

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough, Master-in-Equity

Case No. 06-CP-10-991

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S.C. Supreme Court

Robert B. Shealy, Jr., ...Appellant,

v.

The Paul E. Shelton Revocable Trust, ...Respondent.

RECORD ON APPEAL
VOLUME II OF II

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INDEX

VOLUME I

Order of Removal dated February 21, 2006	1
Order of Reference dated October 23, 2007	2
Order dated September 16, 2008	3
Order dated November 19, 2008	9
Order dated April 15, 2009	17
Order dated May 13, 2009	29
Statement of Creditor's Claim dated July 15, 2005	44
Disallowance of Claim, dated July 21, 2005	45
Petition for Allowance of Claim dated August 18, 2005	46
Petition for Declaratory Judgment and Specific Performance dated January 16, 2006	48
Motion to Remove the Petition for Declaratory Judgment and Specific Performance to the Circuit Court dated February 10, 2006	58
Motion to Remove and Consolidate dated February 10, 2006	59
Answer to Petition for Declaratory Judgment dated February 16, 2006	61
Lis Pendens dated March 20, 2006	64
Amended Summon and Complaint dated June 26, 2008	67
Answer and Counterclaims dated July 10, 2008	73
Motion for Summary Judgment, Memorandum in Support with attached Exhibits dated July 29, 2008	80
Motion to Substitute Party dated August 18, 2008	97

Affidavit of Robert B. Shealy, Jr. dated August 14, 2008	105
Motion to Alter or Amend dated September 8, 2008.....	125
Amended Summons and Complaint dated November 17, 2008.....	132
Answer and Counterclaims of the Paul E. Shelton Revocable Trust to Amended Complaint dated November 21, 2008	146
Reply dated December 23, 2008	153
Motion for Summary Judgment dated January 6, 2009 and Memorandum with attached Exhibits in Support dated January 6, 2009	157
Motion to Alter or Amend Judgment dated May 8, 2009	214
Transcript dated August 19, 2008	228
Transcript dated October 30, 2008.....	295

VOLUME II

Transcript of Proceedings of March 24, 2009 mis-dated May 13, 2009	323
Deposition of Shirley Huggins dated April 25, 2006	366
Deposition of Robert B. Shealy, Jr. dated August 10, 2006	411
The Paul E. Shelton Revocable Trust dated January 23, 2002 – Restatement dated July 21, 2003.....	448
Deed dated January 23, 2002	522
Listing Agreement dated February 17, 2003	528
Agreement to Buy and Sell dated June 10, 2003	530
Deed dated August 29, 2003	541

Deed dated September 20, 2003	546
Right of First Refusal dated September 24, 2003	553
Thomas P. Cothran, Esquire letter dated July 5, 2005	559
E-mail dated February 26, 2005	560
E-mail dated June 8, 2005	561
E-mail dated June 12, 2005	562
E-mail dated June 23, 2005	563

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

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1 (Court convenes.)

2 THE COURT: This is the case of Robert B. Shealy,
3 Jr. as Plaintiff versus the Estate of -- Paul Shelton
4 Revocable Trust and then the Estate of Paul Shelton has
5 now counter-claimed against Robert Shealy,
6 individually. Is that correct, Mr. Freeman?

7 MR. FREEMAN: Yes.

8 THE COURT: We've got just once case, now,
9 2006-CP-10-0991.

10 All right. So today we have the Defendant Trust's
11 Motion for Summary Judgment and that has been filed by
12 Mr. Freeman.

13 Mr. Freeman, I apologize for getting you back up
14 here, but I think I had one of those judicial changes
15 of mind.

16 You may proceed.

17 MR. FREEMAN: Thank you, Your Honor.

18 Your Honor, this is a motion for summary judgment.
19 The issues here are actually fairly narrow at this
20 point.

21 I first want to point out that Rule 56(e) requires
22 that a Defendant or a non-movant respond to a Summary
23 Judgment by setting forth specific facts that give rise
24 to a requirement that there is an issue for trial.
25 They haven't done that.

1 And the reason they haven't done it is very
2 simple. They can't. There are a lot of little side
3 issues, as the Court probably has seen by looking at my
4 Memorandum, but the very core issue is that there is a
5 contract or an alleged contract of a right of first
6 refusal.

7 The right of first refusal is not a contract
8 because it does not have the essential elements of a
9 contract. Most specifically there is no agreement as
10 to the compensation to be paid. There is no agreement
11 as to the type of listing that would be contemplated
12 underneath the right of first refusal. There is no
13 agreement as to the duration of the listing. And there
14 is no agreement as to what the sale price would be.

15 Now, it's very much like my saying to you, Your
16 Honor, I'll buy your car that I know well, and I'll buy
17 it for -- within two weeks, and you say fine, I'll sell
18 it to you in two weeks. And two weeks goes by and you
19 sell it to somebody else. I say, look, you made an
20 agreement with me, Your Honor, to sell your car. You
21 said yes but we never agreed on the price. And you
22 would be right. I would be wrong.

23 And, simply, you cannot supply missing terms here.
24 You can't supply missing terms with extraneous
25 evidence, and there is no affidavit in here other than

1 the affidavit that Mr. Shealy filed to the previous
2 Summary Judgment where he makes all kinds of
3 allegations about things that are not admissible in
4 evidence. And they're not admissible because they're
5 either hearsay or they violate the dead man's statute.
6 He wants -- he's got himself in a spot where he's filed
7 an action for breach contract, specific performance,
8 declaratory judgment; he doesn't have a contract.

9 The contract is not ambiguous. If it was
10 ambiguous you could use the construction rule and maybe
11 you could find -- make some sense out of this contract.
12 You can't do that here, because it's not ambiguous.
13 And you can't supply missing terms by interpreting an
14 alleged ambiguity, because it's devoid of terms that
15 even would make it ambiguous.

16 Simply put -- I cited the Court to a couple of New
17 Jersey cases --

18 THE COURT: Let me stop you and make sure I
19 understand your argument. Your statement was the
20 contract is not ambiguous. Your position is it's not a
21 contract.

22 MR. FREEMAN: Exactly.

23 THE COURT: Okay. Therefore, there is no
24 contract.

25 MR. FREEMAN: The document is not ambiguous so as

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1 to be able to interpret it to make it a contract. And
2 there isn't any South Carolina law that I could find,
3 Your Honor, on this very narrow issue, although there
4 is plenty of law that says you have to have essential
5 terms to every contract or it's not a contract.
6 Meeting of the minds. Right?

7 But the two cases that I will cite out of New
8 Jersey are just -- they're square on. And all I can
9 say is that there is nothing to be tried here if we had
10 a trial. We're going to be at the very same spot at
11 the end of the Plaintiff's case that we are right now.

12 I ask that you grant this Summary Judgment, Your
13 Honor.

14 THE COURT: The names of those two New Jersey
15 cases, I'm looking for.

16 MR. FREEMAN: Page 8, I think, Your Honor, at the
17 last half of the page.

18 THE COURT: Jeffrey Realty versus Ben Petes
19 (phonetic) 2006. Cite's on top of page 9.

20 MR. FREEMAN: No, Your Honor. Well, that's --
21 yes. That's correct. There are two cases; the second
22 paragraph. First there is a discussion of the
23 restatement, and then the second paragraph talks about
24 commission as an essential element of any contract.
25 Then the Defendant's implied promise to pay a

1 commission, which you could say, well, there is an
2 implied promise. The Court in that case held that
3 because the parties have failed to agree on the amount
4 of the commission it's not enforceable. And I --
5 thinking about why we wouldn't have a case right on
6 point in South Carolina, the reason is nobody has ever
7 tried to enforce a contract that doesn't have essential
8 terms.

9 Thank you.

10 THE COURT: I'm with you. Matter of compensation
11 is the essential element of any contract. That's cited
12 in that case.

13 MR. FREEMAN: That's correct.

14 THE COURT: Also Weikert Realty versus Ryan
15 (phonetic). An implied promise to pay commission is
16 unenforceable for failure to agree. The case cite is
17 Jeffrey Realty versus Ben Tice, 2006 case. Okay.
18 Mr. Futeral?

19 MR. FUTERAL: Thank you, sir.

20 First, Your Honor, I wanted to respond to the
21 filing of a memorandum or other materials in response
22 and rather than kill another tree and cloud up the
23 record you'll note we filed a Memorandum in opposition
24 to the Defendant's Motion for Summary Judgment along
25 with exhibits, back in August of '08. In reviewing the

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1 renewed summary judgment motion I didn't see anything
2 argued any differently. In fact, it was pared down a
3 little bit, so rather than refile the same materials
4 again, changing the caption from the Estate of Paul
5 Shelton to now the Trust, we're simply falling back on
6 what we had previously filed directly in response to
7 all of these issues.

8 THE COURT: And if I recall correctly last time
9 the three of us were here I had granted summary
10 judgment, Mr. Nelson came back. The issue was the
11 proper party.

12 MR. FUTERAL: Yes.

13 THE COURT: Now, we're getting more into the
14 substantive argument. You agree with that?

15 MR. FUTERAL: Exactly, Your Honor.

16 THE COURT: So you're relying on your previous
17 memo in opposition.

18 MR. FUTERAL: Yes, we had nothing new to add.

19 Your Honor, the Trust argues to you that there is
20 no case law in South Carolina that deals with this
21 issue when, in fact, there is.

22 What sets this case apart from other cases,
23 wherein there is no meeting of the minds. We concede
24 obviously the amount of compensation is an essential
25 term to any contract between these parties.

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1 If there had been no prior course of dealings
2 between these parties I don't think I would have filed
3 this lawsuit at all, because the terms of whatever it
4 is, what was promised in terms of the listing are
5 completely unspecified, as counsel points out. He's
6 correct.

7 However, what sets this case apart, and is one of
8 the exhibits I believe attached to the Defendant's
9 initial motion, is that these parties had a prior
10 course of dealings. I'm referring then to South
11 Carolina case law which is the Carolina Aviation versus
12 Glenn Falls Insurance Company case. Citation on that
13 is 214 South Carolina 222. It's a 1949 case; still
14 good law. In that case the Court examined a verbal
15 agreement to insure between an insurance company and
16 the insured, to cover the value of an airplane against
17 theft, robbery and pilferage.

18 The plain crashed, parts were stolen from the
19 wreckage and the insured made a claim for the damaged
20 plane. The insurer denied coverage. They claim they
21 never agreed to insure it and the Court in examining
22 said, yes, we can come to terms on this because you
23 have a contract for insurance on another airplane.
24 We're going to take those terms, prior course of
25 dealings, and apply them to this situation.

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1 What we have with Mr. Shealy and now the Trust, or
2 moreover what happened with Mr. Shelton, is that he had
3 previously listed property, sold it for him at four and
4 a half percent commission and then -- was then, not
5 long after that fact, deemed to be the listing agent
6 for the sale of the this property as well.

7 Of course, the document doesn't say four and a
8 half percent. Nor does it determine that -- there are
9 some arguments that are raised in the summary judgment
10 motion regarding the exclusivity of this arrangement.

11 But what we're asking the Court to do is recognize
12 the fact that there is a document deeming him to be the
13 listing agent; to give that full force and effect; to
14 simply look at the prior course of dealings, which we
15 have in this case, and supply those same terms to this
16 listing. It's that simple.

17 We think the Carolina Aviation case is squarely on
18 point with this. So, again, if they hadn't had a prior
19 course of dealings we wouldn't be having this motion.

20 THE COURT: Isn't there some question of fact as
21 to what the commission was supposed to be? Weren't
22 there some e-mails back forth about that?

23 MR. FUTERAL: This is where we get into the
24 repudiation, but to answer your question, yes. At one
25 point Paul Shelton testified -- he either put it in a

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1 affidavit or in testimony, I can't recall specifically
2 which, but where he raised commissions of 6%. He
3 wouldn't be entitled to that based on their prior
4 course dealings and we wouldn't be seeking that at
5 trial either.

6 The other issue raised in the e-mails back and
7 forth was the e-mail leading up to June 2008 where
8 Mr. Shealy was trying to sell the property or trying to
9 show it to the gentleman who had the right of first
10 refusal. And then some back and forth regarding his
11 participation as an agent, and then following with that
12 a letter from Attorney Cothran saying, if you might be
13 the listing agent we'll deal with it at that time.

14 I do believe also that the Trustee offered him a
15 1% commission, which may have been via e-mail -- I know
16 there is testimony to that fact -- when the dispute
17 started. One percent, which he declined 1%.

18 THE COURT: So the argument is that the prior
19 course of dealings takes it out of the realm of no
20 contract?

21 MR. FUTERAL: Yes, sir; that's it.

22 THE COURT: That's the legal argument?

23 MR. FUTERAL: That's it.

24 Your Honor, since Mr. --

25 THE COURT: Let me ask you, did you cite that in

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1 your memo?

2 MR. FUTERAL: Sure did. It is on page 5 of 9 of
3 the Memorandum, there is a discussion of Carolina
4 Aviation.

5 THE COURT: Versus Glenn Falls Insurance Company.

6 MR. FUTERAL: Okay.

7 There is some other stuff about custom and usage.
8 That's not a law we're using in this case.

9 Your Honor, since Mr. Freeman -- well, he hasn't
10 argued the other points in his summary judgment motion.
11 I'll leave it up to Your Honor whether you want me to
12 cover those or take a seat until he's had an
13 opportunity to address those or however you want to do
14 it.

15 THE COURT: Let me ask you, while you're
16 standing -- page 6, you cite Hilton Head Realty versus
17 the Skull Creek case. That's the one I -- in the past
18 I have sort of looked to as to whether or not there
19 exists a right to -- I think in that case the Court
20 found that there was.

21 MR. FUTERAL: They did.

22 THE COURT: Is there any similarity, factually, to
23 that case?

24 MR. FUTERAL: Somewhat. To the extent that the
25 Trustee would argue that there cannot be any contract

1 or any agency here, because it wasn't reduced to
2 writing. The Skull Creek case addresses that. Says
3 look, when they show a property and there is a ready,
4 willing and able buyer they have earned their
5 commission. I believe the language written by Judge
6 Goolsby. Better practice would be get this in writing,
7 however, notwithstanding what -- I think it's Title 40
8 or 44 -- notwithstanding what the statute says,
9 they're still entitled to their commission.

10 Now, in this case never got so far as to bring a
11 ready, willing and able buyer to the table. Hence the
12 legal claim for repudiation that the Trustee was
13 repudiating the contract that was in existence and
14 pulling it off the market, if you will, or not allowing
15 him to actively market it and sell it.

16 THE COURT: Isn't that basically what any real
17 estate commission contract calls for, is the
18 presentation of a buyer in order to earn a commission?

19 MR. FUTERAL: Absolutely. But in juxtaposition to
20 a breach of contract claim for repudiation, the law of
21 repudiation says it doesn't matter if the time for
22 performance has arrived. It doesn't even matter if
23 conditions precedent have yet to be met. If a party to
24 a contract repudiates it at any time you can then sue
25 on a contract and seek damages. Therein is the overlap

1 between the fact that, no, there wasn't a ready,
2 willing and able buyer. That's not what we're going to
3 argue. But that there was a repudiation of the
4 contract before any of that arose and under South
5 Carolina law once they repudiate, even though he hasn't
6 found a buyer yet, the law allows him to seek damages
7 as a result of the repudiation.

8 In our brief, Your Honor, I quote directly from
9 Judge Ralph King Anderson's request to charge. There
10 isn't a great deal of case law on this particular
11 issue, repudiation. Whenever I've gone in to try a
12 case that relates to it I go right back to the jury
13 charge as written by Judge Anderson, and that's where
14 he indicates in the charge, there is no necessity in
15 such case for tender of performance or waiting for the
16 time of performance to arrive, such as he finds a
17 buyer. No notice may be given that the repudiation is
18 treated as a breach, and so on.

19 Now, in this case we never would have been able to
20 bring forth a ready, willing and able buyer because she
21 wouldn't let him proceed. There are some e-mail
22 exchanges where the Trustee is indicating she's going
23 to be traveling to South Carolina; that there are
24 others that are interested in the property, and that
25 she was going to show it to them.

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1 Her testimony in her deposition was, the reason
2 why she allowed Mr. Shealy to show that property to the
3 gentleman who had the right of first refusal,
4 Mr. Gilbreath, was that she was quote-unquote
5 accommodating Mr. Gilbreath.

6 I think there is enough here from which the finder
7 of fact can conclude that she had started to market
8 that property, was continuing to market it and then
9 decided against it when the dispute arose with our
10 client.

11 THE COURT: Doesn't that right of first refusal
12 only apply to him? Isn't he the only prospective
13 purchaser? Does that not make him some type of
14 material witness and if he intends or doesn't intend --
15 doesn't it all hinge on that one? If there is, given
16 your argument there is in fact a right of first refusal
17 contract, and it's only contingent on one individual,
18 isn't it significant to your case that that one
19 individual is going to buy or not going to buy?

20 MR. FUTERAL: Yes and no. One, it means that in
21 order to move forward Mr. Gilbreath would be given the
22 opportunity to purchase it and then know of any
23 subsequent offers and such under the terms of that
24 agreement, with his right of first refusal. But with
25 respect to our claim for repudiation, to answer Your

1 Honor's question, no, it does not matter to us. Once
2 she repudiated the contract as she had done leading up
3 to the letter from Attorney Cothran, again, falling
4 back on Judge Anderson's interpretation, it says here,
5 repudiation of a contract before the time for
6 performance which amounts to a refusal to perform at
7 any time, gives the adverse party the option to treat
8 the entire contract as broken, and to sue immediately
9 for damages as for a total breach.

10 Again, no necessity for tender of performance,
11 compliance with conditions precedent, and so on. So
12 right now with the repudiation claim, even though we
13 don't have a buyer, even though Mr. Gilbreath may still
14 have his right of first refusal, we can seek damages
15 for the repudiation, hence the breach of the contract
16 itself.

17 THE COURT: How are you going to prove what your
18 damages are?

19 MR. FUTERAL: We would simply look back, the
20 damages arose at the time of repudiation. We would
21 then offer testimony to the Court through experts,
22 including our own client who is out there selling
23 beachfront property, of what generally speaking the
24 price of that property, what they would have been able
25 to get for it if they had actively marketed it during

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1 that economic climate, and then Your Honor would take
2 the prior course of dealings, four and a half
3 commission -- four and a half percent commission off of
4 that fair market value or that sales price. That's
5 essentially it.

6 THE COURT: You don't think that's too
7 speculative?

8 MR. FUTERAL: I don't think it's too speculative.
9 I realize it's not calculated to a mathematical
10 certainty. But what they're able to do is take every
11 MLS listing from every beachfront home in that
12 particular area and give a fair market value for it.

13 Remember, Your Honor, I understand there was never
14 a contract to purchase it from a buyer, but this would
15 be no different than any other expert I brought in to
16 court to testify as to what the fair market value is of
17 a particular piece of property in a particular moment
18 in time. It's pretty much the same.

19 THE COURT: What do you contend the date of breach
20 to be?

21 MR. FUTERAL: The date of breach would, at the
22 outside, be the date of Attorney Cothran's letter. So
23 it's all right around June, July into August of 2008.
24 It's a pretty tight timeframe there. So we're not
25 looking at pinpointing it within a 12-month period to

1 try and get some estimation of fair market value.

2 THE COURT: All right.

3 MR. FUTERAL: Thank you, Your Honor.

4 THE COURT: Mr. Freeman, you have a reply?

5 MR. FREEMAN: I do, Your Honor. Thank you.

6 Couple of things. One is that Mr. Futeral very
7 nicely assumes a repudiation. And the only document,
8 the only evidence supporting his claim of repudiation
9 is that letter from Tom Cothran. If the Court looks at
10 the letter from Tom Cothran you'll find there is no
11 repudiation of the contract; period. So that, anything
12 else that he said after he uses the word repudiation,
13 including citing the inimitable Ralph King Anderson.
14 Jury charges are of no -- to no avail.

15 Secondly, if they were relying on a course of
16 prior dealing, which certainly is a way that you can do
17 certain things in the law, you would probably not sue
18 for a 6% commission. That's exactly what they did.
19 They sued, filed a 6% claim against the Estate, and
20 sued for a 6% commission.

21 Then when they found out that they didn't have any
22 basis for a 6% commission, after having admitted in the
23 deposition that commissions are negotiable, they say,
24 okay, now it's 4.5, because that's what Paul Shelton
25 paid in a single previous transaction -- not a course

1 of dealing -- in a single previous transaction. And
2 now they're saying so ergo 4.5 in that case, 4.5 in
3 this case and, therefore, we supplied the missing term
4 to a contract that doesn't have the term. You can't
5 get there from there, Your Honor.

6 Bobby Shealy filed an affidavit which I addressed
7 with a direct memorandum and what he wants to do is --
8 and the unfortunate absence of Mr. Shelton, he wants to
9 talk about what Mr. Shelton wanted for him and what he
10 was going to do for him and what their arrangement was
11 and none of that is admissible. If you're going to
12 file an affidavit in opposition of summary judgment it
13 has to be based upon personal knowledge, a, and, b, has
14 to be admissible evidence. They have neither. And
15 Paul Shelton is not here for us to understand what, if
16 anything, he wanted.

17 So Paul Shelton and Bobby Shealy never agreed on a
18 percentage of commissions. They never agreed upon the
19 sale price. They never agreed upon the duration of a
20 listing. They didn't agree on any of the essential
21 terms that a broker has to have in order to collect a
22 commission from a seller. I say they just can't get
23 there from there.

24 THE COURT: Let me take you back through the
25 documents. I'm looking to the exhibits, to

1 Mr. Shealy's affidavit. There is, in fact, an
2 exclusive-right-to-sell listing agreement. That's from
3 1220 East Ashley Avenue, and then I believe that's the
4 one that Dr.~Gilbreath purchased; did he not?

