetts. Therefore, this arbitration order is not entitled to Full Faith & Credit in South Carolina. I believe that William T. Hurley, Jr., who was involved in the closing of the Aiken Properties & is Trustee of the Aiken Property Trust owes legal duties to me as described in Defendant's Answer & Counterclaim. Further, I believe that the Plaintiff has continually and continues to breach his fiduciary duty to my husband.

The Corrective Deed that I signed was done only to undo the purported document that my husband recorded in Aiken providing me with an option to purchase the Aiken Properties and a life estate in the Aiken Properties. At the time of those recordings and to this day, my husband was the sole beneficiary of Trust One- JJD, which is the sole beneficiary of the Aiken Property Trust. To my knowledge, none of my husband's children nor anyone else is named as beneficiary in either trust.

I request the Court to dismiss this matter or stay the proceedings until the Massachusetts appeal is complete and final. I will suffer if forced from my home as requested by my husband's Trustee. I will be homeless if removed from the Aiken Properties. In addition, I believe that my husband is an indispensable party to this case. If the Court will not stay the proceeding, I ask the Court to add John J. Donovan, Sr., as a defendant so his interest can be protected, and he can receive due process. I also believe that Trust One -JJD is an indispensable party because it is described as the sole beneficiary of the Aiken Property Trust.

I believe the Aiken Properties are worth over \$2 million, and I have valid defenses to all claims of the Plaintiff and await a full trial on this matter so that I can present testimony, documentary evidence, and raise all defenses and assert my counterclaims. Thank you.

FURTHER DEPONENT SAYETH NOT.

  
Linda Donovan

SWORN TO ME BEFORE THIS  
24<sup>th</sup> day of March, 2023

  
Notary Public for South Carolina  
My commission expires: 11/10/31

MADISON A. CHAPEL  
NOTARY PUBLIC  
SOUTH CAROLINA  
MY COMMISSION EXPIRES 11-10-31

|                                    |   |                                   |
|------------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA            | ) | IN THE COURT OF COMMON PLEAS      |
|                                    | ) | SECOND JUDICIAL CIRCUIT           |
| COUNTY OF AIKEN                    | ) |                                   |
|                                    | ) | CASE NO: 2022-CP-02-02654         |
| William T. Hurley, Jr., as Trustee | ) |                                   |
| of the Aiken Property Trust,       | ) |                                   |
|                                    | ) |                                   |
| Plaintiff,                         | ) | <b>AFFIDAVIT OF LINDA DONOVAN</b> |
|                                    | ) |                                   |
| vs.                                | ) |                                   |
|                                    | ) |                                   |
| Linda Donovan,                     | ) |                                   |
|                                    | ) |                                   |
| Defendant.                         | ) |                                   |
| _____                              | ) |                                   |

PERSONALLY appeared before me, Linda Donovan, who being duly sworn, deposes and says:

My name is Linda Donovan, and I have personal knowledge of the information in this Affidavit. I am 69 years old. I am married to John J. Donovan, II a/k/a John J. Donovan, Sr ("John Donovan, Sr."). John Donovan, Sr. is the sole beneficiary of Trust One- JJD. Trust One- JJD is the sole beneficiary of the Aiken Property Trust which holds legal title to the Aiken Properties (Tax Map Nos.: 139-19-01-002 and 140-08-04-001). This is for the sole benefit of Trust One- JJD of which my husband is sole beneficiary. My husband does not want me to be removed from the Aiken Properties, and he is about to be released from incarceration. My husband is 81 years old.

I have lived in the home since 2015 and continue to do so. I claim an interest in the Aiken Properties as described in Defendant's Answer & Counterclaim based on the money I have spent and continue to spend on the Aiken Properties. I personally expended funds towards the purchase of the Aiken Properties which is shown by Exhibit A attached herein. I have also expended money on improvements along with my husband as shown by the partial itemization which is attached as Exhibit B to this Affidavit. Exhibit C to this Affidavit also shows copies of

checks and paid invoices showing the money I and my husband have personally expended on improvements.

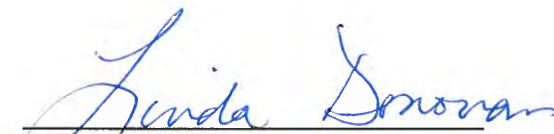
Plaintiff, William T. Hurley, Jr., was involved in the closing of the Aiken Properties which were purchased for my husband and I to live in. The Arbitration Order dated November 10, 2021 in Massachusetts, which is egregious and a violation of the terms of the Trust One- JJD and the Aiken Property Trust, is under appeal and is not a final judgment of the State of Massachusetts. Therefore, this arbitration order is not entitled to Full Faith & Credit in South Carolina. I believe that William T. Hurley, Jr., who was involved in the closing of the Aiken Properties & is Trustee of the Aiken Property Trust owes legal duties to me as described in Defendant's Answer & Counterclaim. Further, I believe that the Plaintiff has continually and continues to breach his fiduciary duty to my husband.

The Corrective Deed that I signed was done only to undo the purported document that my husband recorded in Aiken providing me with an option to purchase the Aiken Properties and a life estate in the Aiken Properties. At the time of those recordings and to this day, my husband was the sole beneficiary of Trust One- JJD, which is the sole beneficiary of the Aiken Property Trust. To my knowledge, none of my husband's children nor anyone else is named as beneficiary in either trust.

I request the Court to dismiss this matter or stay the proceedings until the Massachusetts appeal is complete and final. I will suffer if forced from my home as requested by my husband's Trustee. I will be homeless if removed from the Aiken Properties. In addition, I believe that my husband is an indispensable party to this case. If the Court will not stay the proceeding, I ask the Court to add John J. Donovan, Sr., as a defendant so his interest can be protected, and he can receive due process. I also believe that Trust One -JJD is an indispensable party because it is described as the sole beneficiary of the Aiken Property Trust.

I believe the Aiken Properties are worth over \$2 million, and I have valid defenses to all claims of the Plaintiff and await a full trial on this matter so that I can present testimony, documentary evidence, and raise all defenses and assert my counterclaims. Thank you.

FURTHER DEPONENT SAYETH NOT.

  
Linda Donovan

SWORN TO ME BEFORE THIS  
24<sup>th</sup> day of March, 2023

  
Notary Public for South Carolina  
My commission expires: 11/10/31

MADISON A. CHAPEL  
NOTARY PUBLIC  
SOUTH CAROLINA  
MY COMMISSION EXPIRES 11-10-31

Bank of America



PAGE 1 OF 1

BANK OF AMERICA, N.A.  
WIRE TRANSFER ADVICE  
1 FLEET WAY  
SCRANTON, PA

PA6-580-04-  
18507



WX 0000 569 008565 #001 SP 0.406

RUDNICK & RUDNICK ATTYS  
TRUST ACCT  
PO BOX 544  
AIKEN, SC

29802-0544

DATE: 01/14/15  
DIRECT INQUIRIES TO:  
800.729.9473 OPTION 2

THE FOLLOWING WIRE WAS CREDITED TODAY:

USD AMOUNT \$8,000.00

TRANSACTION REF: [REDACTED]  
SENDER'S REF: [REDACTED]  
IMAD: [REDACTED]  
ORIGINATOR: JOHN JOSEPH DONOVAN  
SENDING BANK: PEOPLE'S UNITED BANK  
BENEFICIARY: RUDNICK & RUDNICK TRUST ACCOUNT

SERVICE REF: 000675

ID: 6500404204  
ID: 221172186  
ID: [REDACTED]

PAYMENT DETAIL: PURPOSE - PARTIAL PAYMENT OF PROPERTY

THE FOLLOWING WIRE WAS CREDITED TODAY:

USD AMOUNT \$19,974.24

TRANSACTION REF: [REDACTED]  
SENDER'S REF: [REDACTED]  
ORIGINATOR: LINDA J DONOVAN  
INSTRUCTING BANK: BANK OF AMERICA NA - MMM

ID: [REDACTED]  
ID: MMML

PAYMENT DETAIL: Linda Donovan

RECEIVED ELECTRONICALLY FILED - 2023 Mar 24 3:34 PM - AIKEN - COMMON PLEAS - CASE#2022CP0202654  
FILED - 2023 Mar 19 12:49 PM - AIKEN - COMMON PLEAS - CASE#2022CP0202654

Bank of America

PAGE 1 OF 1

BANK OF AMERICA, N.A.  
WIRE TRANSFER ADVICE  
1 FLEET WAY  
SCRANTON, PA PA6-580-04  
18507



WX 0000 755 008944 #001 SP 0.406

RUDNICK & RUDNICK ATTYS  
TRUST ACCT  
PO BOX 544  
AIKEN, SC

29802-0544

DATE: 01/15/15  
DIRECT INQUIRIES TO:  
800.729.9473 OPTION 2

THE FOLLOWING WIRE WAS CREDITED TODAY:

USD AMOUNT \$1,282,953.49

TRANSACTION REF: [REDACTED]  
SENDER'S REF: [REDACTED]  
IMAD: [REDACTED]  
ORIGINATOR: TRUST ONE JJD  
SENDING BANK: SANTANDER BANK, N.A.  
BENEFICIARY: RUDNICK & RUDNICK TRUST ACCOUNT

SERVICE REF: 001011  
RELATED REF: N611130 NONE

RECEIVED ELECTRONICALLY FILED 2023 Mar 24 3:34 PM AIKEN: COMMON PLEAS: CASE#2022CP0202854  
FILED 2023 Jul 18 12:49 PM AIKEN: COMMON PLEAS: CASE#2022CP0202854

Aiken Farm Improvements  
November 2022

|                            |                       |            |
|----------------------------|-----------------------|------------|
| Apartment Renovation       | Chris Coulthard       | 47,162.93  |
| Apartment Renovation       | Chris Coulthard       | 650.00     |
| Apartment Renovation       | Carpenters in Home    | 1,164.50   |
| Barn Concrete              | Steve Adams           | 5,600.00   |
| Painting/Stain             | Chad Moyer            | 4,000.00   |
| Painting                   | Donald Wade           | 5,225.00   |
| Painting                   | McCullough            | 3,500.00   |
| Plumbing                   | Pipeworks             | 3,642.39   |
| Electrical                 | DSK Electrical        | 5,194.13   |
| Roof Correction            | C&B Roofing           | 841.63     |
| Window Tinting             | Sun Pro Tint          | 670.04     |
| New HVAC                   | Carolina HVAC         | 3,445.00   |
| New Well Pumps, Motors     | Beck Well Drilling    | 7,917.00   |
| Irrigation System Addition | Enviroscape           | 485.00     |
| Fencing                    | Alex Flores Landscape | 2,485.00   |
| Fence Boards               | SC Trading            | 4,568.00   |
| Fence Boards               | Shoemaker Irrigation  | 1,368.79   |
| Fence Boards               | AA Fence              | 225.60     |
| Fence Boards               | Fencing Solutions     | 90.00      |
| New Arena                  | Longwood Arenas       | 16,000.00  |
| New Driveway               | Shane Doyle           | 8,835.00   |
| Material                   | G.L. Williams         | 33,109.04  |
| Property Insurance         | Berkley Insurance     | 20,351.00  |
| Real Estate Tax            | Aiken County          | 35,168.51  |
|                            |                       | 211,698.56 |

EXHIBIT

C

JOHN JOSEPH DONOVAN

574

51-7218/2211  
344

JUL 7, 2016

DATE

PAID TO THE  
ORDER OF

BECK WELL DRILLING

\$ 1270

TWELVE HUNDRED SEVENTY AND NO/100 DOLLARS

Security  
Features  
Details on  
Back

People's United  
Bank

## Beck Well Drilling, Inc.

Well Drilling & Repair Shop  
803-648-1989

486 Croft Mill Road  
Aiken, S.C. 29801

Pumps Installed & Serviced  
DUANE  
803-663-6489

CUSTOMER'S  
ORDER NO.

DATE 7-7, 2016

NAME 1. A.S. DUNCAN

ADDRESS 1. CROFT MILL RD

SOLD BY

BS

CASH

C.O.D.

CHARGE

ON ACCT.

MDSE. RET'D.

PAID OUT

QTY.

DESCRIPTION

PRICE

AMOUNT

CHECK OUT ALL WELL

PUT IN WATER TIGHT

RESET PUMPED WITH

NEW CYCLE 50 P.W.A.L.

REPAIR CENTER BOX

1 12" CENTRAL BOX

130.00

2 5" CENTRAL BOX

760.00

1090.00

SEND CALL

130.00

1220.00

All claims and returned goods MUST be accompanied by this bill.

TAX

RECEIVED BY:

TOTAL

1370.00

Thank you for your business!

JOHN JOSEPH DONOVAN

562

51-7218/2211  
344

JUN 7, 2016

DATE

PAY TO THE  
ORDER OF AA FENCE

\$ 225<sup>60</sup>

TWO HUNDRED TWENTY FIVE AND <sup>60</sup>/<sub>100</sub> DOLLARS

Security  
Features  
Details on  
Back.

People's United  
Bank

peoples.com

For

John J. Donovan NP  
0562

Harland Clarke

JOHN JOSEPH DONOVAN

237

51-7218/2211  
344

APR 27, 2016  
DATE

Pay TO THE ORDER OF SUN PRO TINT \$ 670<sup>04</sup>  
SIX HUNDRED SEVENTY AND 04/100 DOLLARS

Security  
Features  
Details on  
Back.

**People's United  
Bank**  
peoples.com

For \_\_\_\_\_

John J. Donovan MP  
0237

Harland Clarke

ELECTRONICALLY FILED - 2023 Mar 24 3:34 PM - AIKEN - COMMON PLEAS - CASE#2022CPO202654  
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JOHN JOSEPH DONOVAN

555

51-7218/2211  
344

MAY 1, 2016  
DATE

PAY TO THE ORDER OF STARNET INSURANCE CO. \$ 970<sup>00</sup>

NINE HUNDRED SEVENTY AND NO/100 DOLLARS

Security Features Details on Back.

People's United Bank

peoples.com

FOR ACCT 10034295

John A. Donovan MP

0555

Harland Clarke

ELECTRONICALLY FILED - 2023 Mar 24 3:34 PM - AIKEN - COMMON PLEAS - CASE#2022CP0202654  
ELECTRONICALLY FILED - 2023 Jul 18 12:49 PM - AIKEN - COMMON PLEAS - CASE#2022CP0202654

Account: 10034295

Invoice Date: 05/26/2016

**Account Name and Address:**Aiken Realty Trust  
3320 Banks Mill Rd.  
Aiken, SC 29801**For Questions or Changes Call:**Hutson-Etherredge-Brown, Inc. dba  
Hutson-Etherredge Companies  
129 Park Avenue SW  
Aiken, SC 29801  
(803) 649-5141

| Policy Number                 | Trans Date | Description of Transactions  | Charges/Credits | Policy Balance | Minimum Due |
|-------------------------------|------------|------------------------------|-----------------|----------------|-------------|
| QFO 4128898-10<br><br>Account | 05/19/2016 | Farm and/or Equine Liability |                 |                |             |
|                               |            | Policy Previous Balance      |                 | 1,919.00       |             |
|                               |            | Payment                      | -960.00         |                |             |
|                               | 05/19/2016 | Policy Ending Balance        |                 | 959.00         | 959.00      |
|                               |            | Previous Balance             |                 | 10.00          |             |
|                               |            | Payment                      | -10.00          |                |             |
|                               | 05/25/2016 | Service Fee                  | 5.00            |                |             |
|                               |            | Ending Balance               |                 | 5.00           | 5.00        |

See Reverse Side For Information About Your Bill

| Previous Balance | Payments This Statement Period | Current Activity This Statement Period | Account Unpaid Balance | Payment Due | Minimum Due |
|------------------|--------------------------------|----------------------------------------|------------------------|-------------|-------------|
| \$ 1,929.00      | \$ 970.00                      | \$ 5.00                                | \$ 964.00              | 06/18/2016  | \$ 964.00   |

You may elect to pay any amount above the Minimum Due

## Retain This Part For Your Records

## BILLING INVOICE - PLEASE DETACH AND RETURN WITH YOUR PAYMENT

See reverse side for name and/or address correction. Please do not staple, tape or fold.

Send this part with payment in U.S. dollars payable to: StarNet Insurance Company

|                |              |                |
|----------------|--------------|----------------|
| Account Number | Invoice Date | Please Mail By |
| 10034295       | 05/26/2016   | 06/13/2016     |

Agency: Hutson-Etherredge-Brown, Inc. dba

This Notice Mailed To:

Aiken Realty Trust  
3320 Banks Mill Rd.  
Aiken, SC 29801

| Payment Due | Account Balance |
|-------------|-----------------|
| 06/18/2016  | \$ 964.00       |
| Minimum Due | Amount Enclosed |
| \$ 964.00   | \$              |

PAY ON LINE - GO TO: [www.berkleyequine.com](http://www.berkleyequine.com)

Send Payment To:

StarNet Insurance Company  
c/o BPS - Dept# 1544  
Denver, CO 80291-1544

10C01003429500A100096400000096400061820164

429



**FARM MAINTENANCE, LLC**  
482 BAY ROAD  
SOUTH HAMILTON, MA 01982

BANK OF AMERICA, NA

2699

5-13/110

8/9/2016

PAY TO THE  
ORDER OF

DSK Electrical, LLC

\$ \*\*2,490.61

Two Thousand Four Hundred Ninety and 61/100\*\*\*\*\*

DOLLARS

DSK Electrical, LLC  
P.O. Box 5785  
Aiken, SC 29804

VOID AFTER 90 DAYS

MEMO:

Linda Donovan, 3320 Banks Mill Road



*Linda Donovan*  
AUTHORIZED SIGNATURE

⑈002699⑈ ⑆

⑈

**FARM MAINTENANCE, LLC**

DSK Electrical, LLC

| Date     | Type | Reference |
|----------|------|-----------|
| 8/9/2016 | Bill | 2023      |

Original Amt.  
2,490.61

8/9/2016  
Balance Due    Discount  
2,490.61  
Check Amount

Payment  
2,490.61  
2,490.61

2699

Bank of America—Far    Linda Donovan, 3320 Banks Mill Road

2,490.61

**FARM MAINTENANCE, LLC**

DSK Electrical, LLC

| Date     | Type | Reference |
|----------|------|-----------|
| 8/9/2016 | Bill | 2023      |

Original Amt.  
2,490.61

8/9/2016  
Balance Due    Discount  
2,490.61  
Check Amount

Payment  
2,490.61  
2,490.61

2699

Bank of America—Far    Linda Donovan, 3320 Banks Mill Road

2,490.61

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**FARM MAINTENANCE, LLC**  
482 BAY ROAD  
SOUTH HAMILTON, MA 01982

BANK OF AMERICA, NA

2789

5-13/110

11/28/2016

PAY TO THE  
ORDER OF

DSK Electrical, LLC

\$ \*\*112.50

One Hundred Twelve and 50/100\*\*\*\*\*

DOLLARS

DSK Electrical, LLC  
P.O. Box 5785  
Aiken, SC 29804

VOID AFTER 90 DAYS

MEMO:

Linda Donovan, 3320 Banks Mill Road



AUTHORIZED SIGNATURE

⑈002789⑈ ⑆

**FARM MAINTENANCE, LLC**

2789

DSK Electrical, LLC

| Date       | Type | Reference      |
|------------|------|----------------|
| 11/28/2016 | Bill | 2227, Sep 2016 |

|               |
|---------------|
| Original Amt. |
| 112.50        |

|              | 11/28/2016 |
|--------------|------------|
| Balance Due  | 112.50     |
| Discount     |            |
| Check Amount |            |

|         |
|---------|
| Payment |
| 112.50  |
| 112.50  |

Bank of America—Far Linda Donovan, 3320 Banks Mill Road

112.50

**FARM MAINTENANCE, LLC**

2789

DSK Electrical, LLC

| Date       | Type | Reference      |
|------------|------|----------------|
| 11/28/2016 | Bill | 2227, Sep 2016 |

|               |
|---------------|
| Original Amt. |
| 112.50        |

|              | 11/28/2016 |
|--------------|------------|
| Balance Due  | 112.50     |
| Discount     |            |
| Check Amount |            |

|         |
|---------|
| Payment |
| 112.50  |
| 112.50  |

Bank of America—Far Linda Donovan, 3320 Banks Mill Road

112.50

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Aiken - COMMON PLEAS - CASE#2022CPO202654  
Aiken - COMMON PLEAS - CASE#2022CPO202654