5 MR. FREEMAN: That is correct.

6 THE COURT: That deal went down.

7 MR. FREEMAN: He had that. That's what he had to
8 have in this case.

9 THE COURT: Then there was something happened.
10 Some sort of dispute. Seems to me there was another
11 document that was created. That's what gets us here.

12 MR. FREEMAN: Right of first refusal is the only
13 other document.

14 THE COURT: That's what I'm looking for.

15 MR. FREEMAN: Well, it should be attached to my
16 Motion for Summary Judgment.

17 THE COURT: I want to locate that.

18 MR. FREEMAN: I'm talking about the Memorandum,
19 Your Honor.

20 THE COURT: Yes.

21 MR. FREEMAN: It's Exhibit B to my most recent
22 memorandum.

23 THE COURT: Okay. Here it is. Yes. Right of
24 first refusal. Let's go to it. This is not some
25 standard form. This looks like something that was

1 created by these parties; right?

2 MR. FREEMAN: That is correct.

3 THE COURT: All right. So they first cite the
4 whereas clause by contract dated June 10 of '03.
5 Assuming that's the one we just looked at. The deal
6 that went down?

7 MR. FREEMAN: Yes, sir.

8 THE COURT: So Mr. Gilbreath is given right of
9 first refusal to purchase 1219 East Ashley. That's
10 across the street. I think that's on the water.

11 MR. FREEMAN: That is correct.

12 THE COURT: Front beach?

13 MR. FREEMAN: 1219 is front beach; correct. 1220
14 is not.

15 THE COURT: Which is actually two separate TMS
16 numbers, the property?

17 MR. FREEMAN: Correct.

18 THE COURT: More whereas clauses. What's this
19 fourth whereas clause? 1220 was conveyed to a third
20 party.

21 MR. FREEMAN: 1220 was conveyed to a third party.
22 Dr.~Gilbreath. Gilbreath bought 1220 and he wanted a
23 right of first refusal on 1219. He didn't want
24 somebody buying that house that he didn't have some
25 control over.

1 THE COURT: He doesn't want anybody between he and
2 the beach?

3 MR. FREEMAN: Well, the house is still there, but
4 it was there at the time but --

5 THE COURT: All right. So the three parties each
6 are paying Mr. Shelton \$100.

7 MR. FREEMAN: That's what they say, Your Honor,
8 but that would come up at trial. They did not.

9 THE COURT: Therefore, they agree as follows.
10 One, should Paul Shelton elect to sell, says shall have
11 right of first refusal.

12 Par two is waived, void upon certain conditions.
13 Including Mr. Gilbreath deceasing. I think my
14 recollection was there is a specific exclusion in the
15 event of the death of Mr. Shelton, it would survive his
16 Estate. Am I not right?

17 MR. FREEMAN: I think that's correct, Your Honor.
18 That would be on the last -- on page 3 of 6. Actually
19 the death of Gilbreath, Eva Ravenel or Bobby Shealy
20 voids the rights under the agreement. Which is kind of
21 interesting really. Has nothing to do with this case
22 but why should Dr.~Gilbreath be penalized if one of the
23 real estate agents die? His right of first refusal, as
24 I read that, would go away.

25 THE COURT: All right. Paragraph 3, page 2,

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1 (reading) ... has occurred. That has or has not been
2 done?

3 MR. FUTERAL: No, sir.

4 MR. FREEMAN: Here's what happened, just so if
5 Your Honor recalls. When Shirley Huggins took over as
6 the Trustee, she didn't much like this right of first
7 refusal. The whole idea of it, it's just not a very
8 good thing for a seller. Because it's hard to go out
9 and get a buyer and then say to the buyer, well, I've
10 got to go run that by somebody else before you can buy
11 it. But she said, okay, Gilbreath has this right of
12 first refusal. And assuming he paid his hundred
13 dollars and can prove that, I believe his right of
14 first refusal is a valid contract. I think he has
15 that.

16 So she decided that she would offer it to him to
17 see if he would by-pass this process of putting it on
18 the market, finding a buyer and then having to take a
19 contract to him for his acceptance.

20 THE COURT: Dr.~Gilbreath has only got to respond
21 to the offer.

22 MR. FREEMAN: Exactly. Except or reject, or fail
23 to except. So that was the whole thing about showing
24 Dr.~Gilbreath the house at the price established by the
25 Trustee which was 2.2 million. Gilbreath saw the house

1 and he says I'm not interested at 2.2. I guess I'll
2 wait and see what happens, essentially.

3 So Gilbreath for all practical purposes is out of
4 this picture. And we're down to dealing with the
5 Trustee and Bobby Shealy.

6 THE COURT: That's why I raised that factual
7 question. Anybody got an affidavit from Dr.~Gilbreath
8 as to whether or not he ever intends to exercise it or
9 is it still a contingent exercise of first refusal?

10 MR. FREEMAN: I don't have an affidavit. It
11 wasn't an issue. It may become an issue at some point
12 but it's not an issue. In the first place, property's
13 not for sale.

14 THE COURT: When did the property come off the
15 market?

16 MR. FREEMAN: It was never on the market. It was
17 never on the market. This contract doesn't say if Paul
18 Shelton dies his Trustee or his Estate or anybody else
19 who has the legal right to manage it has to put it on
20 the market. It's not there. Shirley Huggins is the
21 Trustee. Shirley Huggins says the property's not for
22 sale. I offered it to Gilbreath to get rid of that
23 right of first refusal. If he wants it at 2.2 it's
24 his. If he doesn't want it at that I'm not selling.
25 That's it. It's been rented ever since.

1 THE COURT: That did take place?

2 MR. FREEMAN: Yes.

3 THE COURT: That was when?

4 MR. FREEMAN: Gilbreath didn't give up any rights
5 because there was no bona fide offer from some third
6 party.

7 THE COURT: When did that take place?

8 MR. FREEMAN: Before this lawsuit was filed.

9 THE COURT: 2005?

10 MR. FREEMAN: Yes.

11 THE COURT: All right.

12 MR. FREEMAN: Fairly shortly before. A couple of
13 months, I think. That was when Shealy says you've got
14 to put it on the market and my client says, no, I
15 don't.

16 THE COURT: Paragraph 4 talks about time being of
17 the essence. We're five-plus years down the road on
18 this contract.

19 MR. FREEMAN: Correct.

20 THE COURT: September 2003.

21 MR. FREEMAN: I don't really know what that means
22 in the context of this right of first refusal.

23 THE COURT: Doesn't sound essential to me, six
24 years later. We had a lawsuit pending for three.

25 MR. FREEMAN: Almost four.

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1 THE COURT: The market has certainly not gotten
2 any better.

3 MR. FUTERAL: No.

4 THE COURT: All right. I'll let you respond to
5 that.

6 MR. FUTERAL: Couple of things.

7 I heard what Mr. Freeman had to say regarding what
8 Ms. Huggins was doing vis a vis Gilbreath seeing the
9 house. We have and can give Your Honor copies of their
10 depositions. I believe some of them were filed as
11 well. They're not lengthy, and this would be the first
12 time I'm hearing that particular characterization.
13 That's not what the testimony reflects in terms of
14 showing the house to Dr.~Gilbreath. Her only
15 explanation offered was that she was accommodating him.
16 But better evidence we have is to what was going on
17 there and whether this property was actually going to
18 be sold -- and let me clarify.

19 It appears that the Trustee's position is none of
20 this matters because we're never going to sell it, and
21 we weren't trying to sell it. And she testifies we
22 were just accommodating Mr. Gilbreath. Well, that
23 flies square in the face of her e-mail which is one of
24 the exhibits in your package there, Your Honor. And it
25 is an e-mail that she sent to Bobby Shealy on 6/8/2005.

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1 It's not long.

2 THE COURT: Hold on one second. See if I can
3 locate it. Is it attached to your --

4 MR. FUTERAL: It is Exhibit 12. I believe it may
5 very well be attached to our Reply and may even be
6 included with the Defendant's motion.

7 THE COURT: June 8 of '05.

8 MR. FUTERAL: Yes, sir.

9 THE COURT: I see it. It starts out Thanks Bobby?
10 I see something that same date, Exhibit H to the Trust
11 Memo In Support Of Summary Judgment filed January.
12 Starts out Thanks Bobby, my feeling is that --

13 MR. FIELDING: That's exactly the one.

14 Now, this would be -- her position now coming into
15 trial is, we weren't selling this property so none of
16 this matters. We don't have to sell it. But in
17 reading through here I think a fact finder can clearly
18 determine that there was an intent to sell or that she
19 was selling it. She said, my feeling is he should have
20 the first opportunity for the house. She's referring
21 to Dr.~Gilbreath. Really it doesn't matter what her
22 feelings are. He has a right of first refusal.

23 Then she goes on to say several people have
24 contacted her and are very anxious to see it. When I
25 was there Dr.~Gilbreath is the only one I would let

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1 view it. I will of course actively market it later
2 this month.

3 What she's talking about, this is passive
4 marketing, if you will. People are contacting her to
5 see the property. Actively marketing, of course, would
6 be putting it in the MLS and s for sale sign. Says --
7 she's talking about being there July 4th, et cetera.

8 Now, this would be an entire month away. When she
9 gets there, I will contact the people that have
10 contacted me to see if anyone wants to see it at that
11 time.

12 So if she's not selling the property there
13 wouldn't be much of any reason for her to respond or
14 show this property.

15 Also, Your Honor, bear in mind this woman,
16 although not licensed as a realtor in South Carolina,
17 is a realtor. I think that's pretty germane to what's
18 going on here. She's familiar with agency, agreements
19 and things of that nature. She's no stranger to this.

20 This is where Bobby begins to take exception with
21 what's going on. If, due to the prior course of
22 dealing, they have the same relationship, then she, as
23 the Trustee slash owner, what have you, is not allowed
24 to be showing this property to other people at all.
25 She has to go through Bobby.

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1 Second, she's sending him conflicting messages
2 because he does show it to the gentlemen who has right
3 of first refusal but indicating she's going to do the
4 rest herself. That, of course, leads into the letter
5 that was sent by counsel to Bobby Shealy. There's been
6 argument that we have no proof of a repudiation, but I
7 believe we've got some of the best proof of that, in
8 writing. On behalf of Shirley Huggins, Mr. Cothran
9 says he's reviewed the right of first refusal and the
10 document expressly deems you as listing agent. I
11 believe this is not the same as naming you as listing
12 agent. Pardon me. I don't know what the heck he's
13 talking about. But he's taken the definition of the
14 word deemed to say, well, that doesn't name you as the
15 listing agent. And then et cetera, he defines what he
16 thinks deem is. And so on.

17 Nothing in the right of first refusal restricts
18 other actions by the owner. Says she doesn't wish for
19 you to take any action regarding this property until
20 she gives you explicit written instructions. Your
21 entitlement to a commission, if any, as the deemed
22 agent will be dealt with at a future time.

23 In other words, basically we're not going to -- we
24 don't believe we have to honor the right of first
25 refusal, you don't have to be listing agent. They take

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1 this position that deemed means something else. Not
2 withstanding the fact that as you continue through the
3 Trust document it does say that his participation as an
4 agent survives Mr. Shelton's death. There is a
5 reference there several times throughout.

6 They won't take any position with respect to the
7 commission. At least, Attorney Cothran doesn't. Of
8 course, Ms. Huggins did; 1%. Bobby Shealy testified he
9 spoke with her and said that's not what we did before.
10 One percent is not fair for all the work in showing
11 this house.

12 So we believe standing alone this letter would be
13 proof of a repudiation. Certainly we think it would be
14 a genuine issue of material fact warranting from
15 hearing from these witnesses directly, who she was
16 talking to about her interest in selling it and so on.
17 And, of course, you have the others; the contract that
18 they had before.

19 By the way, the 6%, for what it's worth,
20 translates into yours truly drafting a Complaint and
21 taking an industry standard and sticking 6% in there.
22 As testified to him, their prior course of dealing was
23 four and a half percent.

24 THE COURT: That was the commission earned in the
25 prior sale to Dr.~Gilbreath?

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1 MR. FUTERAL: On that prior sale that Bobby Shealy
2 was involved in. That's the one I'm talking about.
3 Four and a half in writing.

4 THE COURT: I'm assuming the testimony will tell
5 me that happened as a result of the commission being
6 reduced to four and a half percent.

7 MR. FUTERAL: I believe there was a reduction with
8 respect to Dr.~Gilbreath and then, of course, as you
9 note in the document, the other realtor, the seller,
10 she was -- in the event it sold in a transaction to
11 Dr.~Gilbreath she was one of the realtors to be
12 involved as well. But if not, then it was just Bobby
13 as the listing agent.

14 THE COURT: She's not a party to this action.

15 MR. FUTERAL: No, she is not.

16 THE COURT: All right.

17 MR. FUTERAL: I assume she could assert something
18 if, in fact, Dr.~Gilbreath wanted to buy the property
19 in the future. But I don't think she's even testified
20 in this case.

21 MR. FREEMAN: I have a couple of observations.
22 One, I want to make sure the Court doesn't think I was
23 trying to mislead the Court as to whether or not
24 Shirley Huggins every thought about selling the
25 property. What she did was she elected not to sell it.

1 A right she has. That doesn't -- you can't bootstrap
2 that into a repudiation by coupling it with that letter
3 from Tom Cothran.

4 THE COURT: Anything in writing to substantiate
5 that, she's not going to sell? An e-mail to
6 Mr. Shealy?

7 MR. FREEMAN: Yes, and Shealy even acknowledges
8 she's going to rent it in one of the e-mails. And he
9 even says to her at one point, which he's now saying --
10 if you recall he said, I just said that because some
11 lawyer told me to say this. He said to her, well, of
12 course you have a right to sell it yourself. Which
13 every owner of real estate has a right to sell it
14 themselves. They don't have to be a broker, they don't
15 have to be anything to sell a piece of real estate that
16 they own or have control over. So --

17 THE COURT: I acknowledge that. And maybe that's
18 where -- seems to be some of what that letter is from
19 Mr. Cothran, has to do with the very last sentence of
20 this right of first refusal document. Bobby Shealy
21 shall be deemed listing agent as to any other sale of
22 the property. Well, that's got nothing to do with this
23 right of first refusal.

24 MR. FREEMAN: Exactly.

25 THE COURT: That's just if right of first refusal

1 doesn't go down. As I've noted, time is of the
2 essence; death of Shelton doesn't void the rights but
3 death of the other parties does. Significantly
4 Paragraph 1, should Paul Shelton elect to sell the
5 property. On his death he can't sell, but there is a
6 provision in there that allows for the PR of the Estate
7 or in this case it was owned by a trust. Wasn't that
8 your first argument? Paul Shelton was never really a
9 party?

10 MR. FREEMAN: In the first one, yes, he wasn't.
11 We got over that hurdle, then you let him back in the
12 door.

13 THE COURT: Woops.

14 MR. FUTERAL: Your Honor, the facts -- the
15 argument that he can't bootstrap himself into some
16 position of arguing repudiation because she's decided
17 not to sell, I think that applies conversely. She
18 can't not repudiate a contract when she's trying to
19 sell it and then later take the position, you know
20 what, no harm no foul, I'm just going to rent it out
21 indefinitely.

22 In other words, she didn't cure the repudiation by
23 stopping efforts to sell this property. Our position
24 would be she did exactly that because a lawsuit had
25 ensued.

1 THE COURT: All right.

2 MR. FUTERAL: I think the evidence in all would
3 show she started to sell this property, there was an
4 intent to sell the property, and as she moved forward
5 she even expressed her intent to meet with people
6 regarding the sale of the property, and at that time he
7 had a right to be the listing agent for that property
8 and she wouldn't let him do it.

9 THE COURT: I don't know about that.

10 MR. FUTERAL: You mean under the Trust document,
11 Your Honor?

12 THE COURT: No, I mean under -- this all pertains
13 to a right of first refusal. I don't see how you can
14 bootstrap a -- Bobby Shealy shall be deemed listing
15 agent as to sale of the property. If that's where
16 we're going I can readily grant summary judgment on
17 that one; to have a blank statement that says Bobby
18 Shealy shall be deemed listing agent as to any other
19 sale of the property. There are absolutely no terms,
20 nothing to support that whatsoever. As to the right of
21 first refusal --

22 MR. FUTERAL: -- there is. That's where we stand
23 right now. There was a showing to Dr.~Gilbreath and
24 then no follow up. Of course, these exchanges back and
25 forth regarding her showing it individually and such as

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1 well. Again, even if she had the right to do that
2 Gilbreath still had a right of first refusal and he
3 still had four and a half percent on that transaction
4 which they clearly repudiated. They weren't even going
5 to give him that. Forget the deemed listing agent for
6 any other sale. This surrounds out of him trying to
7 show the property to Gilbreath, and get a first offer
8 out of him and then, of course, discussions as to
9 what's going to happen if someone else puts in an
10 offer.

11 So I understand what Your Honor is saying and
12 we're centered on this Gilbreath transaction just like
13 the prior course of dealing at four and a half percent.

14 THE COURT: All right. I'm taking that deemed
15 listing agent -- I don't think there is anything to
16 support that. What I find unusual about this is that
17 the death of Shelton does not void the rights of the
18 other three. However, under Paragraph 1 of the
19 therefore clause, should Paul Shelton elect to sell the
20 property, is a condition precedent to anything to
21 happen. That gives the personal representative or the
22 Trustee of the Estate full authority, full right to do
23 whatever she wants to do if she's going to determine to
24 sell the property. The only evidence in the record is
25 that she has decided not to sell the property. That's

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1 my finding.

2 Furthermore, under Paragraph 4, time is of the
3 essence to this agreement. This agreement was entered
4 into in September of 2003. I don't know what date this
5 man died but evidently --

6 MR. FREEMAN: I think it was August of '04, Your
7 Honor.

8 THE COURT: Even then -- I think clearly within a
9 year is not an essential time element to take it out of
10 that time period. Usually time is of the essence in a
11 contract is a relatively short period of time. I don't
12 know what sort of case law you've got on that, but it's
13 been -- it was three years before suit was filed. I
14 understand with him dying and there was some rigmarole,
15 but I think an owner has an absolute right to decide
16 whether or if they want to sell the property. For
17 whatever the reason the property is not now for sale,
18 it's not been for sale, therefore, I find that there is
19 no right of first refusal at this point in time, due to
20 the Trustee's right to pull the property off the market
21 and the fact that the time has run.

22 As a further ruling the issue of Bobby Shealy
23 deemed the listing agent is insufficient evidence to
24 support any terms of a contract to that statement in
25 this document.

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1 What gives this document some credence is that
2 you've got three pages of signatures and notary
3 signatures and that type of thing. It gives it some
4 understanding, but it evidently came out of a
5 transaction in which somebody wasn't happy with their
6 commission being cut so they came up with some other
7 proposal and back in 2003, four and five when the real
8 estate market was so hot in Charleston County that
9 everybody wanted to get their piece of pie at the
10 present price and in 2008 and nine you can't get any
11 price for any property. That's why half of Folly Beach
12 is for sale right now.

13 So on that basis I'm going to grant summary
14 judgment. Okay? At least you got in the game.

15 MR. FUTERAL: Your Honor, if I may, and this is
16 not to argue Your Honor's ruling but avoid filing
17 59(e)'s and the like, and I appreciate your patience.

18 One, the -- as to the repudiation and what we were
19 saying, she was trying to sell the property through
20 these e-mails, discussing it, and that quoting as legal
21 authority Ralph King Anderson, repudiation before the
22 time for performance which amounts to refusal to
23 perform, which we believe they've done.

24 Is there a finding by Your Honor that there is no
25 evidence that she was trying to sell the property at

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1 that time or no repudiation by her that she wouldn't
2 perform in the future?

3 THE COURT: The finding of the Court is that
4 should Paul E. Shelton elect to sell the property, is
5 applicable to Ms. Huggins, as the Trustee; is who owns
6 the property, right? Therefore, if she's not going to
7 sell the property then she's not required to sell the
8 property.

9 Mr. Gilbreath's right of first refusal only exists
10 to respond to some other offer. It's been six years
11 and there has been no other offer. There is nothing
12 for him to respond to. There is no -- I find there is
13 no repuditory breach because there is nothing to
14 breach.

15 When I look at it from a contractual standpoint
16 the first question is, is it a contract, is there a
17 breach, are there damages? Under the question of is
18 there a contract, I think there are elements of a
19 contract. I don't think all the elements or the terms
20 of a contract are sufficiently stated to create what
21 the actual terms are. But a right of first refusal is
22 something that's in response to some other thing. That
23 other thing has never materialized in the time period
24 from which this document was granted. Therefore, the
25 time is of the essence clause, I think, is sufficient

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1 to waive the right of first refusal. Nothing has ever
2 materialized in years. We just don't have anything to
3 respond against.

4 So from that standpoint I don't think that there
5 is a contract to breach, that there has not been a
6 breach even if it's a repuditory breach. And I guess,
7 Mr. Futeral, my position on that would be this. If the
8 party has a clear contract and it says I'm going to buy
9 from you a hundred widgets at X dollars, a dollar a
10 widget, then I don't buy those hundred widgets and I
11 tell you, I ain't buying those widgets. I've
12 repudiated a breach. But there is an intervening
13 element here. There is some third party that triggers
14 this entire document. Without that third party being
15 there, there is nothing, no first refusal to respond
16 to. That's where I'm having trouble and it's because
17 of that that I don't see any way, realistically, that
18 the Plaintiff can establish any element of damages.

19 Ultimately, I don't think you can get to a damages
20 question. And I'll state this for you and for the
21 record. I had Tommy Hartnett come in here. He had
22 appraised a piece of property on Maybank Highway on
23 Johns Island at \$50,000 an acre and came in here a year
24 later, nine months later, to support a lower price on
25 the property. And when I asked him for his comparables

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1 to support that lower price he had none. I got no
2 comparables to support that lower price. And what was
3 significant about that is because there had been no
4 sale. No sales. Well, no sales -- appraisals rest on
5 comparables. There had been no sales. So there may be
6 something out there. I understand where you are.

7 MR. FUTERAL: Back at that time.

8 THE COURT: But the reality of the market is it's
9 gone right now. Evidently, according to the newspaper,
10 property is percolating again. So there is a
11 possibility.

12 MR. FUTERAL: Interesting thing about the
13 repudiation of a contract when this comes up is that a
14 repudiation of a contract isn't actually a breach of
15 contract. Take your example about widgets. Let's say
16 you and I had a contract that said next year, 12 months
17 from now, I'll buy those widgets. And six months into
18 it I go, you know what, I'm not going to do that. The
19 time hasn't come. It's not a breach of the contract.
20 It is saying I repudiate the contract. I'm not going
21 to do it. That's why we brought this lawsuit, because
22 he had the right of first refusal, perhaps four and a
23 half percent off the contract, if it had sold in
24 commission, and when all that arose you get the letter
25 from Cothran and an e-mail from her and they're

1 basically saying no. We might give you 1%. We think
2 that's fair. But you're not the agent for this
3 transaction. So that's why we said it's not a breach.
4 It's a repudiation of what should have been a contract
5 between these parties.

6 I'm just clarifying that so that Your Honor
7 understands why we would bring a lawsuit before there
8 has actually ever been a breach of it. Because we
9 figured, and I guess the law kind of assumes, what
10 would be the point of doing that? They already said
11 they weren't going to. They repudiate.

12 THE COURT: Right. And I don't know whether,
13 Mr. Futeral, to hang that on that as a personal
14 services contract, so you get what you bargained for or
15 whether -- I think what's really driving the train in
16 this instance, from my perspective is, everybody is
17 relying on -- nothing happens without some third party
18 offer. And it's got to be in writing and evidently
19 from the e-mail you showed me from Ms. Huggins,
20 evidently there was some interest but it doesn't look
21 like anything ever materialized to the point of a
22 written offer. There was some activity going on in
23 that summer of 2005 but there was never anything for
24 Mr. Gilbreath to respond to.

25 MR. FUTERAL: True.

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1 THE COURT: Had there been something I think that
2 probably would have been timely, would have happened
3 but that didn't happen. All realtors work with time is
4 of the essence because that's, one, fairly standard
5 and, two, you don't get your money until the deal
6 closes.

7 MR. FUTERAL: Do I understand Your Honor's ruling
8 correctly as far as the DJ as to any potential sale in
9 the future there is no right of first refusal for
10 Gilbreath anymore?

11 THE COURT: Yes. I'm wiping out that right of
12 first refusal. Is there a lis pendens?

13 MR. FUTERAL: Only ask, for the record, any delays
14 in terms of time is of the essence were not caused by
15 my client whatsoever. He hustled and was ready to
16 market this property and they weren't -- there is no
17 evidence that Mr. Gilbreath did anything to delay the
18 potential sale of this home. So I understand Your
19 Honor's talking about time is of the essence, so many
20 years have passed, but the Trust document speaks that
21 it will survive his passing, et cetera, and we didn't
22 do it. She did.

23 THE COURT: I don't know why that is. But
24 evidently he was in ill health or something. I don't
25 know why they would do that. I don't think anybody at

1 that table sat there that day and signed that document
2 thought they would be in litigation six years later.
3 That's where we're going to be if I don't kill this
4 thing. That's my ruling. I didn't think I was going
5 to do that when I came in here but sometimes I surprise
6 myself.

7 MR. FUTERAL: Thank you, Judge.

8 (Hearing concluded.)

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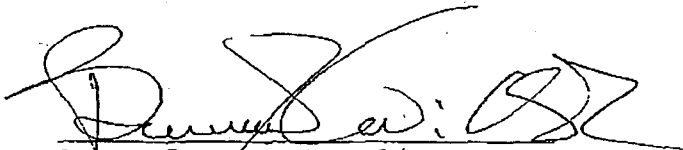
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1
2 STATE OF SOUTH CAROLINA)
3) C E R T I F I C A T E
4 COUNTY OF CHARLESTON)
5

6 I, Bernadette A. Cali, Notary Public, do
7 hereby certify that the within hearing was taken and
8 transcribed by me; and that the foregoing pages are
9 a true and accurate transcript of the within proceedings. I
10 further certify that the persons were present as stated.

11 I further certify that I am not of counsel
12 or kin to any of the parties to this action, nor am I
13 interested in the result of the said action.

14 IN WITNESS WHEREOF, I have hereunto
15 subscribed my name, this May 23, 2009.
16

17
18 
19 Bernadette A. Cali, CSR
20 Notary Public
21 My Commission Expires
22 April 27, 2010
23
24
25

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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 :
COUNTY OF CHARLESTON) CASE NO. 06-CP-10-991

IN THE MATTER OF:) DEPOSITION OF:
)
 PAUL E. SHELTON,) SHIRLEY HUGGINS
)
ROBERT B. SHEALY, JR.,)
)
) Petitioner,)

DATE: April 25, 2006
TIME: 1:00 p.m.
REPORTER: Lisa A. McCarn
LOCATION: Futeral Law Firm
 1004 Anna Knapp Boulevard, 2nd Floor
 Mount Pleasant, SC 29464

COPY

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Fax: (843) 795-0108

A P P E A R A N C E S

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For Shirley Huggins: LAW OFFICE OF FLEET FREEMAN
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I N D E X T O E X A M I N A T I O N S

	Page
Examination by Mr. Nelson	3
Certificate of Reporter	45

I N D E X T O E X H I B I T S

Petitioner's:

Exhibit No. 1 (Title to Real Estate)	6
Exhibit No. 2 (e-mail, 26 Feb 2005)	8
Exhibit No. 3 (e-mail, 28 Feb 2005)	12
Exhibit No. 4 (e-mail, 20 April 2005)	13
Exhibit No. 5 (e-mail, 7 June 2005)	14
Exhibit No. 6 (letter, June 7, 2005)	15
Exhibit No. 7 (e-mail, 8 June 2005)	17
Exhibit No. 8 (e-mail, 8 June 2005)	19
Exhibit No. 9 (e-mail, 8 June 2005)	20
Exhibit No. 10 (e-mail, 12 June 2005)	23
Exhibit No. 11 (e-mail, 23 June 2005)	24
Exhibit No. 12 (letter, July 5, 2005)	28
Exhibit No. 13 (e-mail, 6/8/2005)	31
Exhibit No. 14 (Right of First Refusal)	36
Exhibit No. 15 (Petition For Declaratory Judgment or Specific Performance)	39

SHIRLEY HUGGINS,

having been duly sworn, testified as follows:

EXAMINATION BY MR. NELSON:

Q Ms. Huggins, my name is Tom Nelson. I'm the attorney for Bobby Shealy or Robert Shealy, who, as you know, has a claim against Paul Shelton's estate for a commission on that beach house. Just real briefly: Have you ever given a deposition before?

A No.

Q Okay. Please speak clearly and slowly. Ms. McCarn here is going to be taking down every word you say. If you need to answer yes, say the word yes. Don't just nod your head or give an uh-huh.

A Okay.

Q You're not allowed to talk to Mr. Freeman at all, during the deposition. He's very limited in what he can do here, in terms of objections. If he does make an objection to one of my questions, you're still allowed to answer the question, unless he instructs you otherwise. Okay?

A Okay.

Q I'm going to start out just going through a quick background about you, and then I'm going to try to get into the case. I don't think this will

1 take too long.

2 A Okay.

3 Q Okay. Please state your name and spell it.

4 A Shirley Huggins, S-H-I-R-L-E-Y
5 H-U-G-G-I-N-S.

6 Q And where were you born, Ms. Huggins?

7 A Charleston, South Carolina.

8 Q Where do you currently reside?

9 A Deerfield Beach, Florida.

10 Q How long have you lived there?

11 A Since 1980.

12 Q And you are related to Mr. Paul Shelton?

13 A Yes.

14 Q How so?

15 A His wife was my father's sister.

16 Q Tell me a little bit about your educational
17 background.

18 A I finished high school. I graduated from
19 Limestone College in Gaffney, South Carolina.

20 Q Okay.

21 A I've taken additional courses throughout the
22 years, but that's it. I did not go on for my
23 masters or anything.

24 Q Do you have any licenses, certifications,
25 anything like that?

1 A I have a real estate license in the State of
2 Florida.

3 Q Okay.

4 A Before I left South Carolina, I was a real
5 estate agent in the State of South Carolina. That
6 expired many years ago, though.

7 Q Right. Do you have any other family members
8 in the County of Charleston?

9 A Yes, I do.

10 Q How many, approximately?

11 A I don't know. Maybe, six, eight. I have
12 direct cousins, and then they have families. And I
13 don't even know how many all of those are.

14 Q Are any of them licensed realtors?

15 A Yes.

16 Q Who are they?

17 A Bobby Baker.

18 Q Okay. How are you related to Bobby Baker?

19 A His mother and I are first cousins.

20 Q Who does he work for; do you know?

21 A He is a broker in charge of his office,
22 Folly Island Realty.

23 Q Have you ever been arrested?

24 A No.

25 Q If you'll look in front of you, I've got a

1 set of documents out there?

2 A Uh-huh. (Affirmative.)

3 Q And we're going to go through most of them.
4 You might want to undo the binder clip. The first
5 document there is called "Title to Real Estate."
6 Have you ever seen this document before?

7 A Yes.

8 Q It appears that it is you, as "Trustee of
9 the Paul E. Shelton Charitable Remainder Trust,"
10 conveying property for \$415,000 to Edward Gilbreth
11 and Bonnie Gilbreth?

12 A Correct.

13 Q And did that transaction actually happen?

14 A Yes.

15 Q Do you know if this deed was recorded?

16 A As far as I know, it was.

17 Q Okay. And you can hand that to me, please.

18 MR. NELSON: I'd like to introduce
19 this as Exhibit No. 1.

20 (Exhibit No. 1 marked.)

21 Q You can skip over the next one, for now.
22 And your next document should be an e-mail. At the
23 very bottom, it should say, "Shelton Estate 00026"?

24 A Yes.

25 Q Do you recognize this e-mail?

1 A Yes.

2 Q It's dated February 26, 2005?

3 A Uh-huh. (Affirmative.)

4 Q "Shirley, hope this finds you fine and well.

5 Eva Ravenel, the agent representing Dr. Gilbreath

6 called me yesterday inquiring about Paul's house."

7 "Any chance of giving him a look any time soon?" Do
8 you remember if you responded to this e-mail?

9 A Yes.

10 Q By an e-mail or telephone?

11 A As far as I know, it was by e-mail.

12 Q Okay. Do you still have those e-mails?

13 A No.

14 Q Do you know where this e-mail came from?

15 A Where it came from?

16 Q Uh-huh. (Affirmative.)

17 A I don't know. It may have been one that I
18 turned over to my attorney. I'm not sure.

19 Q Are you in the habit of deleting e-mails,
20 saving e-mails?

21 A It depends. Some I delete, and some I save.

22 Q Because I've got about six or so e-mails
23 here that y'all produced to me, and they're all
24 Bobby Shealy to you. And I was curious if you
25 usually return the call or if you e-mailed him back?

1 Do you remember more than one or two occasions?

2 A The e-mails that I send, I usually do not
3 keep them. I don't know.

4 Q So you think you may have just deleted all
5 the ones that went to Bobby, but you saved all the
6 ones that --

7 A It's very possible. I really don't know for
8 sure, everything.

9 Q On this particular e-mail here, do you
10 remember what your response was to this?

11 A Not exactly. Probably, when I'm in the
12 area, possibly we could get together, but I don't
13 know exactly what I told him.

14 Q Sure.

15 MR. NELSON: I'd like to introduce this
16 one as Exhibit No. 2.

17 (Exhibit No. 2 marked.)

18 Q All right. Your next one should be an
19 e-mail dated February 28, 2005?

20 A Uh-huh. (Affirmative.)

21 Q Do you remember receiving this one?

22 A Yes, I do.

23 Q And you can take a minute to read it, if you
24 need to. Do you remember if you responded to it?

25 A I remember that there was several e-mails

1 back and forth that -- because I got several from
2 Bobby wanting to get into the house and then get
3 Dr. Gilbreth in. And, yeah, I'm sure that I
4 responded to it. Exactly what it was, I do not
5 recall. But I know that, at this point in time, we
6 were trying to accommodate him by letting him,
7 Dr. Gilbreth, get in to see the house.

8 Q And was it just a matter of coordinating
9 everybody's schedules to make that happen?

10 A Well, I live in South Florida.

11 Q Uh-huh. (Affirmative.)

12 A Yes.

13 Q Okay. So did you not want Bobby going in
14 there without you present?

15 A I did not give the keys to anyone, without
16 me being present.

17 Q Okay. Why is that?

18 A Why should I?

19 Q Excuse me?

20 A Excuse me, why should I? I had no reason to
21 do that. I'm sorry. It wasn't a matter of I was
22 trying not to. It's just I did not think that was a
23 good idea.

24 Q Okay. Was the house being rented anywhere
25 around this time?

1 A Not at this point in time. The house was
2 being renovated. We were doing a lot of work on the
3 house.

4 Q Did the contractor have the key?

5 A Yes, he did.

6 Q Okay. At what point did the house start
7 being rented?

8 A I rented the house -- November of 2005 was
9 the first time the house was ever rented.

10 Q Now, coming back to this e-mail here,
11 February 28th. At this point, what was going on
12 between you and Bobby Shealy, conversationwise? Why
13 was he calling you or e-mailing you to let you know
14 that somebody wanted to take a look at the beach
15 house?

16 A I don't know why. I can't answer for Bobby.

17 Q Did y'all have some sort of arrangement,
18 where you wanted him to list the property for you?

19 A No.

20 Q Did you think it was strange that he was
21 trying to show the property?

22 A Not at all. Due to the document that's in
23 place, not at all. He had been e-mailing that
24 Dr. Gilbreth wanted to see the home. I was trying
25 to accommodate him and let that happen.

1 Q Which document are you talking about?

2 A The First Right of Refusal.

3 Q Do you think Bobby, at this point, expected
4 any compensation for any work that he was doing, in
5 this respect?

6 A I don't know what Bobby was expecting.

7 Q Did you ever intend to compensate him for
8 any work that he was doing?

9 A If he sold the property, yes.

10 Q Okay.

11 A E-mailing me is not -- but if he had sold
12 the property, yes, he would have been compensated,
13 absolutely.

14 Q Do you know if he had a sign in front of the
15 house, at this time?

16 A No.

17 Q You don't know, or he did not?

18 A To my knowledge, he did not. Like I said, I
19 live 670 miles away. So I wasn't there to see the
20 sign each and every day. He had no permission to
21 have a sign.

22 Q Okay.

23 A There was no agreement.

24 Q Would you hand me that, please?

25 A Certainly.

(Exhibit No. 3 marked.)

Q Okay. Your next e-mail, April 20, 2005?

A Uh-huh. (Affirmative.)

Q Do you remember getting this e-mail?

A Yes, I do.

Q Do you know who Harvey Watford is?

A Harvey Watford is the man that rents the house directly across the street, the one that Bobby Shealy had sold for Paul in 2003 or whenever it was.

Q So is Harvey Watford a tenant to Gilbreth, Dr. Gilbreth?

A I don't know if he still is. From what I was understanding, at the time of this e-mail, he was. He was the tenant in the home at the time that the house was sold, and it was my understanding he was staying. Whether he's there now or not, I do not know.

Q Why would Bobby have sent you Harvey Watford's name --

A I had asked him for it, if he knew who that was in the house. And I don't really remember now why exactly I needed that, but it was something to do with the -- answering a question in the estate.

Q Did you ever contact Mr. Watford?

A No, I did not.

1 Q Do you know if you responded to this e-mail?
2 There's a question there. It says, "Any ideas when
3 that could happen?" And it appears he's referring
4 to Doctor, which I assume is Dr. Gilbreth coming to
5 see the house. Do you know if he responded to this
6 one, in April of '05?

7 A I do not recall exactly what might have been
8 said. I do know that I responded, because this was
9 in April, and I was planning a trip in the next
10 month or two. So I'm sure that I had responded
11 likewise.

12 MR. NELSON: I'd like to introduce that
13 one, as well.

14 (Exhibit No. 4 marked.)

15 Q The next e-mail here, June 7th; is that what
16 you have?

17 A Uh-huh. (Affirmative.)

18 Q Do you remember getting this one?

19 A Yes, I remember it.

20 Q "I have placed a call into Eva Ravenel." Do
21 you know why Bobby was conveying that message to
22 you?

23 A This was in May. In May of that year, I was
24 in Folly Beach. Bobby and Eva showed the house to
25 Dr. Gilbreth, and this was pertaining to that in

1 some relationship thereof.

2 MR. NELSON: I'd like to introduce that
3 as Exhibit No. 5.

4 (Exhibit No. 5 marked.)

5 Q Okay. Then your next one should be -- I
6 can't tell if this is a fax or what exactly this is.
7 It looks like it might be a fax dated June 7, 2005
8 from Bobby to Eva. Have you seen this document
9 before?

10 A Yes, I have.

11 Q Do you know how you came into possession of
12 this document?

13 A Bobby sent it to me.

14 Q Can you explain to me the significance of
15 this?

16 MR. FREEMAN: Object to the form.

17 A This was a fax that he sent to Eva Ravenel
18 regarding the house. Bobby had wanted Dr. Gilbreth
19 to see the house. I told him, at that time, my
20 price on the house, at that point in time, was 2.2.
21 If Dr. Gilbreth wanted to see it at that price, we
22 would arrange it.

23 Q So you had communicated a price to Bobby
24 Shealy?

25 A Yes, I did.

1 Q \$2.2 million?

2 A Right, for the sale to Dr. Gilbreth. That's
3 the only thing there.

4 Q Did this offer ever get put in front of
5 Dr. Gilbreth?

6 A When Dr. Gilbreth looked at the house -- and
7 I was thinking it was May, but it may have been
8 June, I'm not sure. When Dr. Gilbreth looked at the
9 house, I can only tell you that I had told Shealy
10 the price. I'm assuming, I don't know, that they
11 told Dr. Gilbreth the price.

12 Q So you never heard anything back, whether
13 Dr. Gilbreth accepted or rejected the \$2.2 million
14 offer?

15 A He never made an offer. He never made any
16 type of a -- no.

17 MR. NELSON: Can I introduce that as
18 Exhibit No. 6?

19 (Exhibit No. 6 marked.)

20 Q I'm thinking --

21 A I believe this goes with this.

22 Q Would have been the front of that one.

23 MR. NELSON: Lisa, would you attach
24 that as the third page?

25 Q Your next e-mail should say June 8, 2005?

1 A Uh-huh. (Affirmative.)

2 Q Do you remember receiving this e-mail?

3 A Yes, I do.

4 Q Do you remember if you ever responded to
5 this?

6 A I don't remember.

7 (Mr. Futeral enters.)

8 MR. NELSON: Can we go off the record,
9 for a second?

10 (Off-the-record discussion.)

11 Q So on this June 8th e-mail, you don't know
12 if you ever sent Bobby your fax number or responded
13 to his e-mail?

14 A Oh, I gave him my fax number, yes.

15 Q Okay. Did he ever fax you --

16 A I think this is what he faxed to me.

17 (Points to Exhibit No. 6.) You'll see the cover
18 sheet has the June 8th date on it.

19 Q Got you. This next one here, E-Mail Report,
20 it's dated June 13, 2005. Have you seen this
21 document before?

22 A No.

23 Q On the top right is the date.

24 A Oh, I'm sorry. Yes.

25 Q On the bottom, it's Bate's stamped number

1 34.

2 MR. FREEMAN: Excuse me a second, Tom.
3 I'm a little confused about your exhibit numbers.
4 Exhibit No. 6 is on the --

5 COURT REPORTER: The fax. This is the
6 front page.

7 MR. FREEMAN: Okay. That's what I
8 have. Exhibit No. 6, right?

9 MR. NELSON: Uh-huh. (Affirmative.)

10 MR. FREEMAN: What happened to 00033?

11 MR. NELSON: Do you want to make that
12 Exhibit No. 7? Stephan threw me off.

13 MR. FUTERAL: I have that affect on
14 people, you know.

15 (Exhibit No. 7 marked.)

16 Q Okay. This next one here is dated 6/13/05
17 at the top, but it's got a body of an e-mail in
18 there that's dated June 8th. Do you remember
19 receiving this one?

20 A Yes.

21 Q What did he fax at 11:30 the night before?
22 Is that the fax we just looked at?

23 A I believe it was, yes, because he says --
24 that was addressed to Eva, and that's what he's
25 referring to, yes.

1 Q Now, at this point in time, Bobby Shealy
2 sent you a number of e-mails. And I'm assuming,
3 y'all probably had some phone conversations. Did
4 y'all ever talk on the phone?

5 A We did.

6 Q So obviously, he's got an interest in this
7 house. He's trying to get the house sold. Y'all
8 never had any conversations about compensating him,
9 at this point?