**FARM MAINTENANCE, LLC**  
482 BAY ROAD  
SOUTH HAMILTON, MA 01982

BANK OF AMERICA, NA

2649

5-13/110

5/4/2016

PAY TO THE  
ORDER OF

Chris Coulthard

\$ \*\*6,961.67

Six Thousand Nine Hundred Sixty-One and 67/100\*\*\*\*\*

DEPOSIT

Chris Coulthard  
140 Sugar Cane Court  
Warrenville, SC 29851

VOID AFTER 90 DAYS

MEMO:

Banks Mill Renovation, upper window, new siding, m



AUTHORIZED SIGNATURE

⑈002649⑈

**FARM MAINTENANCE, LLC**

Chris Coulthard

| Date     | Type | Reference |
|----------|------|-----------|
| 5/4/2016 | Bill | May 16    |

Original Amt.  
6,961.67

5/4/2016  
Balance Due 6,961.67  
Check Amount

Payment  
6,961.67  
6,961.67

Bank of America—Far Banks Mill Renovation, upper window, new sidin

6,961.67

**FARM MAINTENANCE, LLC**

Chris Coulthard

| Date     | Type | Reference |
|----------|------|-----------|
| 5/4/2016 | Bill | May 16    |

Original Amt.  
6,961.67

5/4/2016  
Balance Due 6,961.67  
Check Amount

Payment  
6,961.67  
6,961.67

Bank of America—Far Banks Mill Renovation, upper window, new sidin

6,961.67

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MAKEN - COMMON PLEAS - CASE#2022CPO202654  
MAKEN - COMMON PLEAS - CASE#2022CPO202654

## Contractor info:

Chris Coulthard

140 Sugar Cane Ct.

Warrenville, SC 29851

(803) 507-1664

## Customer info:

John and Linda Donovan

3320 Banksmill Rd.

Aiken, SC 29803

\*All work ordered by Linda Donovan

| Date and Duties performed                                                                                                                                                                                          | Cost                         |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| 2-11-16 * Move furniture from 2 <sup>nd</sup> floor to 3 <sup>rd</sup> floor, caulk holes in wall by wash rack and repair screen door to the tack room                                                             | \$ 362.00                    |
| 2-19-16 * Hang towel rods and change out door knobs and deadbolts                                                                                                                                                  | \$ 160.00                    |
| 2-23-16 * Install rubber mats in grooming area as well as indoor and outdoor wash rack                                                                                                                             | \$ 528.00                    |
| 3-23-16 * Install LVT flooring in feed room , make repairs to back decks and hang curtains                                                                                                                         | \$ 850.00                    |
| 3-25-16 * Remove and replace 3 <sup>rd</sup> floor quad window unit as well as remove and replace old vinyl shakes with new ones                                                                                   | \$1500.00                    |
|                                                                                                                                                                                                                    | Sheet rock repairs \$ 200.00 |
| 3-28-16 * Finish interior trim on 3 <sup>rd</sup> floor gable window, swap out 2 <sup>nd</sup> and 3 <sup>rd</sup> floor ceiling fans and install light fixtures on 3 <sup>rd</sup> floor, repairs to access doors | \$ 385.00                    |
| 3-31-16 * Move all furniture out of tractor shed into 2 <sup>nd</sup> and 3 <sup>rd</sup> floor and storage stall                                                                                                  | \$1200.00                    |
| 4-20-16 * Build saddle racks/shelves<br>4-26-16 * Build bench/shoe cubbies in tack room and install kitchen cabinet knobs                                                                                          | \$ 480.00                    |
|                                                                                                                                                                                                                    |                              |
| LABOR TOTAL                                                                                                                                                                                                        | \$5,665.00                   |
|                                                                                                                                                                                                                    |                              |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                           |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| Materials include: <ul style="list-style-type: none"><li>• Vinyl shakes and j channel for new window</li><li>• Decking materials for deck repairs</li><li>• Shelving material for tack room shelves, bench, and cubbies</li><li>• O.S.B. for storage stall floor</li><li>• Interior trim for 3<sup>rd</sup> floor window</li><li>• Shoe mold for feed room</li><li>• Trim to fix screen door</li><li>• Plywood for new attic access door</li></ul> |                           |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                    | MATERIAL COST \$ 1,296.67 |
| Total amount due                                                                                                                                                                                                                                                                                                                                                                                                                                   | \$ 6,961.67               |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                           |



**FARM MAINTENANCE, LLC**

482 BAY ROAD  
SOUTH HAMILTON, MA 01982

BANK OF AMERICA, NA

2799

5-13/110

11/30/2016

PAY TO THE

ORDER OF

Chris Coulthard

\$\*\*1,939.42

One Thousand Nine Hundred Thirty-Nine and 42/100\*\*\*\*\*

DOLLARS

Chris Coulthard  
140 Sugar Cane Court  
Warrenville, SC 29851

VOID AFTER 90 DAYS

MEMO:

Banks Mill Renovation, bat mitigation



AUTHORIZED SIGNATURE

⑈002799⑈ ⑆

**FARM MAINTENANCE, LLC**

2799

Chris Coulthard

11/30/2016

| Date       | Type | Reference | Original Amt. | Balance Due  | Discount | Payment  |
|------------|------|-----------|---------------|--------------|----------|----------|
| 11/30/2016 | Bill | Bats      | 1,939.42      | 1,939.42     |          | 1,939.42 |
|            |      |           |               | Check Amount |          | 1,939.42 |

Bank of America--Far Banks Mill Renovation, bat mitigation

1,939.42

**FARM MAINTENANCE, LLC**

2799

Chris Coulthard

11/30/2016

| Date       | Type | Reference | Original Amt. | Balance Due  | Discount | Payment  |
|------------|------|-----------|---------------|--------------|----------|----------|
| 11/30/2016 | Bill | Bats      | 1,939.42      | 1,939.42     |          | 1,939.42 |
|            |      |           |               | Check Amount |          | 1,939.42 |

Bank of America--Far Banks Mill Renovation, bat mitigation

1,939.42

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MAKEN - COMMON PLEAS - CASE#2022CP0202654  
MAKEN - COMMON PLEAS - CASE#2022CP0202654

**FARM MAINTENANCE, LLC**

McCullough Professional Painting

| Date      | Type | Reference |
|-----------|------|-----------|
| 6/24/2016 | Bill |           |

| Original Amt. |
|---------------|
| 3,500.00      |

| 6/24/2016    |          |
|--------------|----------|
| Balance Due  | Discount |
| 3,500.00     |          |
| Check Amount |          |

| Payment  |
|----------|
| 3,500.00 |
| 3,500.00 |

2668

Bank of America--Far Estimate \$2,800 + 500 cupboards + 100 deck +

3,500.00

**FARM MAINTENANCE, LLC**

McCullough Professional Painting

| Date      | Type | Reference |
|-----------|------|-----------|
| 6/24/2016 | Bill |           |

| Original Amt. |
|---------------|
| 3,500.00      |

| 6/24/2016    |          |
|--------------|----------|
| Balance Due  | Discount |
| 3,500.00     |          |
| Check Amount |          |

| Payment  |
|----------|
| 3,500.00 |
| 3,500.00 |

2668

Bank of America--Far Estimate \$2,800 + 500 cupboards + 100 deck +

3,500.00

ELECTRONICALLY FILED - 2023 Mar 24 3:34 PM  
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BAIKEN - COMMON PLEAS - CASE#2022CP0202654  
BAIKEN - COMMON PLEAS - CASE#2022CP0202654



**FARM MAINTENANCE, LLC**  
482 BAY ROAD  
SOUTH HAMILTON, MA 01982

BANK OF AMERICA, NA

2669

5-13/110

6/27/2016

PAY TO THE  
ORDER OF

McCullough Professional Painting

\$ \*\*650.00

Six Hundred Fifty and 00/100\*\*\*\*\*

DOLLARS

McCullough Professional Painting

VOID AFTER 90 DAYS

MEMO:

Tack Room Cupboards



AUTHORIZED SIGNATURE

⑈002669⑈

**FARM MAINTENANCE, LLC**

McCullough Professional Painting

| Date      | Type | Reference |
|-----------|------|-----------|
| 6/27/2016 | Bill | BM Jun 27 |

|               |
|---------------|
| Original Amt. |
| 650.00        |

| 6/27/2016 | Balance Due  | Discount |
|-----------|--------------|----------|
|           | 650.00       |          |
|           | Check Amount |          |

| Payment |
|---------|
| 650.00  |
| 650.00  |

2669

Bank of America—Far Tack Room Cupboards

650.00

**FARM MAINTENANCE, LLC**

McCullough Professional Painting

| Date      | Type | Reference |
|-----------|------|-----------|
| 6/27/2016 | Bill | BM Jun 27 |

|               |
|---------------|
| Original Amt. |
| 650.00        |

| 6/27/2016 | Balance Due  | Discount |
|-----------|--------------|----------|
|           | 650.00       |          |
|           | Check Amount |          |

| Payment |
|---------|
| 650.00  |
| 650.00  |

2669

Bank of America—Far Tack Room Cupboards

650.00

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ELECTRONICALLY FILED - 2023 Jul 18 12:49 PM  
TAKEN - COMMON PLEAS - CASE#2022CPO202654  
TAKEN - COMMON PLEAS - CASE#2022CPO202654

McCullough Professional Painting  
(803) 979-1243 Richard/Business#  
(803)552-4575 Wendy/Office

## Contractors Invoice

|                              |                     |                                        |  |
|------------------------------|---------------------|----------------------------------------|--|
| TO:                          |                     | WORK PERFORMED AT:                     |  |
| Linda Donovan 1-617-888-4843 |                     | Go down Banks Mill rd. Once you see    |  |
| 3320 Banks Mill Road         |                     | Cedar Creek Church count two driveways |  |
| Aiken, S.C.                  |                     | on the right...call customer at gate   |  |
| DATE                         | YOUR WORK ORDER NO. | OUR BID NO.                            |  |
| 6/1/16                       | none                | none                                   |  |

### DESCRIPTION OF WORK PERFORMED

We have this job scheduled for the week of June 20th to start. There is a single wall at the other property that has a gable point for \$100. Starting at the rear of the house, we will paint all the stairs, and landings all the way up to the deck and then paint the deck. this also includes the two exterior doors on the way up. third story door color change to door to go hunter green with the frames. They will be hand scraped, caulked, primed as needed, and painted. There are three sets of barn doors, only the interior is to be scraped, primed, and painted. In the tack room there are 2 built-ins that need primed gray and painted. the shelf is to be shelf hunter green and trim and side to match the wall. In the same room the rear of the entry door peel center, prime, and paint. the door leading to the upstairs was painted and shut. Needs sanded and repainted. Front deck repaint the bottom only using a transparent stain. Remember to coat all concrete BEFORE you do any painting! There are two cabinets on the interior that need primed and painted. the total labor cost is \$2,700.00 + \$100.00 for the wall at the other property.