10 A No.

11 MR. FREEMAN: Object to the form of the
12 question.

13 Q Did you think Bobby was doing this out of
14 the goodness of his heart?

15 A He's a real estate agent. That's what real
16 estate agents do.

17 Q They make a living, correct?

18 A Correct.

19 Q So you'd think Bobby probably expected to
20 get paid on this deal?

21 MR. FREEMAN: Object to the form.

22 A There was no deal.

23 Q For the work that he was doing?

24 A You don't get paid. In real estate, you do
25 not get paid until a property has sold and closed.

1 Q In the event that this property was sold and
2 closed, did you --

3 A He would have been compensated.

4 Q Okay. How about now? How about if the
5 property sold in the future, would Bobby Shealy --

6 A If he sold the property.

7 Q Is he going to be provided that opportunity?

8 A Let me just put this gently. Bobby has
9 caused me a lot of problems in the past year. As
10 far as I'm concerned, he stepped all over any
11 fiduciary he's had with me as a client. Am I going
12 to forget all this and list the property with him?
13 That would have to be seen.

14 Q At this point, had you given him the
15 opportunity to list the property, in June of 2005?

16 A At this point, the property is not for sale.

17 MR. NELSON: Can we introduce that as
18 Exhibit No. 8, please?

19 (Exhibit No. 8 marked.)

20 Q Your next e-mail, also dated June 8th, with
21 a Bate's stamp of 35 at the bottom. It says, "I
22 will keep you posted and you do the same."

23 A Uh-huh. (Affirmative.)

24 Q Do you know what he was talking about
25 keeping you posted about or you keeping him posted

1 about?

2 A Anything that was going on as far as with
3 the home, if anything -- if he got a contract from
4 Dr. Gilbreth or if anything else happened, if we got
5 the house ready or if I was going to list it or
6 whatever, at this point in time, all of the options
7 were still on the table.

8 MR. NELSON: Can we introduce that as
9 Exhibit No. 9? I know these e-mails are getting
10 tedious. Just bear with me.

11 (Exhibit No. 9 marked.)

12 A I understand.

13 Q Your next one should say June 12, 2005, with
14 a Bate's stamp of 36?

15 A Uh-huh. (Affirmative.)

16 Q Do you remember receiving this e-mail?

17 A Yes, I do.

18 Q So I guess, this is in response to the \$2.2
19 million offer that you had made to Dr. Gilbreth?

20 A Uh-huh. (Affirmative.)

21 Q Did Bobby Shealy convey that, and this is
22 his response --

23 A May I correct you just a moment?

24 Q Certainly.

25 A I did not make that offer to Dr. Gilbreth.

1 Q Okay.

2 A Okay. That's what I told Bobby Shealy.

3 Q What did you tell him?

4 A That that was the price I had on the home.
5 If he conveyed that to Bobby Shealy -- conveyed it
6 to Dr. Gilbreth, that was him conveying it. I
7 didn't tell Dr. Gilbreth directly. That's the only
8 thing I'm clearing up.

9 Q What is the significance of you putting a
10 \$2.2 million tag on the home?

11 MR. FREEMAN: Object to the form.

12 A I have no idea.

13 Q You told Bobby that the house is \$2.2
14 million?

15 A I told him that that was the price of the
16 home, if I was going to sell it. Okay? That's what
17 I'm saying. The house was never officially for
18 sale. Understand that.

19 Q Okay.

20 A Please.

21 Q But you had told Bobby, if somebody was
22 going to pay you \$2.2 million --

23 A That was the price. That was my price.

24 MR. FUTERAL: Pardon me, one second.
25 If you will, please, let him ask the questions.

1 THE WITNESS: I will. Please, I will.

2 MR. FUTERAL: And then, Tommy, if you
3 will, please, let her finish, before you start.

4 Otherwise, this deposition is going to be a little
5 choppy here. So y'all let each other finish.

6 BY MR. NELSON:

7 Q Did you ever tell Bobby Shealy that, if
8 someone was willing to pay \$2.2 million for the
9 home, you would sell the home?

10 A Yes.

11 Q Okay. But you did not consider that an
12 offer to sell the home?

13 A What I said was, you asked me did I tell
14 Dr. Gilbreth the house was 2.2? I just corrected
15 that to say, I did not personally tell Dr. Gilbreth
16 anything.

17 Q If I said that, I did not mean to say it
18 that way.

19 A Okay.

20 Q I was talking about Bobby Shealy conveying a
21 message for you to Dr. Gilbreth.

22 A Okay. Fair enough.

23 Q Do you remember if, on this June 12th
24 e-mail, did you ever respond to this e-mail?

25 A I really don't remember, if I did or not. I

1 really don't know.

2 MR. NELSON: I'd like to introduce that
3 as Exhibit No. 10.

4 (Exhibit No. 10 marked.)

5 Q Your next e-mail should be dated June 23,
6 2005?

7 A Uh-huh. (Affirmative.)

8 Q Do you remember receiving this one?

9 A Yes, I do.

10 Q At this point, before you received this
11 e-mail, what was your relationship with Bobby
12 Shealy? Did you still have him negotiating with
13 Dr. Gilbreth or maybe conveying messages to
14 Dr. Gilbreth? What did you have Bobby Shealy doing
15 for you, at this point?

16 A I didn't have Bobby Shealy doing anything
17 for me.

18 Q Okay.

19 A Okay? Nothing. I made an accommodation to
20 let Dr. Gilbreth see the home, because I had had
21 numerous e-mails from Bobby, telephone calls, and he
22 had called the attorney that Dr. Gilbreth wanted to
23 see the house. When I was there, in Folly Beach, I
24 said, "Okay. He can come in. We have paint cans
25 all over the place. We have -- the place is totally

1 torn up. It's being renovated, but if he wants to
2 come in and see it, he can." And that is how he got
3 into the house to see the house. I had not actively
4 asked Bobby Shealy to do anything in the sale of the
5 house.

6 Q Have you asked, at this point, any other
7 realtors to do anything in the sale of the house?

8 A No. On the sale of the house?

9 Q Uh-huh. (Affirmative.)

10 A No.

11 Q Okay. I'm not going to ask you if you
12 responded to this one because --

13 MR. NELSON: Let's introduce that as
14 Exhibit No. 11.

15 (Exhibit No. 11 marked.)

16 Q I've got here a letter dated July 5th, which
17 I'm assuming was your response to Bobby Shealy's
18 e-mail?

19 A Yes.

20 MR. FREEMAN: Object to the form.

21 Q At this point, what was your relationship
22 with Thomas Cothran? Was he your attorney?

23 A He's the attorney for the estate.

24 Q For the estate. And I'm trying to state
25 this without getting into anything that's

1 attorney/client privileged. Your position, at this
2 point, was that Bobby should stop listing the house
3 or doing whatever he was doing with the house. Why
4 did you ask Mr. Cothran to convey this letter?

5 MR. FREEMAN: Object to the form.

6 A Because this e-mail clearly states that what
7 did I want him to do, advertising, et cetera, et
8 cetera. Now, this had -- this came after numerous
9 e-mails, like I said, from Bobby Shealy, which I had
10 told Bobby, from the get-go, I am not actively
11 trying to sell the house right now. I do not know
12 what is the best thing for us to do for the estate,
13 and I'm not pushing the sale of the house, at this
14 point in time.

15 And I asked Tom Cothran, when I got this
16 letter, that, obviously, Bobby wasn't hearing what I
17 was saying, I asked Tom Cothran to please write a
18 letter to basically say back off. When we get
19 ready, we'll let you know. That's what prompted the
20 letter.

21 Q Well, that's not really what the letter
22 says.

23 A Yes, it does.

24 Q The letter says -- it's basically taking
25 language out of the Right of First Refusal

1 Agreement, and saying that he's not the actual
2 official listing agent; does it not, in the first
3 paragraph there? Mr. Cothran points out that the
4 document expressly, quote, deems you the listing
5 agent. And then he goes on to explain how that
6 doesn't entitle him to anything. At the very last
7 sentence, Mr. Cothran says, "Your entitlement to a
8 commission," "will be dealt with at a future time."

9 A Well, if I could backtrack.

10 MR. FREEMAN: Object to the form. And
11 I don't know that there's a question on the table.

12 A Okay. What is the question?

13 Q What is your position on that? At this
14 point, did you still intend to -- when and if you
15 ever did list the house, were you going to use Bobby
16 Shealy as the agent?

17 A Yes, if I listed the house. I did not, at
18 that point in time, still did not know if I was
19 going to list the house, if I sold it through an
20 agency. Don't forget that I am a real estate agent.
21 I'm not an agent in South Carolina, but I think that
22 the law still states that I have the right to sell
23 my own property. And I, as a representative of
24 this, would have that right.

25 Q So is this --

1 A So if I had sold it myself, then that would
2 have been up for review.

3 Q So is this property yours?

4 A No, you know it's not mine.

5 Q Okay. Who owns the property, currently?

6 A Paul Shelton Estate.

7 Q Is it the estate or one of the trusts in the
8 estate?

9 A Well, the Paul Shelton Trust.

10 Q Okay. It's still in that same -- that
11 Charitable Remainder Trust, I believe?

12 A No.

13 Q Which trust holds the beach house, right
14 now?

15 A The Paul Shelton Trust.

16 Q Okay.

17 A Only the home that was across the street was
18 in the charitable trust.

19 Q Okay. Now, July 5th --

20 MR. FUTERAL: Pardon me. Can y'all
21 break for two minutes? Can I borrow him for one
22 second?

23 MR. FREEMAN: Sure.

24 (Short break.)

25 Q We're still on the July 5th letter from

1 Mr. Cothran to Bobby Shealy.

2 A Uh-huh. (Affirmative.)

3 Q At this point, if you had ever listed the
4 property in the future, on July 5, 2005, did you
5 intend to use Bobby Shealy as the listing agent?

6 A If I was going to list it, yes.

7 MR. NELSON: Can we introduce that as
8 Exhibit No. 12?

9 (Exhibit No. 12 marked.)

10 Q You can flip through the next two, and the
11 next three and four, all the way to that one right
12 there.

13 A Okay.

14 Q Now, this document here, do you recognize
15 it?

16 A This is the same thing as we had before,
17 correct?

18 Q Okay. Correct, correct.

19 A Yeah.

20 Q Okay. Now we have a June 8, 2005 e-mail
21 from you to Bobby?

22 A Uh-huh. (Affirmative.)

23 Q This was in response to Plaintiff's Exhibit
24 No. 8, it looks like.

25 A Uh-huh. (Affirmative.)

1 Q You said, "My feeling is that he should have
2 the first opportunity for the house. I have had
3 several people contact me and are very anxious to
4 see it." So did you have people contacting you,
5 directly?

6 A Yes.

7 Q Do you know how they were finding you?

8 A Some of them went to the City Hall or
9 whatever. I had left my name, number, and
10 everything for emergency purposes. Because the
11 house was unoccupied, and if anything should happen,
12 I wanted them to know how to get in touch with me.
13 So they had my name on record for the house at City
14 Hall, and I'm sure that's how they found me. That
15 would have been the only way that they could have
16 found me.

17 Q Okay. Do you remember who, at City Hall,
18 you left your information with?

19 A No, just whoever was at the desk.

20 Q The front desk?

21 A Uh-huh. (Affirmative.)

22 Q As soon as you walk through the doors?

23 A Right, because any time that we came to
24 Folly Beach or left, at that point in time, I would
25 call and let the police know that I was going to be

1 there, and when I was leaving, that I was leaving
2 and the house would be empty. Because Folly Beach
3 is very good about keeping an eye on property and so
4 forth.

5 Q At this point, were you using the beach
6 house as just a weekend vacation, from time to time?

7 A Absolutely not.

8 Q Was anybody else?

9 A No. When I came, it was to go through
10 personal things, estate things. I was not using it
11 for personal reasons.

12 Q I'm sorry, let me rephrase that: Not for
13 pleasure, but were you staying there?

14 A I was staying there, when I came, yes.

15 Q Okay. And then you say here, in the June
16 8th e-mail, "I plan to be at Folly July 4th
17 weekend/week and hope to complete removal of
18 personal items at that time."

19 A Yes.

20 Q Where were the personal items?

21 A I don't understand your question.

22 Q Which personal items are you speaking of?
23 What house are we talking about?

24 A The one, 1219 East Ashley Avenue, Paul's
25 house. They had 40-some years of personal papers,

1 et cetera, in the home.

2 Q Okay. And 1219, for the record, is that the
3 house that we've been speaking of just about the
4 entire time?

5 A Yes.

6 Q The one that's still currently unoccupied?

7 A Correct.

8 Q Okay. And was that Mr. Shelton's residence,
9 before he deceased?

10 A Yes.

11 MR. NELSON: Can we introduce that as
12 Exhibit No. 13?

13 (Exhibit No. 13 marked.)

14 Q Okay. Pretty much, the e-mails we were just
15 talking about went February through Mr. Cothran's
16 letter of July 2005?

17 A Uh-huh. (Affirmative.)

18 Q And you said that you intended to use Bobby
19 Shealy as the listing agent, if you decided to list
20 the house in the future, up until that point. But
21 earlier, you'd mentioned there were some problems,
22 that now you would not decide to use Bobby Shealy as
23 the listing agent. Can you tell me a little bit
24 about those problems?

25 A I think it's stated with this lawsuit that

1 we see here. I do not feel that Bobby -- I feel
2 that Bobby has totally blown this out of proportion.
3 He now has a lawsuit against us. He is costing us
4 money. He's costing us time. He's costing us a lot
5 of headaches.

6 Q Uh-huh. (Affirmative.)

7 A I don't feel that I like the way he does
8 business. Therefore, I don't know that --
9 everything, up to this point, could have been
10 resolved, I feel. We had a good rapport.

11 Q Okay. Prior to the lawsuit being filed, was
12 everything amicable between you and Bobby Shealy, as
13 far as you're concerned?

14 A As far as I'm concerned, it was.

15 Q How about any other family members, did they
16 have any contacts with Bobby Shealy?

17 A Not that I know of.

18 Q Now, prior to the lawsuit, why did you think
19 that you would have listed Bobby Shealy or named
20 Bobby Shealy as the listing agent? Have you ever
21 met him, before Mr. Shelton deceased?

22 A I don't think I had met him before, no.

23 Q Why did you plan to intend or why did you
24 plan to use Bobby Shealy as the listing agent, prior
25 to the lawsuit?

1 A To honor what Paul had done with the First
2 Right of Refusal.

3 Q If you will, please, pull out the First
4 Right of Refusal. It is the third stapled item, I
5 believe, in your stack right now. Now, you've
6 definitely seen this document before?

7 A Uh-huh. (Affirmative.)

8 Q And when you read it -- or when was the
9 first you saw this document; do you remember?

10 A Not exactly the first time I saw it, no. I
11 don't remember exactly.

12 Q But it was after you were trustee of the
13 trust that holds this beach house that we're talking
14 about today?

15 A Uh-huh. (Affirmative.)

16 Q And when you read it, did you read Paul
17 Shelton's wishes out of this to be to use Bobby
18 Shealy as the listing agent?

19 A I read that.

20 Q And do you find this to be a legal document?

21 MR. FREEMAN: Objection.

22 A I have no idea. I'm not an attorney.

23 Q Did you believe that Paul Shelton, and Eva
24 Ravenel, and Edward Gilbreth, and Bobby Shealy
25 signed this as a contract?

1 A I believe they signed it. I have no idea
2 what it is.

3 Q And at the time this came into play or this
4 was needed, Mr. Shelton had already deceased; is
5 that correct?

6 MR. FREEMAN: Object to the form.

7 A Paul died August of 2004. So I'm not sure I
8 understand what question you're asking.

9 Q By the time you had seen this document or
10 needed to do anything with it as trustee, this was
11 after Mr. Shelton --

12 A This was part of all of Paul's paperwork.
13 Since the house is not for sale and really is not
14 part of what I have to do something with right at
15 the moment.

16 Q Right.

17 A I've been concerned with taxes and different
18 things, a lot of things, you know. So here again,
19 I'm not quite sure what answer you're looking for
20 here.

21 Q Let me try and rephrase it. Do you
22 interpret this document to say that if the beach
23 house ever sells, Bobby Shealy should be the listing
24 agent and make a commission off of such sale?

25 MR. FREEMAN: Object to the form.

1 A It mentions Bobby Shealy is deemed listing
2 agent. I have no affinity to any real estate agent,
3 as far as who I would list the property with. Bobby
4 Shealy would have been the one that would have
5 received the listing.

6 Q Okay.

7 A Okay. That's if I had put the house on the
8 market. Again, the house is not on the market.

9 Q Is that because you thought that was your
10 uncle's wishes, and you wanted to obey his wishes,
11 legal documents aside?

12 A Paul had agreed to it, obviously. That's
13 all I know. Paul and I never had a discussion per
14 se. He never said, "When you sell this house" --
15 That never happened, so.

16 Q Right. But after you saw this document, did
17 you interpret this to mean what we just spoke of,
18 that Bobby Shealy should be the listing agent, if
19 the house ever sold?

20 A It says there that Bobby Shealy is deemed
21 listing agent. That's all I know.

22 Q Okay. Prior to the lawsuit being filed, you
23 were going to use him, though?

24 A Prior to the lawsuit being filed, there was
25 no for sale on the house. We gave Dr. Gilbreth an

1 accommodation to see if he was interested, to see
2 where we were going from there. He, obviously, was
3 not interested. The house is not for sale, has not
4 been for sale.

5 Q Do you have any plans to sell it, in the
6 next year?

7 A No.

8 Q Five years?

9 A No.

10 Q Fifteen years?

11 A I don't know, in 15 years. Right now, I
12 would say no, but I don't know.

13 Q Okay.

14 A I don't know.

15 Q Is it currently being used as a rental
16 property?

17 A It will be.

18 MR. NELSON: Can we introduce that as
19 Exhibit No. 14?

20 (Exhibit No. 14 marked.)

21 Q If Bobby Shealy never filed a lawsuit
22 against you and, ten years down the road, you
23 decided to sell the house, do you think you would
24 have used him then?

25 MR. FREEMAN: Object to the form.

1 A Ten years down the road, we don't even know
2 if Bobby Shealy would be a real estate agent, at
3 that point in time. How can I answer that?

4 Q If he were?

5 A I can't answer that question. A lot of
6 stuff happens in ten years.

7 Q Uh-huh. (Affirmative.) But you just said
8 that you thought Paul Shelton's wishes were for
9 Bobby to get the listing. Would you not have still
10 honored him, if some time had passed?

11 A I would have honored it, had I felt that
12 Bobby was a reputable agent that I would use, yes.
13 If he's still in business, yes. I can't tell you
14 what's going to happen in the future. I wish I
15 could. I could make a lot of money.

16 Q We can skip over the contract, too. The
17 next document you see is Bobby Shealy's lawsuit,
18 Petition for Declaratory Judgment or Specific
19 Performance. Have you seen this before?

20 A Yes, I have.

21 Q If you look at paragraph number 5, on the
22 first page?

23 A Okay.

24 Q It says, "At the time of his death,
25 Decedent," which refers to Paul Shelton, which is a

1 legal term, "owned property at 1219 East Ashley
2 Avenue." Now, y'all denied that as a statement. Is
3 that because one of the trusts actually owned the
4 property, or do you know why that statement was
5 denied?

6 A Yes.

7 Q Because one of the trusts owned the
8 property?

9 A Yes.

10 Q Okay. Number 6 there says, "On or about
11 September 24, 2003, Decedent, Petitioner," which is
12 Bobby Shealy, "Edward Gilbreth, and Eva Ravenel, all
13 for good and valuable consideration, entered into a
14 Right of First Refusal Agreement [hereinafter
15 Agreement], attached hereto as Exhibit A and
16 incorporated by reference herein."

17 A Uh-huh. (Affirmative.)

18 Q Now, that was denied, also. Do you know why
19 you denied that statement?

20 A I don't know about that.

21 Q Do you agree with that statement?

22 A I don't agree that the valuable
23 consideration should be given in order to have an
24 agreement, but, you know, there seems to be some
25 type of first refusal. That's all I know about it.

1 Q Okay.

2 A I wasn't there. So I don't know.

3 Q Do you believe that the Right of First
4 Refusal Agreement legally entitles Bobby Shealy to
5 the listing, in the event the house is ever put on
6 the market for sale?

7 MR. FREEMAN: Object to form.

8 A I thought we had covered that.

9 Q I am making sure I asked the question in the
10 right wording. I apologize.

11 A If the house was put on the market, prior to
12 this litigation, then Bobby Shealy would have been
13 the listing agent.

14 Q Would he have been entitled to it, by the
15 Right of First Refusal document?

16 MR. FREEMAN: Object to the form.

17 A I don't know. I am not an attorney. I can
18 not interpret that form as such.

19 MR. NELSON: Can we go off the record
20 for one second?

21 THE WITNESS: That's fine.

22 (Off-the-record discussion.)

23 (Exhibit No. 15 marked.)

24 Q The last document you have in front of you
25 is your answers to our interrogatories and request

1 for production. Did you ever see the
2 interrogatories and request for production that we
3 had sent?

4 A Yes.

5 Q Okay. That's to list the names of
6 witnesses, on number 1?

7 A Uh-huh. (Affirmative.)

8 Q And you've listed, the last one there, a
9 Claude Loadholt?

10 A Uh-huh. (Affirmative.)

11 Q Can you explain to me why he was listed, as
12 relevant to this lawsuit?

13 A Prior to Bobby opening Castle Rock Realty,
14 he worked for Agent Owned Realty, and any listing
15 stays with the brokerage office. It doesn't go with
16 the agent.

17 Q Do you know what agreement Claude Loadholt
18 had with Bobby Shealy?

19 A No, I do not.

20 Q As to Bobby Shealy's employment, when he
21 worked for Agent Owned?

22 A No.

23 Q Do you know if Bobby Shealy paid any portion
24 of any of his commissions to Claude Loadholt?

25 A I have no idea.

1 Q Okay. How many different occasions did you
2 meet Bobby Shealy, at 1219?

3 A I'm not 100 percent sure, but I know that he
4 came one time to see the house himself, and then he
5 came with Dr. Gilbreth. And I believe those are the
6 only two times that I saw him there.