I will get you those paint estimates, by this week-end.

All Material is guaranteed to be as specified, and the above work was performed in accordance with the drawings and specifications provided for the above work and was completed in a substantial workmanlike manner for the agreed sum of \$2,700.00 + \$100.00

Two thousand eight hundred total Dollars (\$ 2,800.00 ).

This is a ☐ Partial ☒ Full invoice due and payable by: \_\_\_\_\_

in accordance with our ☐ Agreement ☐ Proposal No. \_\_\_\_\_ Dated \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS  
Civil Action No.: 2022-CP-02-02654

WILLIAM T. HURLEY, JR., as trustee,  
Plaintiff,

vs.

LINDA DONOVAN,  
Defendant.

**MOTION TO INTERVENE**

TO: Richard C. Detweiler, Esquire, Counsel for Plaintiff  
Matthew Lewis Jepertinger, Esquire, Counsel for Plaintiff  
Bradley A. Brodie, Esquire, Counsel Defendant

**PLEASE TAKE NOTICE** that the undersigned, as counsel for Non-Party John J. Donovan, II, on the eleventh day following service hereof, or at such other time and place as may be set by the Court, will move before the Presiding Judge of this circuit, pursuant to SCRCP 24(a) for an Order allowing him to intervene in this action as a matter of right, or, alternatively, under SCRCP Rule 24(b) for permissive intervention. Upon such intervention, Donovan moves to continue the trial currently scheduled in this matter on June 26, 2024 so that he may file pleadings and conduct discovery.

On March 26, 2007, a settlement agreement was reached in Massachusetts between the movant and his five children. As a part of that settlement agreement, Trust One JJD was formed, and movant was the grantor and sole beneficiary of that trust. The trust reserves to movant the power to name an independent manager after March 26, 2017, and the independent manager reserves the power to remove and replace a trustee. In light of these provisions, movant retains considerable power over the trust itself.

Additionally, movant is opposed to the trustee's attempts to evict movant's wife from her properties in Aiken County, South Carolina. Movant's financial and personal stake in this litigation gives him interest in the subject action. The trustee's actions without his consent impairs or impedes his ability to protect his interests without intervention, and his interest is not adequately represented by the existing parties. Moreover, the instant motion is timely.

1 Alternatively, movants moves for permissive intervention under SCRCP 24(b) because  
2 his claims or defenses arise from the same incident that is the subject of this action.

3 Upon the court's granting of intervention, movant also moves to continue the trial of this  
4 matter so that he may file applicable pleadings, conduct discovery, and prepare himself for trial.

5 This motion is based upon the pleadings, supporting affidavits, his memorandum in  
6 support of his motion, the South Carolina Rules of Civil Procedure, and additional law or  
7 argument as may be appropriate.

8  
9 Respectfully submitted,

10 Dated: June 21, 2024

**HUGGINS PEIL, LLC**

/s/ Jeffrey F. Peil

Jeffrey F. Peil (S.C. Bar No. 102423)

jpeil@hugginsfirm.com

7013 Evans Town Center Blvd., Suite 502

Evans, Georgia 30809

Telephone: (706) 210-9063

Facsimile: (706) 210-9282

*Attorney for Non-Party John J. Donovan, II*

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

William T. Hurley, Jr., as  
Trustee of the Aiken Property  
Trust,

Plaintiff,

v.

Linda Donovan.

Defendant.

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

Civil Action No.: 2022-CP-02-02654

**MEMORANDUM IN  
OPPOSITION TO MOTION  
TO INTERVENE AND  
REQUEST FOR SANCTIONS**

Plaintiff submits this Memorandum in Opposition to the Motion to Intervene ("Intervene Motion") filed by John J. Donovan, II ("Donovan Sr.") that seeks to continue a long-coming trial at the last minute on a frivolous basis.

Plaintiff requests that the Intervene Motion be denied because Donovan Sr. has no standing to bring it because he, like his wife Defendant Linda Donovan, has no rights or interests whatsoever in the property at issue or the trust that is the sole owner of the property. Plaintiff further requests that sanctions be imposed upon Donovan Sr. and his counsel because the alleged, unverified facts in the frivolous Intervene Motion have already been adjudicated to be false.

Plaintiff has already flown to Aiken to attend the trial scheduled for July 26, 2024; there is no justifiable basis for further delay.

**FACTS**

The underlying case here is simple. The subject properties in Aiken, SC, identified by TMS #'s 139-19-01-002 and 140-08-04-001 (collectively, the "Property"), are solely owned by a nominee trust, the Aiken Property Trust, which has another trust, Trust One – JJD ("Trust One") as its sole beneficiary. These facts will be established at trial by the indisputable deeds and other

documents in which Linda Donovan and Donovan Sr. expressly disclaimed and released to the Aiken Property Trust any interest that they may have had, which is none. Linda Donovan has never been a beneficiary of either trust.

Donovan Sr., husband to Linda Donovan, is a convicted felon, who was just released on parole after serving substantial prison time for multiple counts of fraud committed against his own son, John J. Donovan, Jr. ("John Jr.," now deceased), and his son's widow and children, while John Jr. was on his death bed.

Many years ago, Donovan Sr. had a beneficiary interest solely in Trust One, which was established by a series of settlement agreements between Donovan Sr. and his children, including the late John Jr. and four of his siblings (collectively, the "Donovan Siblings"). The same settlement agreements appointed a retired federal judge, John S. Martin, Jr. ("Arbitrator Martin"), to be the permanent arbitrator of future disputes, including with respect to Trust One and its assets, and empowered him to award any remedy and sanctions against Donovan and the Donovan Siblings.

After years of fraudulent conduct by Donovan Sr. against his children and many second chances, Arbitrator Martin entered a November 10, 2021 arbitral award ("November 10, 2021 Arbitral Award") extinguishing the entirety of Donovan Sr.'s beneficiary interest in Trust One. This Arbitral Award was confirmed and adopted as a Final Judgment of the Massachusetts Superior Court on August 18, 2022 ("August 18, 2022 Final Judgment").

Donovan Sr. filed an appeal of the November 10, 2021 Arbitral Award and the August 18, 2022 Final Judgment, and the Massachusetts Appeals Court entered a decision on March 8, 2024 ("Appeals Decision," attached as **Exhibit A**) affirming the Arbitral Award and Final Judgment in their entirety. On May 16, 2024, the Massachusetts Supreme Judicial Court denied Donovan Sr.'s

application for further appellate review, thereby foreclosing any further challenge by Donovan Sr. with respect to his rights and interests in Trust One.

Plaintiff brought this case as an ejectment proceeding in Magistrate Court on October 17, 2022 to evict Defendant Linda Donovan from the Property. The case was removed to the Circuit Court on November 17, 2022. On April 4, 2024, the Parties agreed to refer the trial of this case to this Court. On May 3, 2024, the June 26<sup>th</sup> trial date was agreed upon by the Parties.

In this case involving his wife's unlawful occupation of the Property that has been pending for almost two years, Donovan Sr. did not file his Intervene Motion until late in the afternoon of Friday, June 21, 2024, on the eve of trial.

### ARGUMENT

Under Rule 24 of the South Carolina Rules of Civil Procedure, intervention, whether “of right” or “permissive,” requires the moving party to have standing by showing “an interest or claim relating to the property which is the subject of the action.” Rule 24, *SCRPC*. *See also Government Employees Insurance Company, ex parte*, 373 S.C. 132, 644 S.E.2d 699 (2007), citing *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994). A party has standing if the party has a personal stake in the subject matter of a lawsuit and is a “real party in interest.” *Id.* “A real party in interest ... is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action.” *Id.* (citations omitted).

Here, Donovan Sr. lacks standing to intervene. Although there is extensive history to the disputes and litigation between Donovan Sr. and the Donovan Siblings, the balance of those issues are not relevant. This Court need go no further than review the Appeals Decision, which provides any requisite background and definitively establishes that Donovan Sr. does not have any rights or

interests in Trust One. Arbitrator Martin has also already determined in an Arbitral Award, dated July 27, 2022 (attached as Exhibit B), that “Neither Donovan nor Linda Donovan have any ownership, rights, title or interest of any kind or form in Trust property,” including the subject Property. Accordingly, Donovan Sr. does not have any standing to intervene in this case because he has no rights or interest in Trust One, its sole beneficiary the Aiken Property Trust, or the Property that is solely owned by the Aiken Property Trust.

The Appeals Decision alone warrants the summary denial of the Intervene Motion. However, by way of additional context, Plaintiff also attaches as Exhibit C a recent Memorandum of Decision and Order from the Massachusetts Superior Court, dated June 3, 2024, in which Judge Catherine M. Ham, taking guidance from the Appeals Decision, dismissed an action brought by Donovan Sr. alleging the same frivolous arguments that he now seeks to raise. This decision is notable in that Judge Ham observed: “There is no doubt in my mind that Donovan [Sr.] wanted another adjudicator who does not know the long history of his misdeeds which led to his entire beneficiary interests being extinguished.” This Court too should not fall victim to Donovan Sr.’s ongoing attempts to re-litigate before new tribunals unfamiliar with his fraudulent body of work the same issues that have already been determined and affirmed through the scrupulous efforts of numerous officials and judges in multiple jurisdictions. The Intervene Motion should be denied.

The Court should also award sanctions against Donovan Sr. and his counsel to include at least the attorneys’ fees and costs of responding to the Intervene Motion and Plaintiff’s flight and accommodation expenses which have already been incurred. In fact, as of the filing of this Opposition, Plaintiff has already flown down to Aiken, SC from Massachusetts for the purpose of attending the trial scheduled for June 26, 2024.

Within hours of Donovan Sr.'s counsel's submission of the Intervene Motion, the undersigned counsel emailed him to consult pursuant to Rule 11 of the South Carolina Rules of Civil Procedure. The undersigned counsel's email (attached as Exhibit D) provided Donovan's counsel with the above-context, including the Exhibits referenced herein, to demand that he withdraw the Intervene Motion. Donovan's counsel ignored the demand.

Under Rule 11, sanctions are appropriate where a party, and/or his attorney, files a frivolous pleading, motion or other paper, or makes frivolous arguments. *Burns v. Universal Health Servs.*, 340 S.C. 509, 513, 532 S.E.2d 6, 9 (Ct. App. 2000), citing *Link v. School Dist. of Pickens County*, 302 S.C. 1, 393 S.E.2d 176 (1990). They may also be sanctioned for filing a pleading, motion, or other paper in bad faith (i.e., to cause unnecessary delay) whether or not there is good ground to support it. *Id.*, citing *Johnson v. Dailey*, 318 S.C. 318, 457 S.E.2d 613 (1995).

There can be no doubt that Donovan Sr.'s Intervene Motion is frivolous. Moreover, despite being aware of these proceedings, pending for almost two years, that involve his own wife, he and his counsel waited until the eve of trial to file the frivolous Intervene Motion. Sanctions are warranted under these circumstances.

### CONCLUSION

Donovan has been adjudicated a fraud by the highest courts in Massachusetts, has recently spent time in prison for his fraud perpetrated on his own children, and now attempts to perpetrate another fraud upon this Court. Donovan's Intervene Motion should be denied, and the Court should award sanctions against Donovan Sr. and his counsel to include at least the attorneys' fees and costs of responding to the Intervene Motion and Plaintiff's flight and accommodation expenses.



Richard C. Detwiler, S.C. Bar No. 6473  
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Columbia, South Carolina  
June 24, 2024

# EXHIBIT A.1

IN RE ARBITRATION AMONG  
 REBECCA M. DONOVAN, JAMES H. DONOVAN,  
 MAUREEN DONOVAN LANTZ, AND CAROLYN DONOVAN ROSENBAUM  
 AND  
 JOHN J. DONOVAN, Sr.  
 AND  
 JOHN J. DONOVAN JR.  
*Jurisdiction retained in the Business Litigation  
 Session of the Suffolk Superior Court,  
 Commonwealth of Massachusetts No. 03-4247*

#### AWARD

The present proceedings might properly be characterized as “Déjà vu - all over again.” In October 2016, the Donovan siblings brought an application before me challenging a series of filings and recordings of documents made by Professor Donovan in the Essex County Massachusetts South District Registry of Deeds. In response, Professor Donovan asserted that the filings at issue were proper because he was acting pursuant to a codicil to the last will and testament of his son John Jr. and a special power of attorney and certain proxies also obtained from John Jr.

To resolve this dispute, I conducted an evidentiary hearing. Several witnesses testified and the siblings offered a report by an expert in handwriting analysis concluding the signature of John Jr. was a forgery. I subsequently issued detailed Findings of Fact setting forth my conclusion that the testimony of Professor Donovan that John Jr. signed the contested documents was unworthy of belief and the documents on which he relied were fraudulent.

Almost four years to the date after my decision holding that the documents offered by Professor Donovan were fraudulent, a new lawyer acting on his behalf commenced an action to set aside all the prior proceedings before me. This “new” action rested, at its core, on the assertion that the documents that I had determined to be fraudulent were genuine. Professor Donovan’s lawyer alleged John Jr. had given the codicil and power of attorney to Professor Donovan because he feared he or his estate might be prosecuted for tax evasion in connection with a series of trusts established in Bermuda for the benefit of himself and his siblings.

In view of this unwarranted attack on John Jr. which has been aided and abetted by an accountant and two lawyers, who have touted their experience as Department of Justice prosecutors to support their slander of John Jr, it seems appropriate to repeat what I said at the outset of my Findings of Fact and Conclusions of Law dated January 25, 2017:

For over 12 years I have served as a mediator and arbitrator of disputes between Professor John Donovan and his children. During that time, four of those children, Rebecca, James, Maureen and Carolyn, were always at odds with their father. His youngest son, John, often found himself in the middle — sympathetic to the views of his siblings but also supportive of his father and concerned for his welfare. John worked with his siblings and his father to resolve disputes and

was instrumental in forging an agreement which resulted in the creation of a trust for Professor Donovan which John hoped would provide his father with financial security for the remainder of his life. It is, therefore, particularly sad that the dispute at issue arises from a blatant attempt by Professor Donovan to defraud John's estate.

Before turning to the specific facts, it is worth noting that, while Professor Donovan is a highly intelligent man who has had substantial academic and business success, he apparently thinks the rest of us are devoid of intelligence or common sense. It was obviously with that mindset that he conceived a fraud that had him representing that all he wanted to do was fulfill John's dying wishes, when in fact he was doctoring videotapes, audiotapes and legal documents in a manner that was so childish that even the least intelligent of us would never believe that what he was proposing was anything that John would have wanted. The fact that he used the claim that all he was doing was attempting to carry out John's wishes to defraud John's wife and children of millions of dollars evidences a total lack of respect and appreciation for all that John attempted to do for him during his life.

Given these findings it is hard to understand how Professor Donovan, or his attorneys, or his aiders and abettors could possibly believe that anyone with common sense would accept the story that they have tried to foist upon this tribunal.

The claim is that John, Jr. prepared the codicil and gave it to his father because he feared the consequences of an alleged tax evasion scheme that he engaged in with his siblings involving the use of sham grantor trusts in Bermuda. This claim is bolstered by the expert reports of an accountant and a lawyer, as well as a slide show by his current lawyer. While both lawyers tout their experience as Justice Department prosecutors to lend credibility to the charges that they level against John, Jr., and his siblings, they apparently left behind at the Justice Department a prosecutor's skepticism when confronted with claims that make no sense, as well as the ability to conduct even a minimal investigation of critical facts.

At the heart of the tax evasion claim is the assertion that the siblings used two fraudulent grantor trusts, the Appleby Trust and the Geneva Trust, as part of a tax evasion scheme. It is alleged that John Jr. acting as the point man, forged a series of documents in connection with The Appleby Trust which had been established in Bermuda by an Irish citizen named James McEniry. In support of this claim, Professor Donovan and his aiders and abettors cite an affidavit from Mr. McEniry in which he stated he did not know Professor Donovan until well after the Appleby Trust was established, he never met the Donovan children and many of the documents relating to the trust bearing his name were forgeries. This affidavit was apparently executed in Ireland and there is no indication that Mr. McEniry is willing to come to the United States where his sworn statement could subject him to a perjury prosecution if what it states proves to be untrue.

It is also alleged that the Donovan children made use of a similar fraudulent grantor trust, the Geneva Trust, which had been established by an individual named Shridhar Submaranian and included as its beneficiaries Shridhar's brother, Sundar. No evidence is offered to sustain the claim that this Trust was fraudulent. The experts simply assume that those involved in the Geneva Trust had no connection with Professor Donovan or his family.

Central to the “experts” assertion that the two trusts were fraudulent are the assumptions that Professor Donovan was unaware of these activities at the time and the grantors of the Trusts were strangers to the Donovan family.

It is surprising that professionals giving opinions that charge serious crimes to several individuals would make those charges with apparently little investigation to determine the validity of the assumptions underlying their opinions. The most glaring example is their accepting without question Professor Donovan's assertions that the codicil and power of attorney were genuine. What investigation did these alleged experts do that allowed them to base their opinions on the claim that these documents were legitimate, given my prior opinion finding them to be fraudulent and Professor Donovan's testimony to be unworthy of belief, as well as the decision of the Essex County District Attorney to bring criminal charges against Professor Donovan relating to these documents.

Given the questionable credibility of the source of the basic allegations of the claims of tax evasion, one would hope that experts with Justice Department experience would make some effort to investigate the facts on which they rely when accusing others of serious crime,

Although the experts did not hesitate to opine that the Geneva Trust was fraudulent, they apparently made no effort to determine who the individuals involved with this trust were and what relationship they may have had with Professor Donovan and his children. The assumption that the Geneva Trust was fraudulent and unknown to Professor Donovan was apparently made with no factual basis or investigation. Why did the experts do nothing to check on any connection Shadhir Subramanian or his brother Sundar might have had with Professor Donovan and his family?

One would have to look no further than Exhibit E to the Graylin affidavit to find that Sundar Subramanian had submitted an affidavit in support of a motion of John J Donovan Sr. to disqualify the Mintz Levin law firm. Had they gone a step further and looked at the website maintained by Professor Donovan, they would have found an accolade about the Professor from the same Sundar Submaranian, who identified himself as a colleague of Professor Donovan. Could any responsible expert give an opinion that Geneva trust was fraudulent and was established by people who had no connection with the Donovan family without doing some investigation? Could any reasonable former prosecutor accept without question Professor Donovan's representation that he knew nothing about a trust set up by the brother of his close friend?

Turning to the Appleby trust we find Professor Donovan's experts charging that John Donovan Jr. submitted a fraudulent letter to the Appleby firm falsely representing that McEniry was a family friend. To quote for Mr. Neiman's report at page 9:

Donovan, Jr. states that “Jim is a very close friend of my family, whom we have known for some time.” Further, “I am personally very close to Jim ( I've always known him as “Uncle Jim”) and it has been somewhat typical of his nature to give generous gifts to myself and my family over the years.” These statements according to both Professor Donovan and McEniry himself are simply false McEniry has never met the Donovan children, has no relationship with the family, and was not the source of the funds referenced in the letter.”