7 Q Was one of them at night?

8 A Yes.

9 Q About --

10 A First one was at night.

11 Q Possibly, around 10:00 p.m.?

12 A Yes.

13 Q Give or take?

14 A It's somewhere around 9:00, 10:00 or
15 something.

16 Q Was that in the summertime; do you remember?

17 A I do not remember.

18 Q Do you remember why you were in town?

19 A It was something to do with the estate.
20 Either I needed to meet with the attorney or, you
21 know. Here again, the -- Paul had a tremendous
22 amount. I mean, a tremendous amount. I don't
23 think, in the five years prior to his wife's
24 passing, that he had thrown away one piece of mail
25 that came into the house. There was a lot to do at

1 the house, a lot. And it could have been that was
2 why I had to meet with -- usually, I combine trips
3 and met with the attorney and whatever.

4 Q Do you know what time you called Bobby
5 Shealy?

6 A I hold told -- Bobby had -- I had told Bobby
7 that we were going to be out. We were going to
8 dinner, et cetera, and I would call him when I got
9 in. And that's why the late hour. And I told Bobby
10 I realize that it was late. And he's like, "No, no,
11 no. It's okay. I'll come by." So that's why he
12 was at the door at 10:00 or 9:45 or whatever time it
13 was, the only reason. I think that that was it.

14 Q Was anyone else present, besides the two of
15 you?

16 A My husband was there.

17 Q Now, why exactly did you need Bobby to come
18 down to the house, at that point?

19 A I did not need him. Bobby wanted to see the
20 house.

21 Q So he had just asked you, "If you're ever in
22 town, please, let me know. I'd like to come in and
23 see the inside of the house"?

24 A That is correct.

25 Q Okay. Did you ever discuss a commission

1 with Bobby, in the event Gilbreth did elect to buy
2 the house?

3 A Yes, I did..

4 Q Do you remember what conversations were had,
5 what numbers were tossed around?

6 A Uh-huh. (Affirmative.) I told him that I
7 would pay a 1 percent commission, at that point in
8 time, if he got a contract from Dr. Gilbreth, when
9 he looked at the house.

10 Q Where did you come up with the 1 percent?

11 A Because I felt like, as a real estate agent
12 myself, to only have to write a contract, and that
13 is all you would do, that was a very fair amount of
14 money. It's still a lot of money, when all you do
15 is walk a client in the house. That was a one-time
16 shot for that customer, that Dr. Gilbreth. That's
17 the only time a commission was ever discussed.

18 Q Do you know what Bobby Shealy's relationship
19 with Mr. Shelton was? Was it just that of a Realtor
20 and his client, or did they have any other
21 relationship besides that?

22 A The only thing I know positively is a
23 Realtor and his client.

24 Q Okay.

25 A I do know that Paul knew Bobby Shealy's

1 mother. How well he knew her, I have no idea.

2 Q Do you know how Paul first came into contact
3 with Bobby?

4 A Through his mother, I'm sure. His mother
5 was in the garden club. I don't know. The garden
6 club on Folly Beach. Folly is a very small
7 community. I do not know anything else.

8 MR. NELSON: I'm done.

9 MR. FREEMAN: Done deal. Thanks.

10 (The deposition concluded at 2:05 p.m.)

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C-E-R-T-I-F-I-C-A-T-E

I, Lisa A. McCarn, Court Reporter and Notary Public, certify that I did have SHIRLEY HUGGINS to appear before me at 1:05 p.m. on the 25th day of April, 2006, at 1004 Anna Knapp Boulevard, 2nd Floor, Mount Pleasant, South Carolina; that the witness was duly sworn and cautioned to tell the truth, the whole truth, and nothing but the truth; that the foregoing pages constitute a true and accurate transcript of her testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 1st day of May, 2006.

COPY

Lisa A. McCarn
Notary Public for South Carolina
My Commission Expires:
August 17, 2015

1 IN THE COURT OF COMMON PLEAS
2 FOR THE STATE OF SOUTH CAROLINA
3 CHARLESTON COUNTY

4 DEPOSITION OF ROBERT BELTON SHEALY, JR.

5
6 ROBERT B. SHEALY, JR.,

7 Plaintiff,

8 vs. CASE NO. 2005-CP-10-0991

9
10 THE ESTATE OF PAUL E. SHELTON,

11 Defendant.

12
13
14
15 DEPONENT: ROBERT BELTON SHEALY, JR.

16 DATE: August 10, 2006

17 TIME: 10:00 a.m.

18 LOCATION: FREEMAN & FREEMAN
19 941 Houston Northcutt Boulevard
20 Suite 204
21 Mt. Pleasant, SC 29465

22
23 REPORTED BY: NANCY ENNIS TIERNEY, CSR (IL)
24 CLARK & ASSOCIATES
25 P.O. Box 73129
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1 I N D E X

2		Page
3	Witness Sworn	4
4	EXAMINATION	
	By Mr. Freeman	4
5	By Mr. Nelson	35
	By Mr. Freeman	36
6		
7		
8		
9	Certificate of Reporter	37

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11

E X H I B I T S

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13

Page

14	Defendant's Exhibit Nos. 1 through 6	4
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1 (Defendant's Exhibit Nos. 1 through 6
2 were marked for identification.)

3 ROBERT BELTON SHEALY, JR., having
4 been first duly sworn, testified as hereinafter
5 set forth.

6 EXAMINATION

7 BY MR. FREEMAN:

8 Q. Mr. Shealy, have you ever been deposed
9 before?

10 A. No, sir.

11 Q. There are a couple of things for the
12 record. Let's get your full name and address on
13 the record to start with.

14 A. It's Robert Belton Shealy, Jr., and I
15 live at 420 East Erie Avenue on Folly Beach,
16 29439. Mailing address is P.O. Box 1438.

17 Q. A deposition is an opportunity for me to
18 find out what you know, or what you perceive that
19 you know, and to possibly identify a couple of
20 documents that I don't think are in dispute.

21 If I ask you a question at any time that
22 you don't understand, if you would please just
23 say, I'm sorry, I don't understand the question,
24 will you rephrase it.

25 Under the rules of South Carolina Civil

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1 Procedure you are not permitted to talk to your
2 attorney about anything once this deposition has
3 started, and it has.

4 So if you have any issue with any
5 question or don't understand it, let me rephrase
6 it. Sometimes I don't always speak as clearly as
7 I should.

8 A. All right.

9 Q. Let's talk about a couple of terms so
10 that we are not having to use the whole term,
11 okay?

12 1219 Ashley Avenue, Folly Beach, South
13 Carolina, we will refer to as the property, for
14 the most part.

15 A. Okay.

16 Q. Or as 1219 Ashley Avenue, and we all
17 understand what we are talking about, correct?

18 A. Correct.

19 Q. And there is only one property involved
20 in this issue, is that correct?

21 A. Correct.

22 Q. Another term that will save me time and
23 you time, because if it saves me it saves you, is
24 let's refer to Shirley Huggins with the
25 understanding that she is acting in a

1 representative capacity, without having to go
2 through the entire representative capacity.

3 Is that fair enough?

4 A. Fair.

5 Q. So if I say Shirley Huggins, I'm talking
6 about Shirley Huggins, the defendant in this case,
7 in her representative capacity, okay?

8 A. Yes.

9 Q. And the other term that I saw that I
10 thought we should identify is you now, as I
11 understand it, have a brokerage firm called Castle
12 Rock Real Estate Company, LLC, is that correct?

13 A. That's correct. I am part owner.

14 Q. We will get to that issue, but let's
15 just call that Castle Rock, okay?

16 A. That's fine.

17 Q. And if I refer -- if I ask you -- I may
18 use the term you and Castle Rock interchangeably,
19 okay? And if you think it doesn't apply
20 interchangeably, will you tell me?

21 A. Yes, sir.

22 Q. Because I don't want there to be any
23 confusion.

24 Tell me a little bit about your
25 background.

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1 A. Born and raised here in Charleston.
2 Went to University of South Carolina. Majored in
3 business management. Was an administrative law
4 hearing officer for the State of South Carolina
5 for 16 years. Held appeals on unemployment
6 decisions, traveled around the state.

7 Was not an attorney, am not an
8 attorney. Just got grandfathered in at the right
9 time in the legal department.

10 I retired from the State of South
11 Carolina with the full 28-year package, only
12 having worked 21 years. I was able to buy time
13 back from when I paged at the State House and
14 served on the Meggett Town Council. Bought time
15 back and I qualified.

16 I got my real estate license about six
17 years ago. I worked for Agent Owned, and opened
18 my own company May a year ago, Castle Rock.

19 Q. And that is located in Folly Beach, on
20 Folly Beach?

21 A. No, sir. Actually, West Ashley.

22 Q: And you indicated earlier that you were
23 a part owner?

24 A. Correct.

25 Q. What is your ownership interest and who

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1 are the other part owners?

2 A. 50 percent. The other part owner is
3 James Farrell.

4 Q. F-a-r-r-e-l-l?

5 A. That's correct. He is the actual
6 broker.

7 Q. He's the BIC, right?

8 A. That's right.

9 Q. I understand that you were involved in a
10 transaction in which Paul E. Shelton sold a piece
11 of property to Dr. Edward Gilwreth (sic), is that
12 correct?

13 A. Gilbreth, yes, sir.

14 Q. Gilbreth, right, not Gilwreth. And do
15 you recall when that was?

16 A. That was in 2003. The contract did, I
17 believe, in June, and closed in September. I was
18 listing agent.

19 Q. And, as I understand it, Eva Ravenel, of
20 Ravenel Realty, was the selling agent, is that
21 correct?

22 A. That's correct.

23 Q. So she represented Dr. Gilbreth and you
24 represented Paul Shelton?

25 A. That's correct.

1 Q. As part, or in connection with that
2 transaction, it's my understanding that there was
3 a document called a Right of First Refusal that
4 was executed at or about the time of closing of
5 that transaction. Is that true?

6 A. That's true.

7 Q. Let me show you what has been previously
8 identified, and I will now identify it as
9 Defendant's Exhibit Number 1, which is a Right of
10 First Refusal.

11 I ask you to take a quick look at that,
12 and I will ask you if that is a true and accurate
13 copy of the Right of First Refusal that I just
14 asked you about?

15 A. Yes, sir.

16 Q. Let's talk about that Right of First
17 Refusal for a second, if we might. You attached
18 that Right of First Refusal to your petition for
19 declaratory judgment or specific performance in
20 this case, is that correct?

21 A. Yes, sir.

22 Q. And starting with Page 1, about the
23 fifth paragraph down, there is reference here that
24 says, "Edward Gilbreth, Bobby Shealy and Eva
25 Ravenel have each given Paul E. Shelton the sum of

1 \$100 along with other good and valuable
2 consideration in payment of the rights herein
3 granted, the receipt of which by Paul E. Shelton
4 is hereby acknowledged."

5 Are you looking at that paragraph?

6 A. Yes, sir.

7 Q. Did you, in fact, give to Paul E.
8 Shelton the \$100 that is referenced in that
9 paragraph?

10 A. I gave \$100 to Mr. Cothran, his
11 attorney.

12 Q. And did you get a receipt for that?

13 A. This is the receipt.

14 Q. The answer, I guess, would be --

15 A. Yes.

16 Q. -- no, I did not get a receipt?

17 A. I did not get a receipt. However, I
18 took this as the receipt.

19 Q. And so the \$100 that you gave Mr.
20 Cothran, was that cash?

21 A. It was.

22 Q. Was it in the form of a one hundred
23 dollar bill?

24 A. It was.

25 Q. And did Eva Ravenel give Mr. Cothran or

1 anyone else \$100?

2 A. I have no idea.

3 Q. And did Mr. Gilbreth give \$100 to Mr.
4 Cothran or anybody representing Mr. Shelton?

5 A. I have no idea.

6 Q. As I understand this -- and I'm not
7 trying to trick you. I'm paraphrasing to shorten
8 our conversation here.

9 The Right of First Refusal comes into
10 play if Paul Shelton elects to sell the property,
11 is that correct?

12 A. That's correct.

13 Q. And there is provision in this agreement
14 that says that the other representatives of Mr.
15 Shelton would be, likewise, bound by that
16 provision?

17 A. That's correct.

18 Q. So if Paul Shelton or his representative
19 decided to sell the property, Mr. Gilbreth would
20 have a right of first refusal at whatever the
21 price was that he had a bona fide offer to
22 purchase, is that correct?

23 A. That's correct.

24 Q. And then he has five days in which to
25 either accept the property at that price or to, in

1 fact, reject it, at which point the owner would be
2 free to go on and do whatever they wanted to do
3 with the property?

4 A. That's correct.

5 Q. Let's turn to Page 3, Paragraph C, and I
6 want to ask you about that. The term, quote, real
7 estate agent of record, end quote, shall mean
8 Bobby Shealy and Eva Ravenel, and Bobby Shealy
9 shall be deemed the listing agent and Eva Ravenel
10 shall be deemed the selling agent as to a sale of
11 the property from Paul E. Shelton to Edward
12 Gilbreth.

13 What do you understand the term real
14 estate agent of record to mean?

15 A. That means, according to my
16 interpretation, and what Mr. Shelton told me and
17 what Mr. Cothran told me, was that if at the time
18 he decided to sell the house, or representative of
19 the estate, that I would be the listing agent for
20 the property.

21 Dr. Gilbreth would have first right of
22 refusal, with Eva Ravenel being his agent, which
23 would be the selling agent. And if Dr. Gilbreth
24 decided he did not want to exercise his first
25 right of refusal, then I would be the listing

1 agent for the property to sell it.

2 Q. As to anyone else?

3 A. Correct.

4 Q. And what exactly is the amount of

5 commission that would be involved if Edward

6 Gilbreth decided to purchase the property?

7 A. Six percent is standard in the industry.

8 Q. Was there six percent commission paid on

9 the previous sale to Dr. Gilbreth?

10 A. The commission was 4-1/2 percent, a

11 special arrangement that Mr. Shelton and I worked

12 out. He had told me he wanted to take care of me

13 and wanted me to list his house when he went to a

14 nursing home or when he passed on, and he wanted

15 me to give him a deal on listing the house that

16 Dr. Gilbreth initially bought, so I did.

17 Q. You admit, though, do you not, that

18 there is nothing in this Right of First Refusal as

19 it relates to the real estate agents of record, or

20 you as the deemed listing agent, that there is any

21 amount of commission listed there?

22 A. I agree with that. You would -- the

23 standard in the industry is six percent, and we

24 all acted on that.

25 Q. Real estate commissions, however, Mr.

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1 Shealy, are subject to negotiation, are they not?

2 A. Negotiation between the agent and the
3 other parties involved, not the other parties
4 involved dictating it.

5 Q. But it is subject to negotiation?

6 A. It is subject to negotiation.

7 Q. And, in fact, you already have the best
8 evidence of that in the previous sale to Dr.
9 Gilbreth?

10 A. That's correct.

11 Q. Now, as to the election to sell the
12 property that is mentioned in the Right of First
13 Refusal, you certainly agree that the owner at any
14 time has a right to sell their own property?

15 A. No, not according to this agreement.

16 Q. So tell me about that. Tell me what
17 your understanding is that Paul Shelton couldn't
18 sell the property if he wanted to?

19 A. My understanding, according to this
20 agreement, is that it cannot be a for sale by
21 owner. The document states Bobby Shealy shall be
22 deemed the listing agent as to any other sale of
23 the property, and that is if Dr. Gilbreth did not
24 exercise his first right of refusal. Any other
25 sale would cover for sale by owner.

1 Q. Well, are you indicating to me here in
2 your deposition that there is a prohibition
3 against Paul Shelton or his representative selling
4 the property by himself?

5 A. Yes. According to this document, Ms.
6 Huggins does not have the right to sell this
7 property without using me as the listing agent.
8 That was Mr. Shelton's intent, and that is how it
9 was explained to me by Mr. Cothran, and Ms.
10 Huggins was aware of that at one time.

11 Q. Well, I mean, you have already admitted
12 that she has the right to sell the property,
13 haven't you?

14 A. No. Then I misunderstood your question.
15 According to this document, and according to Mr.
16 Shelton's intent, if he went to a nursing home or
17 he passed on, he wanted me to sell the property.

18 The document states I shall be the
19 listing agent as to any other sale. Any other
20 sale means any time this property is sold, I'm the
21 listing agent. The representative does not have
22 the authority to sell it herself as a for sale by
23 owner, and that was not his intent.

24 Q. Well, the document doesn't say that,
25 though, does it?

1 A. It says it very clearly, Bobby Shealy
2 shall be deemed the listing agent as to any other
3 sale of the property. It can't get any clearer
4 than that.

5 Q. Defendant's Exhibit 3, let me show you
6 that, if I can. You indicate to Mrs. Huggins in
7 this e-mail -- that is your e-mail, isn't it?

8 A. It is.

9 Q. And it's to Shirley Huggins?

10 A. That's correct.

11 Q. Under the date of June 23, 2005?

12 A. That's correct.

13 Q. You indicate that it is your
14 interpretation the exclusive agency for the sale
15 of the property is established, is that correct?

16 A. In this e-mail. This e-mail was to call
17 her bluff because I knew they were up to
18 something.

19 Q. Well, tell me why you were calling her
20 bluff and what you meant to do with that.

21 A. Okay. She had sent me an e-mail dated
22 June 8th that she was going to start actively
23 marketing the property.

24 She had also given me a phone call that
25 the house was going to be put up for sale, and she

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1 wanted me to notify Dr. Gilbreth to see if he was
2 interested in exercising his first right of
3 refusal.

4 So I sent Eva Ravenel a fax with that
5 information, that I had been instructed by the
6 executrix to notify him the house was going to be
7 marketed for \$2.2 million. I sent her a fax and
8 sent Shirley a copy of that fax.

9 Shirley, in turn, sent me an e-mail
10 dated June 8th that she was going to market the
11 property herself the first week of July of 2005.

12 At that time I realized that she was not
13 intending to honor Mr. Shelton's wishes, and she
14 was not intending to honor the First Right of
15 Refusal document.

16 And so I called Mr. Cothran to try to
17 just kind of feel him out and get some
18 information. And at that time he told me that --
19 completely opposite of what he had told me
20 previously, that he didn't know what my role would
21 be, if any, and that an owner had the right to
22 sell their own home.

23 And I said not according to the terms of
24 the First Refusal document, and not according to
25 what we have discussed for the past several months

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1 personally, on the phone and in person.

2 So I contacted an attorney, Mr. Thomas
3 Brush, who handled my real estate closings at the
4 time, gave him the e-mails, told him what was
5 going on, that it appeared they were trying to
6 sell the house without using me.

7 He suggested I try to call Shirley's
8 bluff. He said send her an e-mail and tell her
9 that you interpret this as the two of you will be
10 marketing it together. Tell her what your
11 marketing ideas and thoughts are and see what kind
12 of response you get from her.

13 So this is just to call her bluff to see
14 if she would show her hand. Sure enough, I got a
15 letter July 5th from Mr. Cothran stating that I,
16 according to their opinion, had no position in the
17 selling of Paul's house, and for me to not do
18 anything towards putting the marketing program
19 together.

20 At that time I took that letter and the
21 other documentation to Mr. Futeral and filed a
22 claim against the estate.

23 Q. So when you wrote this e-mail you didn't
24 mean what you said?

25 A. Correct. It was simply to call her

1 bluff and let her play her hand, which she did.

2 Q. What part of that e-mail, if you will,
3 Mr. Shealy, is to call her bluff?

4 A. The part saying that it is my
5 interpretation exclusive agency for the sale of
6 the property is established versus exclusive right
7 to sell.

8 My opinion is I would have the exclusive
9 right to sell, since she stated in her e-mail to
10 me that she was going to be marketing the property
11 herself when she arrived in July, and that she had
12 people that had contacted her about it.

13 I just wanted to call her bluff and see
14 what kind of response I would get from her. And
15 just basically this means, from me, hey, we are
16 going to market this together, let me know what
17 you want me to do to fulfill my responsibilities
18 in the matter when you get to town. Tell me what
19 you are expecting of me when you arrive so I have
20 my ducks in a row. And that is when I received
21 the -- and it called her bluff.

22 Q. And you perceive that the response of
23 Mr. Cothran on July 5, 2005, which is Defendant's
24 Exhibit Number 4, to be the response that called
25 her bluff?

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1 A. Absolutely.

2 Q. Now, as the listing agent for the
3 property -- I'm using your language -- you would
4 be the listing agent for the property?

5 A. Correct.

6 Q. What would be your commission if Shirley
7 Huggins had sold the property to someone that you
8 had nothing to do with?

9 A. If I was the listing agent it would be
10 50 percent of the established commission. In
11 other words, it's called a co-broker.

12 Q. And there hadn't been an established
13 commission, had there?

14 A. Not at that time, no.

15 Q. Now, as it relates to showing the
16 property to Dr. Gilbreth, she did, in fact, allow
17 you, she, Shirley, allowed you to show it to Dr.
18 Gilbreth, is that correct?

19 A. She did.

20 Q. And the purpose of that was to determine
21 if Dr. Gilbreth wanted to purchase the property at
22 the price that she had established at \$2.2
23 million, is that correct?

24 A. Not exactly. It didn't happen that way.
25 He had just wanted to see -- he and his wife had

1 never seen the house, had never seen the inside.
2 They just wanted to see the inside so that if the
3 issue ever came up that it was going to be sold
4 they could -- they had other investments they
5 wanted to make.

6 And so they could go in, look at the
7 house, decide if they ever wanted to exercise
8 their right of first refusal. So when they saw
9 the house, no price had been mentioned, nor had
10 she called me and told me that it was going to be
11 offered for sale. It was about two weeks after
12 that.