It appears that Mr. Neiman and the other experts did not inquire to determine whether Professor Donovan and Mr. McEniry had any other associations or had been involved in any other litigation. Such inquiry might have revealed that the same Mr. McEniry who claimed to have met Professor Donovan only after the Trust was established and denied knowing John Jr., had signed an affidavit in connection with litigation in Bermuda concerning the Appleby Trust stating:

Relationship with Professor Donovan

2. I wish first to explain the relationship between Professor John Donovan and myself.
3. Professor Donovan has been a friend of mine for many years. It was because of the close relationship between Professor Donovan and myself that I offered to become involved in the funding of the Appleby Trust. That was clearly stated in a letter dated 18 August 1993 I wrote to Marten Collins of Appleby Spurling & Kempe ("AS&K"), the attorneys for the former trustee of the Appleby Trust.

My Involvement in the Funding of the Trust

Professor Donovan requested that I participate in the funding of the trust. When I did so, I believed that I was creating the trust. I have now been informed by those advising Indigo that in fact the Appleby Trust already existed on the day I wired the sum of US\$145,000 to the former Trustee, Appleby Trust (Bermuda) Limited ("ATBL") then called "Harrington Trust Limited".

4. I agreed with Professor Donovan in 1993 to settle money on the trust and it was arranged that I would meet with AS&K in Bermuda. I was unfamiliar with the establishment and operation of trusts and at the suggestion of Professor Donovan I liaised with and was helped by his son, John Donovan Jr. ("JDJ") with regard to all of the technical details.

Even without his sworn statement of Mr. McEniry, one would hope that a former prosecutor, giving an expert opinion accusing several with serious crimes, would ask himself, if John Jr. did not know McEniry, how did he even know about the Appleby Trust and gain the ability to forge McEniry's signature? But there are none so blind as those who would not see.

In opposition to Professor Donovan's current motion, counsel for his children submitted an expert report signed by Steven Toscher, Sandra R Brown- Bodner and Robert Horowitz, sometimes referred to as the Toscher Report. That report stated, "Based on our review of the exhibits and appendices to the Edelstein letter and other documents that are appended to this letter there is no evidence that any of the Donovan children had the intent necessary to constitute tax fraud." That report also noted that the Donovan children had acted on the advice of well-respected accounting firms that their conduct was appropriate under existing law.

It is interesting that Mr. Neiman concludes in his Report:

Despite the Toscher letter's tone there is not much difference between the conclusions offered in the Toscher report and those offered by myself and Koplowitz. Rather the dispute appears evidentiary. This report describes a scheme (1) to steal James McEniry's identity; (2) forge correspondence and trust documents in McEniry's name; (3) misrepresent McEniry as a bona fide foreign grantor of a trust he in fact had nothing to do with; (4) lie about this to tax advisors and other professionals to obtain favorable opinions concerning the Structure's tax treatment. . . .

The only thing Mr. Neiman got right was that the dispute is evidentiary. The evidence is overwhelming in establishing that Professor Donovan and Mr. McEniry lied about their relationship and the purpose of the Trust and there is no reason to believe that the Donovan children believed that the actions they took, with the advice of highly skilled professionals constituted tax fraud. Professor Donovan's claims that John Jr. executed the codicil and power of attorney are no less fraudulent today than they were in 2016 and 2017.

In short, the only sham involved in these proceedings is the claim that the Appleby and Geneva Trusts were created without the knowledge of Professor Donovan by people who had no connection with the Donovan family. I noted in 2017 findings that Professor Donovan: "thinks the rest of us are devoid of intelligence or common sense." Apparently, he was able to find lawyers and accountants who shared that view. In the federal courts lawyers are required to make a reasonable inquiry before making assertions to the court and can be sanctioned if they do not. Unfortunately, the same standards do not apply in arbitrations.

### CONCLUSION

We have come to a sad end of a long and somewhat tragic journey. Repeated attempts to resolve the conflicts between Professor Donovan and his children have fallen apart, in large measure because Professor Donovan has refused to abide by agreements that he has made.

Over the course of my service as mediator and Arbitrators of the disputes between Professor Donovan and his children, I have been told that the children wanted to keep Professor Donovan from having control of substantial assets because they feared that he would use whatever assets he had to do them harm. The sad course of these proceedings has demonstrated that the children have substantial basis for that fear. Professor Donovan has been convicted of shooting himself so that he could falsely place the blame for his injury on his son James. He has used a fraudulent codicil and power of attorney to try to strip assets from the estate of John Jr. He has employed several, no doubt, high priced experts in the current proceedings to charge his children with forgery and tax fraud.

In the past I have resisted the entreaties of counsel for the Donovan children to forfeit Professor Donovan's rights in the existing trust. I resisted those efforts out of respect for the memory of John Jr and his concern for the welfare of his father. None of this has deterred Professor Donovan from hiring experts and charging them with the mission to attack his son John as a forger and tax cheat.

I have warned Professor Donovan that any further wrongdoing would result in the forfeiture of his interest in the Trust One. Despite those warnings, he has brought before me another fraudulent application. Enough is enough. I have concluded that Professor Donovan deserve to be sanctioned to the fullest extent possible and that his interest in Trust One should be forfeited.

To some it may seem cruel to strip Professor Donovan of assets that have been derived from his efforts. It may be argued that in doing so, he will be left in poverty. But his alleged poverty has not prevented him from instituting what must have been costly litigation attacking his children. To extent that it is claimed that this litigation has been financed by friends of Professor Donovan who are concerned for his welfare, those friends might better use their wealth to provide financial support to Professor Donovan rather than waste their money funding frivolous litigation.

Counsel for the parties are directed to confer to develop a plan for the winding up of Trust One and to bring to my attention any disputes or questions relating to that process.

I previously advised the parties that I was retiring from practice and they should consider finding someone to replace me. These most recent proceedings had convinced me, however, that this would be unfair to the Donovan siblings, and any new mediator/arbitrator. To the extent there are likely to be future proceedings, there is a substantial likelihood that, like the present application, there will be attempts to relitigate what I have already decided. At a minimum, the appropriate disposition of any application will require a deep understanding of all that has gone before. In these circumstances, I feel it would be irresponsible for me to withdraw and I will not.

November 10, 2021



John S. Martin

# EXHIBIT A.2

# NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK,SS

SUPERIOR COURT DEPARTMENT

Rebecca M. Brown, et al.,

Plaintiffs,

Civil Action No.: 0384CV4247-BLS1

v.

John J Donovan, Sr. et al,

Defendants

## FINAL JUDGMENT

Upon consideration by Peter Krupp, Associate Justice of the Superior Court IT IS  
HEREBY ORDERED and ADJUDGED that:

1. Defendant's Motion to Vacate Arbitration Award of November 10, 2021, is  
DENIED. The Arbitrator's Award dated November 10, 2021, is CONFIRMED  
pursuant to G.L. c. 251, Sec. 12(d).

Final judgment shall enter accordingly.

August 17, 2022

  
Assistant Clerk Magistrate  
Office of the Civil Clerk  
Michael J. Donovan

Noted  
SMP  
8-18-22

JUDGMENT ENTERED ON DOCKET Aug 18 2022  
PURSUANT TO THE PROVISIONS OF MASS. R. CIV. P. 60  
AND NOTICE SENT TO PARTIES PURSUANT TO THE PRO-  
VISIONS OF MASS. R. CIV. P. 71(b) AS FOLLOWS

# EXHIBIT A.3

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

22-P-1075

REBECCA M. BROWN & others<sup>1</sup>

vs.

JOHN J. DONOVAN, SR., & another.<sup>2</sup>

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

In this protracted litigation, the narrow issue currently before us is whether a Superior Court judge erred in confirming an arbitration award that sanctioned the defendant, John J. Donovan, Sr. ("Donovan"), by divesting him of his interest in a trust. Donovan argues that the arbitrator refused to hear evidence, exceeded his powers, and demonstrated evident partiality, and that the award was procured by fraud. We affirm.

Background. In 2003, three of Donovan's children ("the siblings") filed the underlying complaint against him and another sibling, John J. Donovan, Jr. ("John"). Thereafter, the

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<sup>1</sup> James H. Donovan, Maureen Donovan Lantz, and Carolyn Donovan Rosenbaum.

<sup>2</sup> The estate of John J. Donovan, Jr.

parties agreed to submit their disputes to an arbitrator, and the same arbitrator has heard the parties' disputes for over a decade. The Superior Court retained jurisdiction over the case for the purpose of enforcing the agreement and related issues. As the arbitrator summarized, the siblings "were always at odds with their father," while John was often in the middle, "sympathetic to the views of his siblings but also supportive of his father and concerned for his welfare." Thus, "John worked with his siblings and his father to resolve disputes and was instrumental in forging an agreement which resulted in the creation of a trust for [Donovan] which John hoped would provide his father with financial security for the remainder of his life."

After John died in 2015, Donovan claimed that a codicil to John's will gave him authority to act on John's behalf. Pursuant to that purported authority, Donovan filed a number of self-benefiting documents with the registry of deeds that, among other things, were designed to deprive John's widow and children of their interests in various assets. Donovan also claimed that John wanted to make a posthumous confession that he and his siblings had committed tax fraud, thereby corroborating allegations made by Donovan that were previously discredited, and that the codicil instructed Donovan to submit paperwork to that effect with the Internal Revenue Service. Upon discovering

these filings, the siblings and John's estate submitted a demand for arbitration and contended that Donovan forged the codicil. In an award dated January 25, 2017, the arbitrator concluded that the codicil was "false and fraudulent." The arbitrator contemplated divesting Donovan of his interest in the trust as a sanction for his wrongdoing, did not do so "out of respect for what [the arbitrator] believed John would have wanted," but warned Donovan that there would "be no more second chances." A Superior Court judge confirmed the award, and Donovan did not appeal from that order.

Then, by letter to the arbitrator dated January 19, 2021, Donovan asked for various forms of relief, including entry of an order rescinding all prior orders entered in the arbitration proceedings. The letter reasserted Donovan's tax fraud allegations and suggested that John had legitimate reasons for instructing Donovan to report that fraud to the Internal Revenue Service. The arbitrator received documentary evidence from the parties and agreed to hear Donovan's testimony, after which the arbitrator would decide whether to hear any additional testimony from other parties. After hearing Donovan's testimony, the arbitrator decided not to hear any additional testimony and issued an award dated November 10, 2021, which concluded that Donovan was fraudulently trying to charge his children with tax fraud, and sanctioned Donovan by divesting him of his interest

in the trust. The arbitrator noted his prior reluctance to impose that sanction but concluded that "[e]nough is enough." A Superior Court judge confirmed the award, which is the subject of this appeal.