13 Q. Two weeks after that that she
14 established a price?

15 A. That she called me and said that she had
16 decided to sell the property and the price would
17 be \$2.2 million, and would I please notify Dr.
18 Gilbreth, through Eva Ravenel, that's what the
19 asking price was going to be.

20 Q. This was after he saw the property?

21 A. Correct.

22 Q. And how did you arrive at the sale price
23 of \$2.2 million?

24 A. I didn't, she did.

25 Q. In fact, you didn't think that was an

1 appropriate sale price, did you?

2 A. No, I didn't. She had had me down to
3 the house to discuss price on an earlier occasion,
4 and to show me the renovations she had done to the
5 house to discuss for the sale.

6 It was common knowledge that I was going
7 to sell the house at one point, and that is why
8 this whole thing has been a surprise to me.

9 And I had been in the house several
10 times with my business dealings with Mr. Shelton.
11 And she had put some hardwood floors in and
12 changed some things, and she wanted me to see that
13 and ask me what I thought about pricing. And I
14 gave her my opinion and --

15 Q. What was your opinion, sir?

16 A. At that time I told her about -- and
17 this is -- keep in mind, this has been about two
18 years ago, or maybe longer -- \$1.7 million. She
19 said, no, I think \$2 million.

20 And so when she called me up and told me
21 the asking price would be \$2.2 million, that was
22 her decision.

23 Q. And you didn't agree that -- you thought
24 that was too high?

25 A. I did.

1 Q. Can you identify this letter from Mr.
2 Cothran in Defendant's Exhibit Number 4 as being a
3 copy, a true copy of the letter you received from
4 Mr. Cothran?

5 A. Yes, sir.

6 Q. Now, as I understand this letter, he's
7 saying to you that the personal representative
8 tells you he does not wish for you to take any
9 further action until she gives you explicit
10 written instructions, is that correct?

11 A. That's correct.

12 Q. And to discontinue any activities that
13 you may have started and do not commence any
14 further activities, is that correct?

15 A. That's correct.

16 Q. And at that point in time Ms. Huggins
17 had told you that she was making some improvements
18 in the property, correct?

19 A. No. That had already been done.

20 Q. Everything had been done?

21 A. To my knowledge.

22 Q. But she also told you that she was
23 contemplating renting the property, did she not?

24 A. No.

25 Q. She never told you that?

1 A. That is absolutely not true. She told
2 me that she had no intention of renting the
3 property, that she had decided to sell the
4 property, and the asking price would be \$2.2.
5 million.

6 The reason -- back to the other exhibit,
7 Number 3. I never told her I was doing anything
8 to market the property. I simply advised her what
9 my marketing plan was for million dollar plus
10 properties. I never said I'm -- I never marketed
11 the property. This is just a letter to call --

12 Q. You wouldn't --

13 A. I wouldn't have the authority.

14 Q. That's correct, because you didn't have
15 a listing agreement?

16 A. We didn't have a listing agreement.
17 This is just simply to call her bluff, which it
18 did.

19 Q. And after you received the letter from
20 Mr. Cothran, you then filed a statement of a
21 creditor's claim in probate court against the
22 estate of Paul E. Shelton, is that correct?

23 A. That's correct.

24 Q. And in that creditor's claim you filed a
25 claim for \$132,000 or six percent of sale. What

1 does that mean?

2 A. She had put the \$2.2 million price tag
3 on it, and six percent is the standard in the
4 industry. And after consulting with my attorney,
5 that is what they came up with.

6 Q. And as of July 15, 2005, did Paul
7 Shelton or his estate owe you \$132,000?

8 A. They did not. This was simply to
9 protect my interest in the First Right of Refusal
10 document, because it was very clear to me that Mr.
11 Cothran and Ms. Huggins had become dishonest and
12 untrustworthy.

13 We had all talked about the house. We
14 had all talked about I would sell the house.
15 Everything was going along fine. We were all very
16 friendly.

17 And it just floored me out of the blue
18 where she sent me this e-mail that she was going
19 to start marketing the house herself, and it
20 floored me to get this letter from Mr. Cothran
21 stating that no role for me had been determined on
22 the disposition of the property, because it was
23 very clear between all parties that I was going to
24 be listing and selling the house when it was sold.

25 Q. Do you or your brokerage firm, Castle

1 Rock, have a written exclusive listing agreement
2 to sell this house?

3 A. We do not.

4 Q. Do you have a written listing agreement
5 of any kind to sell this house?

6 A. We do not.

7 Q. Do you have any document that reflects
8 that you or Castle Rock are entitled to the six
9 percent commission on the sale of 1219 Ashley
10 Avenue?

11 A. We do not.

12 Q. And, in fact, the Right of First Refusal
13 is silent on that fact, isn't it?

14 A. It is.

15 Q. Do you have any other document of any
16 kind that shows that there was an agreement in
17 writing that Bobby Shealy and/or Castle Rock would
18 receive a six percent commission on the sale of
19 1219 Ashley Avenue?

20 A. We do not. However, when Mr. Cothran
21 drew this document up, he drew it up under the
22 direction of Mr. Shelton. He drew it up under the
23 understanding and direction that I was to be taken
24 care of per Mr. Shelton's instructions, Mr.
25 Cothran's words to me and Mr. Shelton's words to

1 me.

2 I was not given an opportunity to have
3 the document reviewed by independent legal
4 counsel. It was given to me at the closing of the
5 Gilbreth home. And Mr. Cothran looked at me,
6 pointed to the last line of the document where it
7 says Bobby Shealy shall be deemed the listing
8 agent as to any other sale of the property, and
9 said to me, you are taken care of.

10 I had been dealing with him for several
11 months. I had no reason to believe that we were
12 going to end up where we are. I expected them to
13 remain honest and trustworthy throughout the
14 situation, and they have proven not to.

15 Q. Let me show you Defendant's Exhibit 2.
16 I am going to ask you if this is an e-mail that
17 you sent to Shirley Huggins regarding Dr. Gilbreth
18 and the right of first refusal situation?

19 A. Yes.

20 Q. And did you send that to her on or about
21 June 12, 2005?

22 A. That's correct.

23 Q. Have you at any time ever presented to
24 Shirley Huggins, or any other representative of
25 the estate or the trust, a written offer from a

1 potential buyer that was ready, willing and able
2 to purchase 1219 Ashley Avenue?

3 A. No, sir.

4 Q. Do you have any evidence that 1219
5 Ashley Avenue is listed or has been listed with
6 any other broker?

7 A. For sale?

8 Q. Yes.

9 A. No, sir.

10 Q. Do you have any evidence that 1219
11 Ashley Avenue has been entered for sale in MLS?

12 A. No, sir.

13 Q. And, in fact, Shirley told you that she
14 decided to rent the property, did she not?

15 A. That is not correct.

16 Q. She never told you that?

17 A. That is not correct.

18 Q. Well, did you know that she was going to
19 rent the property?

20 A. I realized the property was being rented
21 when I drove by and saw the for rent sign out
22 front because I live nearby. Shirley Huggins
23 called me and told me explicitly that the property
24 was going to be offered for sale at \$2.2 million.

25 Shirley Huggins sent me an e-mail dated

1 June 8th, 2005, which stated that when she came to
2 town 4th of July week she was going to be removing
3 the rest of the personal items from the property,
4 and that she planned to start marketing the
5 property herself because she had had several
6 people call her that were interested in it, and
7 that since Dr. Gilbreth didn't appear, basically,
8 that he was going to exercise his first right of
9 refusal, she was going to move forward to market
10 it herself.

11 She also stated in the e-mail to remind
12 me that it was a double lot and not a single lot
13 for any interest in the sale. She never told me
14 the property -- that she had plans to rent it.
15 She told me that it was not advantageous to her to
16 rent it.

17 Q. Well, you don't dispute that she has the
18 right, as personal representative of the estate,
19 to rent the property if she so likes?

20 A. I don't dispute that at all.

21 Q. And she doesn't have to sell that
22 property, does she?

23 A. Not to my knowledge.

24 Q. And she can elect, even under the Right
25 of First Refusal, not to sell the property?

1 A. That is correct.

2 Q. Did she ever tell you that if you sold
3 the property to Dr. Gilbreth that you would not
4 receive a commission?

5 A. She told me that she and Mr. Cothran had
6 had a meeting and that they decided that a one
7 percent commission would be appropriate.

8 Q. And did you then show the property to
9 Dr. Gilbreth after that?

10 A. No, sir. That telephone call was about
11 two weeks after he had seen the property. That is
12 when she called me to let me know the sales price.

13 Q. So when Dr. Gilbreth saw the property,
14 he didn't know what price she had put on the
15 property? Is that what you are saying?

16 A. That's correct.

17 Q. And there had been no discussion at that
18 point as to what your commission would or wouldn't
19 be, right?

20 A. That is correct. I did have a
21 discussion with Mr. Cothran after her phone call
22 stating the one percent, and he said that he and
23 Shirley had decided that was appropriate. And I
24 said, well, you and Shirley can't make that
25 decision, it takes three of us because I am the

1 agent.

2 And there would not be a First Right of
3 Refusal document. There would have not been a
4 deal without me. I put the whole thing together.
5 It's part of the nature of the business of real
6 estate. Sometimes you work a day on something.
7 Sometimes you work two years on something.

8 Q. Well, a one percent fee for selling it
9 to a person who already was in place would not be
10 an unreasonable fee, would it?

11 A. Absolutely unreasonable. I have to give
12 half of that to Ms. Ravenel. On a \$2.2 -- just
13 say he paid \$2.2 million. You are talking about
14 \$22,000. We each walk away with \$12,000 (sic).
15 That is not even acceptable, not on that price
16 range.

17 And the fact of the matter is, there
18 wouldn't have been a deal, there wouldn't have
19 been a first right of refusal if I hadn't put the
20 deal together. I had worked it just like it was
21 any other deal. It just was rolled into the other
22 sale. So that was absolutely unacceptable.

23 Q. Let me show you Defendant's Exhibit
24 Number 6. That is a lis pendens that was filed in
25 this case. Did you authorize the filing of that

1 lis pendens?

2 A. I did.

3 Q. What is your understanding of what a lis
4 pendens does to a piece of property?

5 A. It keeps it from being sold.

6 Q. So when you filed that lis pendens, it
7 was your intention to prevent the trust from
8 selling 1219 Ashley Avenue?

9 MR. NELSON: Object to the form.

10 A. The document was filed by my attorney as
11 part of their maneuvering.

12 Q. But it was filed with your blessing?

13 A. Absolutely, on their advice.

14 Q. And you intended to prevent the sale of
15 that property when you filed that lis pendens?

16 MR. NELSON: Object to the form. You
17 can answer it.

18 A. My attorney filed the lis pendens.
19 Obviously, I authorized it upon their advice.

20 Q. Looking at Defendant's Exhibit 2, tell
21 me, if you will, what you meant when you told
22 Shirley Huggins that you received a verbal
23 response from Eva Ravenel that at this time and
24 price Dr. Gilbreth will not move forward. What
25 did you mean by that?

1 A. Meaning he wasn't going to pay \$2.2
2 million for it, but if they ended up settling with
3 somebody down the road at \$1.7, he might. Because
4 he still --

5 Q. But he still didn't know what the price
6 was?

7 A. No. That wasn't -- at the time he saw
8 the house, a few weeks earlier, he didn't know
9 what the price was.

10 I, at this point, sent them an e-mail --
11 excuse me, a fax, and the fax indicated that I had
12 been instructed by Ms. Huggins to officially
13 notify him that the house would be marketed and
14 that he -- they wanted him to know it was at \$2.2
15 million, and that did he want to exercise his
16 first right of refusal.

17 Q. How much before this date of June 12,
18 2005 did Dr. Gilbreth see the property?

19 A. A couple of weeks, I believe.

20 Q. So it took two weeks for him to
21 determine that he didn't want to go forward?

22 A. No, no. At the time he saw the property
23 no price was mentioned. At the time he saw the
24 property she had not called me and told me it was
25 going to be for sale.

1 The reason he went to see the property
2 was just because they had been trying to see the
3 property for several months. They owned a house
4 across the street.

5 Ms. Huggins would not allow anyone in
6 the house without her presence. She lived in
7 Florida. She was not very accommodating at all.
8 All they wanted to do is walk through the house
9 and look at the floor plan.

10 So she was coming to town, I believe,
11 sometime in May, and she said they could have the
12 chance to walk through the house at that time.
13 They saw the house at that time. No price had
14 been given. She had not told me it was going to
15 be for sale. It was a couple of weeks later is
16 when she called me. At that time I notified Eva,
17 and that is what brought this about.

18 Q. Are you familiar with the rules and
19 regulations relating to the sale of real estate in
20 South Carolina?

21 A. Yes, sir.

22 Q. And are you familiar with the fact that
23 you cannot market, sell, or otherwise hold
24 yourself out to market or sell a piece of property
25 without a written listing agreement?

1 A. Absolutely.

2 Q. And doesn't that written listing
3 agreement have to have the price and the
4 commission and all other pertinent terms of a
5 potential sale included in it?

6 A. A listing agreement does. Ms. Huggins
7 called me and authorized me to notify Dr. Gilbreth
8 that she was going to be offering the house for
9 sale and was letting him know prior to putting the
10 house on the market.

11 Q. I'm not sure you answered the question,
12 sir.

13 MR. FREEMAN: Would you repeat it for
14 him?

15 A. Well, would you rephrase the question?

16 MR. FREEMAN: Read it back to him.

17 (Question read back.)

18 A. Yes.

19 MR. FREEMAN: Go ahead.

20 EXAMINATION

21 BY MR. NELSON:

22 Q. Bobby, did you draft the Right of First
23 Refusal?

24 A. I did not.

25 Q. Do you know who did?

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1 A. Thomas Cothran.

2 Q. Was he acting on someone's behalf when
3 he did this?

4 A. Mr. Shelton's estate attorney is who he
5 was.

6 Q. And when was the first time you saw it?

7 A. At the closing of the house Dr. Gilbreth
8 bought.

9 MR. NELSON: That is all the questions.

10 FURTHER EXAMINATION

11 BY MR. FREEMAN:

12 Q. I have one follow-up. Isn't it true,
13 Mr. Shealy, that Tommy Brush, in your behalf, who
14 was your closing lawyer on real estate
15 transactions, collaborated with Mr. Cothran in the
16 preparation of the Right of First Refusal?

17 A. To be honest with you, I don't know. I
18 don't think so.

19 Q. But you don't know?

20 A. I would answer no.

21 MR. FREEMAN: Okay. That's it.

22 (The deposition was concluded at 10:45
23 a.m.)

24 - - -

25

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1 STATE OF SOUTH CAROLINA)

2)

3 COUNTY OF CHARLESTON)

4

I, Nancy Ennis Tierney, Certified Shorthand
Reporter and Notary Public for the State of South
Carolina at Large, do hereby certify that the
witness in the foregoing deposition was by me duly
sworn to testify to the truth, the whole truth and
nothing but the truth in the within-entitled
cause; that said deposition was taken at the time
and location therein stated; that the testimony of
the witness and all objections made at the time of
the examination were recorded stenographically by
me and were thereafter transcribed by
computer-aided transcription; that the foregoing
is a full, complete and true record of the
testimony of the witness and of all objections
made at the time of the examination; and that the
witness was given an opportunity to read and
correct said deposition and to subscribe the same.

13

Should the signature of the witness not be
affixed to the deposition, the witness shall not
have availed himself of the opportunity to sign or
the signature has been waived.

I further certify that I am neither related
to nor counsel for any party to the cause pending
or interested in the events thereof.

Witness my hand, I have hereunto affixed my
official seal this 11th day of August, 2006, at
Charleston, Charleston County, South Carolina.

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Nancy Ennis Tierney
CSR (IL)
My Commission expires
April 6, 2014

CLARK & ASSOCIATES (843) 762-6294

**THE PAUL E. SHELTON REVOCABLE TRUST
DATED JANUARY 23, 2002**

Restatement dated July 21, 2003

LAW OFFICES
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The Paul E. Shelton Revocable Trust

Table of Contents

Article One Establishing My Trust	1-1
Section 1.01 Identifying My Trust	1-1
Section 1.02 Reliance by Third Parties on Affidavit or Certification of Trust	1-1
Section 1.03 Transferring Property to My Trust	1-1
Section 1.04 Powers Reserved by Me as Grantor	1-1
Section 1.05 Grantor Trust Status	1-1
 Article Two Family Information	 2-1
 Article Three Trustee Succession and Trust Protector Provisions	 3-1
Section 3.01 Resignation of a Trustee	3-1
Section 3.02 Trustee Succession During My Lifetime	3-1
Section 3.03 Trustee Succession After My Death	3-1
Section 3.04 Appointment of a Cotrustee	3-1
Section 3.05 Corporate Fiduciaries	3-1
Section 3.06 Incapacity of a Trustee	3-1
Section 3.07 Appointment of Special Independent Trustee	3-1
Section 3.08 Rights of Successor Trustees	3-1
Section 3.09 Provisions for Trust Protector	3-1
 Article Four Administration of My Trust During My Incapacity	 4-1
Section 4.01 Trust Distributions During My Incapacity	4-1
 Article Five Administration of My Trust Upon My Death	 5-1
Section 5.01 My Trust Shall Become Irrevocable	5-1
Section 5.02 Administrative Trust	5-1
Section 5.03 Payment of My Expenses and Taxes	5-1
Section 5.04 Payment of Death Taxes	5-1
Section 5.05 Coordination with My Personal Representative	5-1
Section 5.06 Tax Elections	5-1
 Article Six Specific Distributions and Disposition of Tangible Personal Property	 6-1
Section 6.01 Specific Distribution to Beverly Lehmeyer	6-1
Section 6.02 Specific Distribution to Arnette Deytens	6-1
Section 6.03 Specific Distribution to Shirley A. Huggins	6-1

Paul E. Shelton Revocable Trust

G:\00-Client Folders\02050.shel\beplpes.restatement of tra.2003.0721.d5.doc

Section 6.04	Specific Distribution to Barbara Jansen.....	6-1
Section 6.05	Distribution of Tangible Personal Property by Memoranda.....	6-1
Section 6.06	Distribution of Remaining Tangible Personal Property.....	6-1
Section 6.07	Definition of Tangible Personal Property.....	6-1
Section 6.08	Encumbrances and Incidental Expenses of Tangible Personal Property.....	6-1
Section 6.09	Residuary Distribution.....	6-1
 Article Seven Distribution of My Trust Property		7-1
Section 7.01	Division of Remaining Trust Property.....	7-1
Section 7.02	Distribution of the Share for the Paul E. Shelton Family Pot Trust	7-1
 Article Eight Remote Contingent Distribution Pattern.....		8-1
 Article Nine Administration of Trusts for Underage and Incapacitated Beneficiaries.....		9-1
Section 9.01	Distributions for Underage and Incapacitated Beneficiaries	9-1
Section 9.02	Methods of Distribution.....	9-1
Section 9.03	Application of Article	9-1
 Article Ten Retirement Plans and Life Insurance Policies		10-1
Section 10.01	Retirement Plans.....	10-1
Section 10.02	Life Insurance Policies.....	10-1
Section 10.03	Liability of Payor.....	10-1
Section 10.04	Collection Efforts.....	10-1
Section 10.05	No Obligation to Purchase or Maintain Benefits.....	10-1
 Article Eleven Trust Administration		11-1
Section 11.01	Distributions to Beneficiaries	11-1
Section 11.02	No Court Proceedings.....	11-1
Section 11.03	No Bond.....	11-1
Section 11.04	Exoneration of My Trustee.....	11-1
Section 11.05	Trustee Compensation	11-1
Section 11.06	Employment of Professionals	11-1
Section 11.07	Exercise of Testamentary Power of Appointment.....	11-1
Section 11.08	Trust Accounting	11-1
Section 11.09	Action of Trustees; Disclaimer	11-1
Section 11.10	Delegation of Trustee Authority; Power of Attorney.....	11-1
Section 11.11	Power to Terminate Trusts.....	11-1
Section 11.12	Discretionary Distribution to Fully Utilize Basis Increase Upon Death of Beneficiary	11-1
Section 11.13	Merger of Corporate Fiduciary	11-1

Section 11.14	Beneficiary's Status	11-1
Section 11.15	Discharge of Third Persons.....	11-1
Section 11.16	Certificate by Trustee.....	11-1
Section 11.17	Funeral and Other Expenses of Beneficiary	11-1
Section 11.18	Generation-Skipping Tax Provisions.....	11-1
 Article Twelve My Trustee's Powers.....		12-1
Section 12.01	Introduction to Trustee's Powers.....	12-1
Section 12.02	Rights of Persons Dealing with My Trustee	12-1
Section 12.03	Powers to Be Exercised in the Best Interests of the Beneficiaries	12-1
Section 12.04	My Trustee's Investment Powers.....	12-1
Section 12.05	Closely-Held Business Interests	12-1
Section 12.06	My Trustee's Administrative Powers	12-1
Section 12.07	Limitation on Trustee's Powers	12-1
 Article Thirteen General Provisions		13-1
Section 13.01	Maximum Term for Trusts.....	13-1
Section 13.02	Spendthrift Provision	13-1
Section 13.03	Contest Provision.....	13-1
Section 13.04	Survivorship Presumption.....	13-1
Section 13.05	Changing the State of Administration.....	13-1
Section 13.06	Definitions.....	13-1
Section 13.07	General Provisions.....	13-1

The Paul E. Shelton Revocable Trust

Article One Establishing My Trust

On January 23, 2002, I established the Paul E. Shelton Revocable Trust, wherein I reserved the right to amend the agreement, in whole or in part. On this 21st day of July, 2003, I now exercise my power to amend that agreement, in its entirety, so that after amendment, the Paul E. Shelton Revocable Trust states as follows:

The parties to this restated agreement are Paul E. Shelton (the "Grantor") and Paul E. Shelton (the "Trustee").