Discussion. "[A]n arbitration award is subject to a narrow scope of review" (citation omitted). Beacon Towers Condominium Trust v. Alex, 473 Mass. 472, 474 (2016). We "review an arbitrator's award to determine only whether one of the statutory grounds for vacating, modifying, or correcting the award has been met." Katz, Nannis & Solomon, P.C. v. Levine, 473 Mass. 784, 793 (2016). As pertinent here, the statutory grounds for vacatur include that "the arbitrators . . . refused to hear evidence material to the controversy . . . as to prejudice substantially the rights of a party"; "the arbitrators exceeded their powers"; "there was evident partiality by an arbitrator"; and "the award was procured by corruption, fraud or other undue means." G. L. c. 251, § 12 (a).

Donovan argues that the arbitrator "refused to hear evidence" by not permitting Donovan to present any testimony other than his own. G. L. c. 251, § 12 (a) (4). This argument disregards the history of the case and the context of Donovan's requests for relief. The arbitrator, who had spent over a decade arbitrating disputes between the parties, was exceedingly familiar with the parties and the underlying issues. Donovan's

2021 letter asked the arbitrator to rescind all his prior orders based on Donovan's previously discredited tax fraud allegations. The arbitrator received Donovan's documentary evidence and heard his testimony. After considering that evidence, the arbitrator concluded, based on his extensive experience with the case and prior rejection of the same unsubstantiated allegations, that Donovan had "brought before me another fraudulent application" and there was no need to hear further evidence regarding those allegations. Rather than refusing to hear evidence, the arbitrator exercised his discretion to place reasonable bounds on the scope of the evidence presented. See, e.g., Northland Inv. Corp. v. Goodwin Proctor LLP, 82 Mass. App. Ct. 272, 273-274 (2012).

Donovan also argues that the arbitrator exceeded his powers in divesting Donovan of his interest in the trust. See G. L. c. 251, § 12 (a) (3). However, the parties entered into an agreement that gave the arbitrator "discretion to award any remedy including sanctions, damages, attorney[']s fees . . . for any reason." This language gave the arbitrator broad authority to fashion an appropriate remedy for Donovan's wrongdoing and did not limit the arbitrator to imposing "discrete payments to compensate for specific expenses or wrongs," as Donovan argues.<sup>3</sup>

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<sup>3</sup> We note that Donovan faced criminal charges for fraud in connection with the codicil. He argues that his tax fraud

While Donovan also argues that the broad language, taken to its extreme, permitted the arbitrator to divest Donovan of his interest in the trust "just because he felt like it one day," that is not what occurred here. The arbitrator did not make the decision lightly, gave Donovan warning, and divested Donovan of his interest in the trust only after he repeatedly engaged in unconscionable conduct. Accordingly, the arbitrator did not "grant[] relief beyond the scope of the arbitration agreement, . . . award[] relief beyond that to which the parties bound themselves, or . . . award[] relief prohibited by law," and did not exceed his powers (citations omitted). Plymouth-Carver Regional Sch. Dist. v. J. Farmer & Co., 407 Mass. 1006, 1007 (1990).

Donovan's remaining arguments, that the arbitrator demonstrated "evident partiality" and that the arbitration award was procured by undue means require little discussion, as Donovan has not established a factual basis for either argument. See G. L. c. 251, § 12 (a) (1), (2). As to evident partiality, Donovan largely points to various strongly worded comments made by the arbitrator that, among other things, found fault with

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allegations were critical to his defense and that he was impermissibly sanctioned for presenting that defense. This argument fails as a matter of fact; the arbitrator sanctioned Donovan for filing the petition in the arbitration proceedings, not for making the same arguments in his criminal case.

Donovan's experts and reproached Donovan for his wrongdoing. The arbitrator made these comments based on his review of the evidence, and they do not suggest that the arbitrator was biased in reviewing that evidence or in deciding the merits of the petition. As to undue means, Donovan relies on his discredited allegations of tax fraud, but those allegations, even if they had not been discredited, would not establish that the instant award was procured by undue means.<sup>4</sup>

Judgment affirmed.

By the Court (Vuono,

Wolohojian & Toone, JJ.<sup>5</sup>),



Assistant Clerk

Entered: March 8, 2024.

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<sup>4</sup> Given our conclusion, we need not address Donovan's argument that the case should be remanded with instructions that a new arbitrator be appointed.

<sup>5</sup> The panelists are listed in order of seniority.

# EXHIBIT B

IN RE ARBITRATION AMONG  
 REBECCA M. DONOVAN, JAMES H. DONOVAN,  
 MAUREEN DONOVAN LANTZ, AND CAROLYN DONOVAN ROSENBAUM  
 AND  
 JOHN J. DONOVAN, Sr.  
 AND  
 JOHN J. DONOVAN JR.  
*Jurisdiction retained in the Business Litigation  
 Session of the Suffolk Superior Court,  
 Commonwealth of Massachusetts No. 03-4247*

### AWARD

This Arbitral Award orders relief as to the Letter Motion dated July 22, 2022 submitted by counsel for the Trustee of Trust One – JJD (“Trust”), on which a telephonic hearing was held on July 25, 2022, with counsel for the Trustee, John J. Donovan, Sr. (“Donovan”), and the Estate/Donovan Siblings<sup>1</sup> in attendance. In response to my email request, a Supplemental Letter dated July 26, 2022 was also submitted by the Trustee’s counsel, and another telephonic hearing was held on July 26, 2022 with the same attendees.

The Letter Motion requested relief regarding three groups of properties owned by the Trust, identified in the Letter Motion as “Hamilton, MA; Pomfret, VT; and Aiken, SC” (“Three Properties”). I incorporate by reference my Arbitral Awards dated January 25, 2017 and November 10, 2021, which, in addition to the facts adduced from the Letter Motion and the Supplemental Letter, provide the requisite background for the parties’ disputes and Donovan/Linda Donovan’s conduct warranting the relief ordered therein and herein.

As the arbitrator imbued with discretionary authority concerning Trust property and disputes as to same, I have authority to enter this Order as to Donovan as a party to this arbitration and the former beneficiary of the Trust, and as to Linda Donovan as agent of Donovan, who also directly participated in the proceedings relating to the issues raised in the Letter Motion.

At the telephonic hearings on July 25 and 26, 2022, I provided an opportunity for all counsel to be heard. However, I find that neither Donovan nor Linda Donovan have standing to object to any of the relief provided herein because: 1) Donovan and Linda Donovan have waived and released any ownership, rights, title or interest of any kind or form in the Three Properties; 2) Donovan and Linda Donovan have repeatedly settled, renounced, and/or released any such purported interests under oath; and 3) Donovan forfeited all of his rights under the Trust pursuant to my November 10, 2021 Arbitral Award.

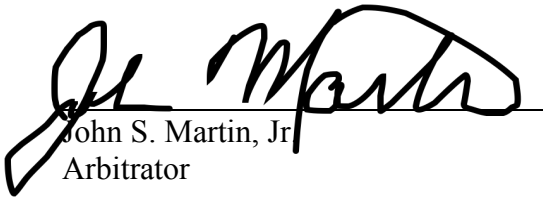
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<sup>1</sup> This term refers to Donovan’s adult children (Rebecca, James, Maureen, Carolyn) and the Estate of the late John Donovan, Jr.

For the reasons set forth in the prior Arbitral Awards, the Trustee's counsel's Letter Motion and Supplemental Letter, and at the telephonic hearings, I hereby Order:

- 1) Neither Donovan nor Linda Donovan have any ownership, rights, title or interest of any kind or form in Trust property, including the Three Properties;
- 2) Neither Donovan nor Linda Donovan had any right at any time to lease the Three Properties to third-parties or authorize third-parties to use the Three Properties for residential, commercial, or other purposes;
- 3) The Trustee and his agents are entitled to free and unfettered access to, and possession of, the Three Properties and may take action as necessary to gain entry to the Three Properties; and
- 4) The Trustee is authorized to engage counsel and incur Trust expenses in connection with any necessary action to dispossess and/or remove Donovan, Linda Donovan, and any third-parties from the Three Properties, including bringing an eviction action, civil trespass action, or other action; and

Dated: July 27, 2022

  
John S. Martin, Jr.  
Arbitrator

# EXHIBIT C

## COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 2382CV01127JOHN J. DONOVAN,  
Plaintiffvs.WILLIAM T. HURLEY, ESQ., in his capacity as  
Trustee of TRUST ONE REALTY TRUST,  
Defendant6/23/2024  
RECEIVED & FILED  
CLERK OF THE COURTS  
NORFOLK COUNTY**MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS' MOTION TO  
COMPEL BINDING ARBITRATION and MOTION TO DISMISS THE COMPLAINT****FACTUAL BACKGROUND:**

There is a long and tortured history prior to Plaintiff filing his complaint with this Superior Court. In 2002, disputes arose between John J. Donovan ("Plaintiff" or "Donovan") and his five adult children (collectively, the surviving siblings and the estate, "Siblings/ Estate") regarding the ownership of certain properties of Hamilton, MA, Pomfret, VT, and Aiken, SC). All parties executed an Interim Settlement Agreement in March 2003 ("2003 ISA") where Donovan disclaimed ownership interest in all of the properties. After Donovan reneged on the 2003 ISA's terms, Siblings/ Estate brought the Business Litigation Session ("BLS") action against Donovan (No. 03-4247 BLS). All parties subsequently executed a 2004 Mediation Settlement Agreement ("2004 MSA") to resolve the matters before retired Justice Martin as an Arbitrator. 2004 MSA stated the following:

Any matter, controversy, dispute, claim, disagreement or issue, arising out of or related to this Agreement, the ISA or any of the other Related Documents, any matter contemplated herein or therein, including, without limitation, the choice, finalization and/or interpretation of the terms of any agreements, documents, exhibits or schedules, including those not yet drafted, the intent of the parties and any legal disputes involving any of the parties hereto (as determined by the Arbitrator), shall be determined, settled and resolved by final and binding arbitration.