Section 1.01 Identifying My Trust

My trust may be referred to as "Paul E. Shelton, Trustee of the Paul E. Shelton Revocable Trust dated January 23, 2002, and any amendments thereto." My trust may also be referred to as the "Paul E. Shelton Revocable Trust dated January 23, 2002, and any amendments thereto."

Section 1.02 Reliance by Third Parties on Affidavit or Certification of Trust

From time to time, third parties may require documentation to verify the existence of this agreement, or particular provisions of it, such as the name or names of my Trustee or the powers held by my Trustee. To protect the confidentiality of this agreement, my Trustee may use an Affidavit or a Certification of Trust that (1) identifies my current Trustee(s); (2) sets forth the authority of my Trustee to transact business on behalf of the trust; and (3) may include pertinent pages from the trust, such as title or signature pages.

All third parties may rely upon the Affidavit or Certification of Trust signed by my Trustee regarding the representations contained in the Affidavit or Certification of Trust. All third parties relying upon the Affidavit or Certification of Trust shall be exonerated from any liability for so relying.

Section 1.03 Transferring Property to My Trust

Any person or entity may transfer property of any kind, nature and description to my trust in any manner authorized by law.

Paul E. Shelton Revocable Trust

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(a) References to My Trust

For purposes of transferring property to my trust, or to identify my trust in any beneficiary or pay-on-death designation, any description allowed by law referring to my trust shall be effective. A description may be to either the name of my trust or the name of at least one Trustee then serving, with a reference indicating that the Trustee is holding the property in a fiduciary capacity.

(b) Acceptance by My Trustee

All property transferred to my trust must be acceptable to my Trustee. My Trustee, in its sole discretion, may refuse to accept any property as an addition to my trust. My Trustee shall hold, administer and dispose of all property accepted by my Trustee for my benefit and the benefit of my beneficiaries in accordance with the terms of this agreement.

(c) Initial Funding of My Trust

By execution of this agreement, I transfer, convey and assign to my Trustee and my Trustee accepts and agrees to hold the property described in Schedule A, attached to this agreement.

Section 1.04 Powers Reserved by Me as Grantor

During my lifetime I retain the powers set forth in this Section in addition to any powers that may be reserved by me in other provisions of this agreement. I shall have these powers regardless of whether or not I am serving as Trustee and despite any provisions in this agreement to the contrary.

(a) Action on Behalf of My Trust

During any period that I am serving as sole Trustee or as a Cotrustee, I may act for and conduct business on behalf of my trust without the consent of any other Trustee.

(b) Amendment, Restatement or Revocation

I retain the absolute right, at any time and from time to time, to amend, restate, or revoke any term or provision of this agreement, or of any trust created under this agreement, in whole or in part. Any amendment, restatement, or revocation must be in a written instrument signed by me.

(c) Addition or Removal of Trust Property

I have the absolute right to add to the trust property and to remove any property from my trust at any time.

(d) Control of Income and Principal Distributions

I have the absolute right to control the distribution of income and principal from my trust. My Trustee shall distribute to me, or to such persons or entities as I may direct, as much of the net income and principal of the trust property as I deem advisable. My Trustee may distribute trust principal to me or for my unrestricted use and benefit, even to the exhaustion of all trust property. Any undistributed income shall be added to the principal of my trust.

(e) Approval of Investment Decisions

I have the right to approve my Trustee's investment decisions. My approval of investment decisions shall be binding on all other beneficiaries of this agreement.

Section 1.05 Grantor Trust Status

By reserving the broad rights and powers set forth in Section 1.04 of this Article, I intend to qualify my trust as a "Grantor Trust" under Sections 671 to 677 of the Internal Revenue Code during my lifetime so that, for federal income tax purposes, I will be treated as the owner of all the assets held in my trust as though I held them in my individual capacity.

During any period that my trust is a Grantor Trust, the taxpayer identification number of my trust shall be my social security number, in accordance with Treasury Regulation Section 301.6109-1(a)(2).

Paul E. Shelton Revocable Trust

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Article Two Family Information

The members of my immediate family who are beneficiaries under my estate plan:

Name	Relationship
June Coover	Sister
Beverly Lehmeyer	Niece
Arnette Deytens	Niece
Shirley A. Huggins	Niece
Barbara Jansen	Niece

I was married to Carolyn A. Shelton on June 6, 1953, who died on May 16, 1999.

I recognize that I have other family members (mine and my deceased wife's both by blood and marriage) and I intentionally make provisions in my Will and/or Trust for only those names above and for others as they may specifically mentioned in my estate plan.

It is my not my intention to treat all of my kinsmen of the same degree of consanguinity equally. I have intentionally made unequal provisions among the family members who are my beneficiaries.

Paul E. Shelton Revocable Trust

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Article Three

Trustee Succession and Trust Protector Provisions

Section 3.01 Resignation of a Trustee

Any Trustee may resign by giving notice to me. If I am deceased, notice shall be given to the income beneficiaries of the trust and to any other Trustee then serving.

Notice shall become effective upon the acceptance of appointment by the successor Trustee. Notice to a minor beneficiary or to an incapacitated beneficiary shall be given to the parent or legal representative of the beneficiary.

Section 3.02 Trustee Succession During My Lifetime

During my lifetime, my Trustees shall be removed and replaced as provided in this Section.

(a) Removal and Replacement by Me

I may remove any Trustee with or without cause. If a Trustee is removed, resigns or cannot continue to serve for any reason, I may serve as sole Trustee, appoint Trustees to serve with me or appoint a successor Trustee.

(b) During My Incapacity

If I am incapacitated, The National Bank of South Carolina shall serve (or continue to serve, as the case may be) as my successor Trustee replacing any other then serving Trustee.

The Trust Protector may remove any Trustee with or without cause, during any period of time I am incapacitated.

If there is no named successor Trustee during any period of time that I am incapacitated, the Trust Protector shall appoint an individual or a corporate fiduciary to serve as my successor Trustee. If the Trust Protector is unable or unwilling to act, the court having jurisdiction of my trust may appoint my successor Trustee.

All such appointments, removals and revocations shall be by signed written instrument.

Notice of removal shall be delivered to the Trustee being removed and shall be effective in accordance with the provisions of the notice.

Paul E. Shelton Revocable Trust

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Notice of appointment shall be delivered to and accepted by the successor Trustee and attached to this agreement.

Section 3.03 Trustee Succession After My Death

After my death, my Trustees shall be removed and replaced as provided in this Section.

(a) Successor Trustees

If no other corporate Trustee is then serving and there is no designation of a Trustee by my Trust Protector (as herein provided), I appoint the following to serve as my successor Trustee upon my death, in the order named:

The National Bank of South Carolina

Shirley A. Huggins

Barbara Jansen.

(b) Removal of a Trustee

After my death, a Trustee of any trust created under this agreement may be removed, with or without cause by my Trust Protector according to the provisions of Section 3.09(d).

If there is no Trust Protector serving, a Trustee of any trust created under this agreement may be removed, with or without cause by the unanimous decision of all the income beneficiaries of the trust. If a beneficiary is a minor or incapacitated, the parent or legal representative of such beneficiary may act on behalf of such beneficiary. Such power shall not be exercised by the income beneficiaries more frequently than once in any **twenty-four (24) month** period. For example, if the beneficiaries remove and appoint a Trustee on March 31, 2003, the beneficiaries may not again remove and appoint a Trustee until April 1, 2005.

A Trustee may be removed in this manner only if, on or before the effective date of removal, the person or persons having the right of removal either (1) obtain a written statement from the next named Successor Trustee that she is willing to serve or (2) appoint an attorney, certified public accountant or corporate fiduciary that simultaneously commences service as Trustee. The Trustee so appointed may not be related or subordinate to the person or persons having the right of removal within the meaning of Section 672(c) of the Internal Revenue Code.

Paul E. Shelton Revocable Trust

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Notice of removal and appointment shall be delivered to the Trustee being removed and shall be effective in accordance with the provisions of the notice. Such notice shall also identify the successor Trustee.

Nothing in this Section shall be deemed to grant to a beneficiary any of the powers of the Trustee that is subject to removal and appointment by the beneficiary.

(c) Default of Designation

If at any time the office of Trustee of a trust created under this agreement is vacant and no designated Trustee is able and willing to act, my Trust Protector shall appoint the successor Trustee.

If my Trust Protector is unable or unwilling to act, a majority of the income beneficiaries of the trust shall appoint as successor Trustee an attorney, certified public accountant or corporate fiduciary that is not related or subordinate within the meaning of Section 672(c) of the Internal Revenue Code. If a beneficiary is a minor or incapacitated, the parent or legal representative of such beneficiary may act on behalf of such beneficiary.

Any such appointment shall be in a written instrument delivered to and accepted by the successor Trustee and attached to this agreement.

Any beneficiary or his or her legal representative may petition a court of competent jurisdiction to appoint a successor Trustee to fill any vacancy remaining unfilled after a period of 30 days. By making such appointment, such court shall not thereby acquire any jurisdiction over the trust, except to the extent necessary for making such appointment.

Section 3.04 Appointment of a Cotrustee

Any individual Trustee may appoint an individual or a corporate fiduciary as a Cotrustee. A Cotrustee so named shall serve only as long as the Trustee who appointed such Cotrustee (or, if such Cotrustee was named by more than one Trustee acting together, by the last to serve of such Trustees) serves, and such Cotrustee shall not become a successor Trustee upon the death, resignation, or incapacity of the Trustee who appointed such Cotrustee, unless so appointed under the terms of this agreement.

Section 3.05 Corporate Fiduciaries

Any corporate fiduciary serving under this agreement as a Trustee must be a bank, trust company, or public charity that is qualified to act as a fiduciary under applicable federal

or state law and that is not related or subordinate to any beneficiary within the meaning of Section 672(c) of the Internal Revenue Code.

Section 3.06 Incapacity of a Trustee

If any individual Trustee, other than me, shall become incapacitated, it shall not be necessary for such Trustee to resign as Trustee. The written declaration of such incapacity by the Cotrustee, if any, or, if none, by the party designated to succeed such incapacitated Trustee, if made in good faith, shall terminate such trusteeship.

Section 3.07 Appointment of Special Independent Trustee

If for any reason the Trustee of any trust created under this agreement is unwilling or unable to act as to any trust property of that trust, or with respect to any provisions of this Agreement, the Trust Protector shall appoint, in writing, corporate fiduciary or an individual who is not related or subordinate to any beneficiary of the trust within the meaning of Section 672(c) of the Internal Revenue Code to act as a Special Independent Trustee as to such property or with respect to such provisions, and may revoke any such appointment at will.

Each Special Independent Trustee so acting shall exercise all fiduciary powers granted by this Agreement unless expressly limited elsewhere in this agreement or by the Trust Protector in the instrument appointing such substitute or special Trustee. Any Special Independent Trustee may resign at any time by delivering written notice to the Trust Protector to that effect.

Section 3.08 Rights of Successor Trustees

Every successor Trustee shall have all of the title, rights, powers and privileges and shall be subject to all of the obligations and duties, discretionary and ministerial, as given to my initial Trustee under this agreement and shall be subject to any restrictions imposed upon the original Trustee.

Section 3.09 Provisions for Trust Protector

The function of the "Trust Protector" is to assist if needed in protecting the interests of my beneficiaries and in achieving my objectives as manifested by the other provisions of this agreement.

My Trust Protector shall from time to time as my Trust Protector deems appropriate give advice to my Trustee regarding my family and the needs of any beneficiary under this

Paul E. Shelton Revocable Trust

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agreement. My Trustee may notify my Trustee if there is a change in the conditions of an beneficiary for whom a "Special Needs Trust" is being administered under this agreement.

To carry out this function I intend that my Trust Protector be empowered to correct any errors or ambiguities, including scrivener errors, found in this agreement and to respond to changes in the law that affect any trusts created under this agreement.

My Trust Protector, including any successor Trust Protector named or appointed under this Section, shall be an individual or corporate fiduciary that is not related or subordinate to any beneficiary within the meaning of Section 672(c) of the Internal Revenue Code.

(a) Designation of Trust Protector

During any period of time I am incapacitated and following my death, the Trust Protector of each trust created under this agreement shall be **Shirley A. Huggins**.

Shirley A. Huggins may at any time (and from time to time) name a successor or substitute Trust Protector to serve on any terms and conditions that she specifies in a writing signed by her and attached to the Trust Agreement.

If **Shirley A. Huggins** or her designee should fail to serve or shall cease to serve, then the following shall serve as the successor Trust Protector from the list below in the order named:

Barbara Jansen

Beverly Lehmeyer.

Upon any further vacancy, the successor Trust Protector shall be the successor Trust Protector effectively named by a serving Trust Protector under Section 3.09(b).

(b) Right of a Trust Protector to Appoint Successor Trust Protectors

Any Trust Protector (including successors) shall have the right to appoint a successor Trust Protector in writing, such appointment to take effect upon the death, resignation or incapacity of the appointing Trust Protector. Except as otherwise provided in Section 3.09(a) regarding the authority of **Shirley A. Huggins** to designate a successor Trust Protector, if I have named a successor Trust Protector, the appointment of a successor Trust Protector under this Paragraph shall take effect only if and when all Trust Protectors that I have named fail to qualify or cease to act.

Paul E. Shelton Revocable Trust

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(c) Lack of a Named Trust Protector

If during any period of time I am incapacitated or if at any time following my death, the office of Trust Protector for any trust is vacant and there is no effectively named successor Trust Protector, a majority of the income beneficiaries of that trust may appoint a successor Trust Protector for that trust. In the case of a minor or incapacitated beneficiary, the parent or legal representative of such beneficiary may act on behalf of such beneficiary.

(d) Power to Remove and Appoint Trustees

During any period of time I am incapacitated and after my death, my Trust Protector shall have the authority to remove any Trustee of a trust under this agreement, such power may not to be exercised more frequently than once in any twenty-four (24) month period. For example, if my Trust Protector removes and appoints a Trustee on March 31, 2003, my Trust Protector may not again remove and appoint a Trustee until April 1, 2005.

Whenever the office of Trustee of a trust is vacant and no successor Trustee is effectively named my Trust Protector may appoint any individual or a corporate fiduciary to serve as Trustee.

A Trust Protector may not appoint itself as a Trustee and a Trust Protector may not simultaneously serve as Trust Protector and Trustee.

(e) Resignation of Trust Protector

The Trust Protector of any trust created by this agreement may resign by giving written notice to my Trustee and to the income beneficiaries of that trust. Such resignation shall take effect on the date set forth in the notice, which date shall not be earlier than thirty (30) days after the date of delivery of the written resignation, unless an earlier effective date shall be agreed to by the income beneficiaries. Upon the effective date of such resignation, the Trust Protector shall be relieved of any further duties and responsibilities and shall not be liable or responsible for the act of any successor Trust Protector.

(f) Good Faith Standard Imposed

The authority of my Trust Protector is conferred in a fiduciary capacity and shall be so exercised, but my Trust Protector shall not be liable for any action taken in good faith. My Trust Protector will not be liable for any act or omission to act unless it is conclusively established that the act or omission to act was motivated by an actual intent to harm the beneficiaries of the trust or is an act of self-dealing for personal pecuniary benefit. The

Paul E. Shelton Revocable Trust

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trust will pay or promptly reimburse the costs of defending, settlement or judgment of any claim made against my Trust Protector unless it is conclusively established to a court of competent jurisdiction that the conduct of my Trust Protector was motivated by an actual intent to harm a beneficiary of the trust or was an act of self-dealing for personal pecuniary benefit.

(g) Power to Amend Trust Agreement

My Trust Protector may with respect to any trust as to which my Trust Protector is acting:

Amend the administrative and investment powers of my Trustee as set forth in this agreement;

Amend the trust provisions to reflect tax or other legal changes that affect trust administration; or

Amend the trust provisions to correct ambiguities, including scrivener errors that might otherwise require court construction or reformation.

Grant the beneficiary of any trust created in this agreement the unlimited and unrestricted testamentary general power to appoint to the creditors of the beneficiaries' estate, or otherwise, by a valid last will and testament or by a valid living trust agreement any property remaining in trust with an inclusion ratio greater than zero and which in the absence of the exercise of a power of appointment would pass to a skip person for generation skipping transfer tax purposes.

My Trust Protector may not amend the trust in any manner that would result in a reduction in the estate tax charitable deduction under Section 2055.

An amendment made in good faith shall be conclusive on all persons interested in the trust and my Trust Protector shall not be liable for the consequences of any amendment or for not having amended the trust. No amendment shall limit or alter the rights of a beneficiary in any trust assets held by the trust before the amendment.

Any such amendment shall be made in a written instrument signed by my Trust Protector and a copy of the amendment shall be delivered to the income beneficiaries and my Trustee. In the case of a minor or

Paul E. Shelton Revocable Trust

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incapacitated beneficiary, the notice shall be delivered to the natural guardian or legal representative of that beneficiary.

(h) Not a General Power of Appointment

Notwithstanding any other provision in this trust to the contrary, my Trust Protector shall not participate in the exercise of a power or a discretion conferred under this agreement that would cause my Trust Protector to possess a general power of appointment within the meaning of Sections 2041 and 2514 of the Internal Revenue Code and specifically may not use such powers for his or her personal benefit, or for the discharge of his or her financial obligations.

(i) Release of Powers

My Trust Protector, acting on its own behalf and on behalf of all successor Trust Protectors, may at any time, by a written instrument delivered to my Trustee, irrevocably release, renounce, suspend, cut down or modify to a lesser extent any or all powers and discretions conferred on my Trust Protector by this agreement.

(j) No Duty to Monitor

My Trust Protector shall have no duty to monitor any trust created under this agreement in order to determine whether any of the powers and discretions conferred by this agreement on my Trust Protector should be exercised. Further, my Trust Protector shall have no duty to keep informed as to the acts or omissions of others or to take any action to prevent or minimize loss. Any exercise or non-exercise of the powers and discretions granted to my Trust Protector shall be in the sole and absolute discretion of my Trust Protector, and shall be binding and conclusive on all persons. My Trust Protector is not required to exercise any power or discretion granted under this agreement.

(k) Compensation

Any Trust Protector serving hereunder shall be entitled to receive (but not required to accept) reasonable compensation for services as determined by my Trustee. My Trust Protector shall be entitled to reimbursement for all expenses incurred in the performance of duties as Trust Protector, including travel expenses.

Serving in the capacity of Trust Protector shall not prevent my Trust Protector from also providing legal services on behalf of the trust or the trust beneficiaries. If my Trust Protector is providing legal services, my Trust Protector is entitled to charge its normal and customary fees for legal

services rendered, or to be rendered and in addition be compensated as Trust Protector.

(l) Right to Examine

The books and records of each trust created under this agreement, including all documentation, inventories and accountings shall be open and available at all reasonable times to my Trust Protector.

(m) Rights of Successor Trust Protectors

Any successor Trust Protector shall have all of the authority of the Trust Protector by original appointment, but will not be responsible for the acts or omissions to act of its predecessor.

(n) Right of Trust Protector to Act Regarding Special Needs Trust

My Trust Protector shall have the power and authority to act under the provisions of any "Special Needs Trust" created by me, whether under this Agreement or otherwise.

Article Four

Administration of My Trust During My Incapacity

Section 4.01 Trust Distributions During My Incapacity

Whenever I am incapacitated, as that term is defined in Section 13.06(g) of this agreement, my Trustee shall administer my trust and distribute its net income and principal as follows:

(a) Distributions for My Benefit

My Trustee shall regularly and conscientiously make appropriate distributions of trust income and principal on my behalf and for my benefit. In making such distributions my Trustee shall assume responsibility for my general welfare and comfort under the circumstances existing at the time such distributions are made.

Such distributions shall include payments for any of my valid legal obligations. My Trustee may also make distributions for insurance premiums including, but not limited to, life, medical, disability, property and casualty, errors and omissions and long-term health care insurance policies owned by me or by my trust, as the case may be.

My Trustee is authorized to honor pledges and continue to make gifts to charitable organizations that I have regularly supported in the amounts I have customarily given.

My Trustee may make distributions on my behalf and for my benefit as my Trustee determines appropriate and the examples set forth in this Subsection are for purposes of illustration only and not by way of limitation.

(b) Manner of Distributions

My Trustee may make distributions on my behalf under this Section in any one or more of the following ways:

The distribution may be made directly to me (but only if such distributions are consistent with my ability to manage money and property).

The distribution may be made to any agent or attorney-in-fact authorized to act for my benefit under a legally valid durable power of attorney executed by me prior to my incapacity.

The distribution may be made to any guardian or conservator who has assumed responsibility for me under any court order, decree or judgment issued by a court of competent jurisdiction.

The distribution may be made to any individual or institution that is providing care to me.

(c) Distributions for the Benefit of Persons Dependent on Me

My Trustee also shall distribute as much of the net income and principal as my Trustee, in its sole discretion, deems necessary for the health, education, maintenance or support of persons that my Trustee determines to be dependent on me for support at the time this Trust Agreement is created, no persons are dependent upon me. At the time this agreement is created, no persons are dependent on me.

(d) Guidance for My Trustee Regarding Distributions

In making distributions under this Section, my Trustee shall give principal consideration to my needs, and only thereafter to the needs of persons dependent on me.

My Trustee, in its sole discretion, may make distributions to, or for the benefit of, one or more of the beneficiaries provided for under this Section based on the priority set forth in this subsection. I request that my Trustee, in its sole discretion, consider the respective needs of the beneficiaries. My Trustee, in its sole discretion, may consider other income and resources available to the beneficiaries when making distributions and may also make equal or unequal distributions or no distributions to or among the beneficiaries.