Judge Martin affirmed the enforceability of the 2003 ISA and a Final Settlement Agreement in 2007 ("2008 FSA"). 2008 FSA created Trust One with Donovan as the original beneficiary, John Jr. as the original Trustee, and Judge Martin with exclusive discretionary power to replace the Trustee of Trust One. The BLS held 2008 FSA as enforceable. After John, Jr. passed away in April 2015, Judge Martin appointed William T. Hurley Jr. ("Hurley") as the Trustee of Trust

One in January 2015. After discovering Donovan's fraudulent filings with various Town Clerks, Judge Martin entered an Arbitral Award in 2017 ("2017 Arbitral Award") sanctioning Donovan by reducing his income distributions from Trust One. In 2019, Judge entered an Arbitral Order ("2019 Arbitral Order") finding that Donovan violated the 2008 FSA.

Upon Donovan's additional fraudulent and criminal acts, Judge Martin issued a 2021 Arbitral Award ("2021 Arbitral Award") which extinguished Donovan's entire beneficiary interest in Trust One as sanctions for his misdeeds. Although Judge Martin alerted all parties his plan to retire from his practice, he noted in 2021 Arbitral Award the importance of him staying on this case:

To the extent there are likely to be future proceedings, there is a substantial likelihood that, like the present application, there will be attempts to relitigate what I have already decided. At a minimum, the appropriate disposition of any application will require a deep understanding of all that has gone before. In these circumstances, I feel it would be irresponsible for me to withdraw and I will not.

In August 2022, the BLS entered a final judgment affirming the 2021 Arbitral Award and denied Donovan's motion to vacate the 2021 Arbitral Award. The 2021 Arbitral Award and the BLS's affirmation was affirmed by the Appeals Court, and recently, Supreme Judicial Court declined to further hear the case. Judge Martin entered a 2022 Arbitral Award ("2022 Arbitral Award") finding that Donovan and his wife had no ownership, rights, title or interest of any kind or form in Trust properties.

Donovan filed a new complaint with this Superior Court on December 15, 2023, falsely claiming the following: Donovan as the sole beneficiary of a nominee trust, Trust One Realty Trust; and Donovan as the sole beneficiary of a nominee trust, Aiken Property Trust. Donovan seeks first, to remove Hurley as a Trustee and to appoint William Graylin or other acceptable and appropriate third party to act as a trustee; second, to obtain accounting from Hurley; third, to restrain Hurley from making withdrawals from any trust accounts and to award Donovan rights of inspection of his properties.

#### DISCUSSION:

"The Massachusetts [Arbitration] Act 'expresses a strong public policy favoring arbitration as an expeditious alternative to litigation for settling commercial disputes.'" *Miller v. Cotter*, 448 Mass. 671, 676 (2007) (citations omitted). "A written agreement to submit any existing controversy to arbitration or a provision in a written contract to submit to arbitration any controversy thereafter arising between the parties shall be valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract." G.L. c. 251, § 1. "A party aggrieved by the failure or refusal of another to proceed to arbitration under an agreement . . . may apply to the superior court for an order directing the parties to proceed to arbitration." G.L. c. 251, § 2(a).

There is no doubt in my mind that Donovan wanted another adjudicator who does not know the long history of his misdeeds which led to his entire beneficiary interests being extinguished.

Certainly, Donovan did not want to appear before Judge Martin who, unfortunately for Donovan, knows every detail of the long history of this case ("I am uniquely situated to expeditiously resolve these matters based on my familiarity with the parties, their history and the underlying facts") (2023 Arbitral Order, upon Judge Martin's review of this complaint). Judge Martin is the Arbitrator who appointed Hurley as the trustee when John, Jr. passed, and Judge Martin is the only person who should hear this issue in the binding arbitration.

Other claims of seeking accounting records and inspection of properties and preventing Hurley from making withdrawals all fall under the subject matter to which only Judge Martin can decide. In addition, Donovan does not have standing to claim such verified complaint before this court as his beneficiary rights have been terminated.

I dismiss Donovan's complaint. Although tempted to dismiss the complaint with prejudice, the Court follows the traditional principle that dismissal without prejudice should be allowed unless the defendant will suffer some plain legal prejudice other than the mere prospect of a second lawsuit. The record has not shown that Plaintiff's counsel acted in bad faith and simple negligence to justify such an extreme penalty. Defendant has not sought dismissal with prejudice nor made any showing that such dismissal now would somehow impair their ability to defend against these claims in the arbitration, or that he would be unfairly prejudiced in some other way if the court were to allow the motion to dismiss. See *Quest Systems, Inc. v. Zepp*, 28 Mass.App.Ct. 489, 496-97, 552 N.E.2d 593 (1990).

ORDER:

For the foregoing reasons, Defendant's motion to compel arbitration before Judge Martin is ALLOWED. Defendant's motion to dismiss the complaint is ALLOWED.

Hamm. J.  
Catherine H. Ham  
Justice of the Superior Court

DATE: 5/29/24

# EXHIBIT D

FW: Hurley v. Donovan - 2022-CP-02-02654

Rick Detwiler <rickdetwiler@callisontighe.com>

Mon 6/24/2024 12:42 PM

To: Madolyne E. Daigle <MaddieDaigle@callisontighe.com>

 3 attachments (741 KB)

2022-07-27\_Trust One\_Arbitral Award re. 2022-07-22 Letter.pdf; 6-3-24 Memo and Order - Donovan v. Hurley 2382CV01127.pdf; MARCH 8. 2024 MASS. APPEALS COURT.pdf;

Exhibit D (Email to Peil with Attachments. )



**Richard C. Detwiler, Member**

**PHONE 803.404.6900**

**DIRECT 803.404.6964**

**CELL 803.331.3418**

---

**From:** Rick Detwiler

**Sent:** Friday, June 21, 2024 5:13 PM

**To:** Jeff Peil <jpeil@hugginsfirm.com>

**Cc:** Brad Brodie (brodielawfirm@gmail.com) <brodielawfirm@gmail.com>; slu@murphyking.com; 'Sullivan, Henry' <HSullivan@mintz.com>

**Subject:** RE: Hurley v. Donovan - 2022-CP-02-02654

**Importance:** High

Dear Mr. Peil,

I am responding to your Motion to Intervene, which apparently seeks to continue a long-coming trial at the last minute on a frivolous basis. I am not surprised that your client, who just completed a stint in prison and has been repeatedly sanctioned by various judicial officers in multiple jurisdictions, has failed to give you critical facts.

I attach to this email the following:

1. The Arbitral Award of John S. Martin, Jr. dated July 27, 2022, finding, among other things: “Neither Donovan nor Linda Donovan have any ownership, rights, title or interest of any kind or form in Trust property,” which includes the subject property.
2. The Decision of the Massachusetts Appeals Court, dated March 8, 2024, which the Massachusetts Supreme Judicial Court declined to further review, affirming the 2021 Arbitral Award extinguishing Donovan’s beneficiary interest in Trust One – JJD.
3. The Memorandum of Decision and Order of the Hon. Catherine M. Ham, dated June 3, 2024, finding, among other things, that Donovan does not have standing in a Massachusetts action to raise the same arguments that you have included in your motion because Donovan does not have any beneficiary rights.

Donovan no longer has any interest in Trust One – JJD. The property at issue is solely owned by the nominee trust, Aiken Property Trust, which has Trust One – JJD as its sole beneficiary. These facts have been adjudicated and cannot be disputed. As such, the allegations in your Motion to Intervene are demonstrably false and misleading to the Court. Assuming that you were not aware of these facts when you agreed to file your Motion on Donovan’s behalf, you are now on notice.

Please be advised that this email is my attempt to consult with you pursuant to Rule 11 of the SC Rules of Civil Procedure. If your Motion is not withdrawn promptly by Monday morning, I will file a Motion for Sanctions against both you and your client for this frivolous and fraudulent Motion. Please immediately advise me as to your intentions.

Sincerely,

Rick Detwiler



**RICHARD C. DETWILER** MANAGING MEMBER

|                          |               |              |
|--------------------------|---------------|--------------|
| Palmetto Armory Building | <b>PHONE</b>  | 803.404.6900 |
| 1812 Lincoln Street      | <b>DIRECT</b> | 803.404.6964 |
| Columbia, SC 29201       | <b>CELL</b>   | 803.331.3418 |

**MAILING ADDRESS**

P.O. Box 1390  
Columbia, SC 29202-1390

[\*\*VCARD\*\*](#)

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**Richard C. Detwiler, Member**

|               |                     |
|---------------|---------------------|
| <b>PHONE</b>  | <b>803.404.6900</b> |
| <b>DIRECT</b> | <b>803.404.6964</b> |
| <b>CELL</b>   | <b>803.331.3418</b> |

---

**From:** Jeff Peil <[jpeil@hugginsfirm.com](mailto:jpeil@hugginsfirm.com)>  
**Sent:** Friday, June 21, 2024 3:45 PM  
**To:** Shannon Jowers <[SJowers@aikencountysc.gov](mailto:SJowers@aikencountysc.gov)>  
**Cc:** Brad Brodie <[brodielawfirm@gmail.com](mailto:brodielawfirm@gmail.com)>; Rick Detwiler <[rickdetwiler@callisontighe.com](mailto:rickdetwiler@callisontighe.com)>; Matt Jepertinger <[mattjepertinger@callisontighe.com](mailto:mattjepertinger@callisontighe.com)>  
**Subject:** Hurley v. Donovan - 2022-CP-02-02654

Ms. Jowers:

I filed the attached motion to intervene and motion for continuance in the above-listed matter today. I understand that there may be a hearing scheduled for next week. I ask Judge Griffith to consider continuing the trial date until this motion is considered.

Respectfully,

**Jeffrey F. Peil**

Huggins Peil, LLC  
7013 Evans Town Center Boulevard  
Suite 502, Evans, Georgia 30809  
Telephone: (706) 210-9063  
Facsimile: (706) 210-9282  
[E-mail: jpeil@hugginsfirm.com](mailto:jpeil@hugginsfirm.com)

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