Distributions made to a beneficiary under this Section shall be considered advances and shall be charged against the share of a beneficiary that may be distributable under any other provisions of this agreement.

(e) Distributions to Agents under General Durable Power of Attorney

My Trustee may make distributions to any agent under a valid power of attorney executed by me for the purpose of making gifts as authorized in that power of attorney, or to assist my agent in carrying out my estate planning objectives. My Trustee shall be indemnified from the trust property for any damages sustained by my Trustee as a result of exercising, in good faith, the authority granted it under this subsection.

Article Five Administration of My Trust Upon My Death

Section 5.01 My Trust Shall Become Irrevocable

Upon my death, my trust shall become irrevocable and my social security number may no longer be used to identify my trust. Therefore, my Trustee shall apply for a separate taxpayer identification number for my trust.

Section 5.02 Administrative Trust

After my death and prior to the distribution of trust property as provided in the subsequent Articles of this agreement, my trust shall be an "administrative trust" but shall continue to be known as the Paul E. Shelton Revocable Trust dated January 23, 2002. My administrative trust shall exist for a reasonable period of time in order to comply with the provisions of this Article.

Section 5.03 Payment of My Expenses and Taxes

My Trustee is authorized but not directed to pay from the administrative trust:

- Any expenses of my last illness, funeral and burial or cremation, including memorials and memorial services;
- Legally enforceable claims against me or my estate;
- Expenses of administering my trust and my estate; and
- Any allowances by court order for those dependent upon me.

These payments are authorized, but are discretionary with my Trustee. Decisions on such expenses may be made by my Trustee without regard to any limitation on such expenses imposed by law and may be made without obtaining the approval of any court having jurisdiction over the administration of my estate. No claim or right to payment by third parties may be enforced against my trust by virtue of this discretionary authority.

In addition, my Trustee shall pay any taxes imposed by reason of my death out of the principal of the trust property in the manner provided in Section 5.04 of this Article.

Paul E. Shelton Revocable Trust

G:\00-Client Folders\02050.shelton\pes.restatement of rta.2003.0721.d5.doc

However, if a probate estate is opened within six months after my death, then such payments, to the extent not already paid by my Trustee, shall be made by my Personal Representative to the extent that the cash and readily marketable assets included in the residue of my probate estate are sufficient to pay such items.

Section 5.04 Payment of Death Taxes

Except as otherwise provided in this Section or elsewhere in this agreement, my Trustee shall provide for payment of all death taxes from the administrative trust without apportionment and shall not seek contribution toward or recovery of any such payments from any individual.

For the purposes of this Section, the term death taxes shall refer to any taxes imposed by reason of my death by federal, state or local authorities, including but not limited to estate, inheritance, gift, and direct-skip generation-skipping transfer taxes. However, for the purposes of this Section, death taxes shall not include any additional estate tax imposed by Section 2031(c)(5)(C), Section 2032A(c) or Section 2057(f) of the Internal Revenue Code or any other comparable recapture taxes imposed by any taxing authority. Nor shall death taxes include any generation-skipping transfer tax, other than a direct skip.

(a) Protection of Exempt Property

In no event shall any such taxes be allocated to or paid from any assets that are not included in my gross estate for federal estate tax purposes.

(b) Charitable Distributions

Notwithstanding anything in this agreement to the contrary, no death taxes payable as a result of my death shall be allocated to or paid from any assets passing to any organization qualifying for the federal estate tax charitable deduction, or split-interest charitable trusts, unless my Trustee has first used all other assets available to my Trustee.

(c) Property Passing Outside of My Trust

Death taxes imposed with respect to property included in my gross estate for death tax purposes and passing outside of my trust shall be apportioned among the persons and entities benefited in the proportion that the taxable value of the property or interest bears to the total taxable value of the property and interests received by all persons benefited. The values to be used for the apportionment of the respective taxes shall be the values as finally determined in the respective tax proceedings.

Paul E. Shelton Revocable Trust

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Section 5.05 Coordination with My Personal Representative

The following provisions are intended to help facilitate the coordination between the Personal Representative of my probate estate, if any, and my Trustee. These provisions apply even if the Personal Representative of my probate estate and my Trustee are the same person or entity.

(a) Reliance on My Personal Representative

My Trustee may rely upon the written request of my Personal Representative for payments authorized under this Article and the amounts included therein without computing the sums involved. If payment is made under this Article to my Personal Representative, my Trustee shall not have any duty to inquire into the application of any such payments requested by my Personal Representative.

My Trustee may accept distributions from the Personal Representative of my estate without obligation to review the records of my Personal Representative.

(b) Purchase of Assets from and Loans to My Probate Estate

My Trustee is authorized to purchase and retain, as an investment for my trust estate, any property forming a part of my probate estate. My Trustee may make loans, with or without security, to my probate estate. My Trustee shall not be liable for any loss suffered by my trust as a result of the exercise of the powers granted in this subsection.

(c) Discretionary Distributions to My Personal Representative

At any time during the term of my trust after my death, my Trustee may, in its sole discretion, distribute to my probate estate, as a beneficiary of this trust, cash or other trust property, including cash or property that is classified as post-death trust income, to whatever extent my Trustee determines it to be in the best interests of the beneficiaries. My Trustee shall not make distributions for payment of any administrative expenses from property described in Section 5.04(b).

Section 5.06 Tax Elections

I authorize my Trustee to make the following tax elections upon my death:

(a) Right to Make Elections

My Trustee may make any available tax election with regard to federal or state gift, estate or other death taxes or generation-skipping transfer taxes.

Paul E. Shelton Revocable Trust

G:\00-Client Folders\02050.shelton\pes.restatement of rta.2003.0721.d5.doc

However, if for any reason a Personal Representative is appointed for my estate, my Personal Representative shall have the sole and absolute discretion to make the tax elections authorized under this Section.

(b) Tax Elections

My Trustee's authority to make tax elections shall include, but shall not be limited to, the right to choose the alternate valuation date, the right to elect whether to take administration expenses as estate tax deductions or income tax deductions, the right to allocate my unused generation-skipping exemption to all or any portion of the trust property, the right to make special use valuation elections, and the right to defer payment of all or any portion of any taxes.

My Trustee may elect to treat my administrative trust as part of my estate for federal and/or state income tax purposes.

My Trustee, in its sole discretion, may elect to have trust property qualify for the "family owned business deduction" authorized under Section 2057 of the Internal Revenue Code. My Trustee may enter into any agreement on behalf of my trust that is necessary to validly make such election under the Internal Revenue Code and regulations promulgated thereunder.

My Trustee may, but need not, make any equitable adjustments between income and principal on account of any tax elections made by my Trustee.

(c) Allocation of GST Exemption

My Trustee may elect to allocate or not allocate any portion of the available GST exemption under the Internal Revenue Code, or a counterpart exemption under any applicable state law, to any property of which I am the transferor for generation-skipping transfer tax purposes, including any lifetime transfer of property by me as to which I did not make an allocation prior to death. The exercise of such discretion shall be based on the transfers, gift tax returns and other information known to my Trustee, with no requirement that allocations benefit the various transferees or beneficiaries equally, proportionally, or in any other particular manner.

(d) Qualified Conservation Easements

My Trustee may, in its sole discretion, and without the consent of any beneficiary, create a qualified conservation easement, as defined in Section 2031(c)(8)(A) of the Internal Revenue Code in any land held by my trust and make the election provided by Section 2031(c)(6).

Paul E. Shelton Revocable Trust

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Article Six

Specific Distributions and Disposition of Tangible Personal Property

Section 6.01 Specific Distribution to Beverly Lehmeyer

Upon my death, my Trustee shall, subject to reduction for advancements, distribute **Fifty Thousand (\$ 50,000.00) Dollars** to **Beverly Lehmeyer**.

If **Beverly Lehmeyer** should predecease me, this distribution shall lapse and the property subject to this distribution shall instead be distributed under the other provisions of this agreement.

All amounts paid to or for the benefit of **Beverly Lehmeyer** shall be treated as advancements if such amounts were paid or applied:

under the authority of any Agent of mine under any Power of Attorney, or

under Article 4 of this Agreement, or

by way of any gift made by me as to which there is a writing signed by me directing that such gift shall be treated as an advancement.

Funds received by **Beverly Lehmeyer** by reason of my death from a jointly owned asset or by reason of a beneficiary designation shall **not** be considered and advancement against the distribution to **Beverly Lehmeyer** under this Section.

All advancements shall be deducted from the amount stated above dollar for dollar based on the value at the time of the advancement.

Property passing under this Section shall pass free of any administrative expenses or death taxes.

Section 6.02 Specific Distribution to Arnette Deytens

Upon my death, my Trustee shall, subject to reduction for advancements, distribute **Fifty Thousand (\$ 50,000.00) Dollars** to **Arnette Deytens**.

Paul E. Shelton Revocable Trust

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If Arnette Deytens should predecease me, this distribution shall lapse and the property subject to this distribution shall instead be distributed under the other provisions of this agreement.

All amounts paid to or for the benefit of Arnette Deytens shall be treated as advancements if such amounts were paid or applied:

under the authority of any Agent of mine under any Power of Attorney, or

under Article 4 of this Agreement, or

by way of any gift made by me as to which there is a writing signed by me directing that such gift shall be treated as an advancement.

Funds received by Arnette Deytens by reason of my death from a jointly owned asset or by reason of a beneficiary designation shall not be considered and advancement against the distribution to Arnette Deytens under this Section.

All advancements shall be deducted from the amount stated above dollar for dollar based on the value at the time of the advancement.

Property passing under this Section shall pass free of any administrative expenses or death taxes.

Section 6.03 Specific Distribution to Shirley A. Huggins

Upon my death, my Trustee shall, subject to reduction for advancements, distribute Seventy Five Thousand (\$ 75,000.00) Dollars to Shirley A. Huggins.

If Shirley A. Huggins should predecease me, this distribution shall lapse and the property subject to this distribution shall instead be distributed under the other provisions of this agreement.

All amounts paid to or for the benefit of Shirley A. Huggins shall be treated as advancements if such amounts were paid or applied:

under the authority of any Agent of mine under any Power of Attorney, or

under Article 4 of this Agreement, or

by way of any gift made by me as to which there is a writing signed by me directing that such gift shall be treated as an advancement.

Paul E. Shelton Revocable Trust

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Funds received by **Shirley A. Huggins** by reason of my death from a jointly owned asset or by reason of a beneficiary designation shall **not** be considered and advancement against the distribution to **Shirley A. Huggins** under this Section.

All advancements shall be deducted from the amount stated above dollar for dollar based on the value at the time of the advancement.

Property passing under this Section shall pass free of any administrative expenses or death taxes.

Section 6.04 Specific Distribution to Barbara Jansen

Upon my death, my Trustee shall, subject to reduction for advancements, distribute **Ten Thousand (\$ 10,000.00) Dollars** to **Barbara Jansen**.

If **Barbara Jansen** should predecease me, this distribution shall lapse and the property subject to this distribution shall instead be distributed under the other provisions of this agreement.

All amounts paid to or for the benefit of **Barbara Jansen** shall be treated as advancements if such amounts were paid or applied:

under the authority of any Agent of mine under any Power of Attorney, or

under Article 4 of this Agreement, or

by way of any gift made by me as to which there is a writing signed by me directing that such gift shall be treated as an advancement.

Funds received by **Barbara Jansen** by reason of my death from a jointly owned asset or by reason of a beneficiary designation shall **not** be considered and advancement against the distribution to **Barbara Jansen** under this Section.

All advancements shall be deducted from the amount stated above dollar for dollar based on the value at the time of the advancement.

Property passing under this Section shall pass free of any administrative expenses or death taxes.

Section 6.05 Distribution of Tangible Personal Property by Memoranda

I reserve the right to make dispositions of tangible personal property by attaching or associating with my trust subsequent to its execution a **written memorandum**. The

Paul E. Shelton Revocable Trust

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memorandum shall be dated and signed by me, or shall be in my handwriting, and shall list items of tangible personal property designating the beneficiary of such property.

If I do so the memorandum shall be incorporated by reference into this agreement. I direct that upon my death my Trustee distribute my tangible personal property, together with any insurance policies covering such property and claims under such policies, in accordance with such memorandum. Should I leave multiple written memoranda that conflict as to the disposition of any item of tangible personal property, that memorandum that is last dated shall control as to those items that are in conflict.

If the writing is not legally binding, I request that my Trustee follow my wishes and distribute my tangible personal property, together with any insurance policies covering such property and claims under such policies, in accordance with such memorandum.

Section 6.06 Distribution of Remaining Tangible Personal Property

My Trustee shall distribute any tangible personal property not disposed of by a written memorandum as follows:

Such tangible personal property shall be distributed equally among the following people who survive me: **June Coover, Beverly Lehmeyer, and Shirley A. Huggins.**

Section 6.07 Definition of Tangible Personal Property

For purposes of this Article, my tangible personal property shall include but not be limited to my household furnishings, appliances and fixtures, works of art, motor vehicles, pictures, collectibles, personal wearing apparel and jewelry, books, sporting goods, and hobby paraphernalia.

Tangible personal property shall not include any tangible property that my Trustee, in its sole discretion, determines to be part of any business or business interest owned by me or my trust.

If my Trustee receives property to be distributed under this Article from my probate estate or in any other manner after my death, then the gift shall not adeem on account of not being a part of my trust property at my death, and my Trustee shall distribute the property, free of trust, as a specific distribution in accordance with this Article. If property to be distributed under this Article is not part of the trust property upon my death and does not subsequently become trust property, then the specific distribution made in this Article shall be considered null and void, without any legal or binding effect.

Paul E. Shelton Revocable Trust

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**Section 6.08 Encumbrances and Incidental Expenses of Tangible
Personal Property**

My Trustee shall distribute property under this Article subject to any liens, security interest or other encumbrances on such property.

However, my Trustee shall pay, as an administration expense, the reasonable expenses of storing, insuring, packing, transporting and otherwise caring for my tangible personal property until actual delivery of each item of property to the appropriate beneficiary.

Section 6.09 Residuary Distribution

Any tangible personal property not distributed under this or prior Articles of this agreement shall be distributed under the Articles that follow.

Article Seven

Distribution of My Trust Property

My Trustee shall administer all of the remaining trust property as provided in this Article.

Section 7.01 Division of Remaining Trust Property

My Trustee shall divide the remaining trust property not previously distributed under this agreement into the following shares:

Name	Relationship	Share
June Coover, if then living	Sister	the <u>lesser</u> of 1/3 of the trust estate or \$ 300,000.00
Paul E. Shelton Family Pot Trust	N/A	the balance of the trust estate or all thereof if June Coover is not then living.

My Trustee shall administer the Paul E. Shelton Family Pot Trust as provided in the subsequent Sections of this Article.

If she is then living, the share provided for June Coover shall be distributed by my Trustee to the Personal Representative of my estate to be administered as provided in the "Special Needs Trust" created by my Will. If June Coover is not then living, there shall be no share created for her and no "pour-back" to my estate.

Section 7.02 Distribution of the Share for the Paul E. Shelton Family Pot Trust

My Trustee shall administer the share set aside for the Paul E. Shelton Family Pot Trust under the provisions of this Section.

The Primary Beneficiaries of the Paul E. Shelton Family Pot Trust are the following: Beverly Lehmeyer, Arnette Deytens, Shirley A. Huggins, and Barbara Jansen

The Secondary Beneficiaries of the Paul E. Shelton Family Pot Trust are the following: the descendants of Beverly Lehmeyer, the descendants of Arnette Deytens, the descendants of Shirley A. Huggins, and the descendants of Barbara Jansen.

Paul E. Shelton Revocable Trust

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(a) Distributions of Net Income

At least quarter-annually, my Trustee shall pay to or apply for the benefit of the Primary Beneficiaries of the Paul E. Shelton Family Pot Trust living at the end of the calendar quarter in equal shares all of the net income of the Paul E. Shelton Family Pot Trust. Each Primary Beneficiary's entitlement to an income distribution shall end when such beneficiary dies.

(b) Distributions of Principal

My Trustee shall pay to or for the benefit of each Primary Beneficiary of the Paul E. Shelton Family Pot Trust as much of the principal of the Paul E. Shelton Family Pot Trust as my Trustee determines is necessary or advisable for such beneficiary from the Paul E. Shelton Family Pot Trust for such beneficiary's health needs. The annual aggregate distributions of principal for any Primary Beneficiary shall not exceed the sum of Twenty Thousand (\$ 20,000.00) Dollars.

My Trustee shall pay to or for the benefit of each Secondary Beneficiary of the Paul E. Shelton Family Pot Trust as much of the principal of the Paul E. Shelton Family Pot Trust as my Trustee determines is necessary or advisable for such beneficiary from the Paul E. Shelton Family Pot Trust for such beneficiary's health and education needs. The annual aggregate distributions of principal for any Secondary Beneficiary shall not exceed the sum of Ten Thousand (\$ 10,000.00) Dollars, plus any bonuses described below. The Trustee shall consult with the committee created below.

Education Bonuses for Secondary Beneficiaries:

My Trustee shall (upon the written request of each Secondary Beneficiary) distribute to such beneficiary an amount equal to the value of any scholarships awarded to such beneficiary.

My Trustee shall (upon the written request of each Secondary Beneficiary) distribute to such beneficiary the sum of **Fifteen Thousand (\$ 15,000.00) Dollars** upon such beneficiary's graduation from an accredited four-year college or university.

My Trustee shall (upon the written request of each Secondary Beneficiary) distribute to such beneficiary the sum of **Fifteen Thousand (\$ 15,000.00) Dollars** upon such beneficiary's graduation from an accredited technical college, provided such beneficiary has been a full time student for the equivalent of four academic years.

Paul E. Shelton Revocable Trust

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My Trustee shall (upon the written request of each Secondary Beneficiary) distribute to such beneficiary the sum of **Twenty-five Thousand (\$ 25,000.00) Dollars** upon such beneficiary's receiving from an accredited college or university a PhD, a Master's Degree, or a degree equivalent to any of them.

(c) Guidelines for Discretionary Distributions

In making discretionary distributions to the beneficiaries of the **Paul E. Shelton Family Pot Trust**, it is my desire that such benefits are a supplement to the beneficiaries' other resources. Accordingly, my Trustee shall be mindful of, and always consider, the other known resources available to the beneficiary before making discretionary distributions. These expressions of my desires are **precatory** and not mandatory.

Distributions for educational expenses shall be made only to full time students at an accredited post-high school institution. No distributions shall be made for any beneficiary who has not attained at least a 2.5 grade point on a 4.0 scale during the next prior school semester attended by the beneficiary.

(d) Committee to Advise Trustee

There shall be a committee created. The committee shall be **Shirley A. Huggins, William "Bill" Huggins, Barbara Jansen, and Arnette Deytens**, or the designee of each. The committee shall have an advisory role to assist the Trustee in all matters concerning the distributions from the **Paul E. Shelton Family Pot Trust**.

(e) Distribution Upon the Death of the Surviving Beneficiary of the Paul E. Shelton Family Pot Trust

If all of the beneficiaries of the **Paul E. Shelton Family Pot Trust** should die before the complete distribution of the **Paul E. Shelton Family Pot Trust**, my Trustee shall distribute the remaining trust property as provided in **Article Eight** of this agreement.

Article Eight

Remote Contingent Distribution Pattern

If, at any time, there is no person or entity qualified to receive final distribution of my trust estate or any part of it, then my Trustee shall distribute any such portion of my trust estate with respect to which such failure of qualified recipients has occurred as follows:

One-eighth (1/8) of the then remaining property of this Trust shall be divided and paid over and distributed to those persons then living who would then be **my heirs**, their identities and respective shares to be determined in accordance with the law then in effect in the **State of South Carolina**, as if I had then died intestate.

One-eighth (1/8) of the then remaining property of this Trust shall be divided and paid over and distributed to those persons then living who would then be **my deceased wife's heirs**, their identities and respective shares to be determined in accordance with the law then in effect in the **State of South Carolina**, as if my deceased wife had then died intestate.

The balance of the then remaining property of this Trust shall be divided and paid over and distributed as follows:

Unrestricted Outright Gift to Charity. **One-third (1/3)** of the balance to the **America Cancer Society** located at Charleston, South Carolina or its successors, for such charitable uses and purposes as its governing board shall deem necessary and advisable.

Unrestricted Outright Gift to Charity. **One-third (1/3)** of the balance to the **America Heart Association** located at Charleston, South Carolina or its successors, for such charitable uses and purposes as its governing board shall deem necessary and advisable.

Unrestricted Outright Gift to Charity. **One-third (1/3)** of the balance to the **Alzheimer's** located at Charleston, South Carolina or its successors, for such charitable uses and purposes as its governing board shall deem necessary and advisable.

Article Nine

Administration of Trusts for Underage and Incapacitated Beneficiaries

Section 9.01 Distributions for Underage and Incapacitated Beneficiaries

Whenever my Trustee is authorized or directed to make a distribution to a beneficiary who is younger than 35 years of age, is incapacitated or who is, in my Trustee's sole opinion, unable to manage such distribution properly, my Trustee may make the distribution to such beneficiary or retain the amount to be distributed in any manner my Trustee, in its sole discretion, deems advisable, including without limitation, by the methods authorized in this Article.

Before making any distributions to the beneficiaries under this Article, it is my desire that my Trustee, to the extent that it is both reasonable and possible, consider the behavior of the beneficiaries with regard to their disposition of prior distributions of trust property, but my Trustee shall have no responsibility to inquire into the ultimate disposition of the distributed property.

Section 9.02 Methods of Distribution

My Trustee may distribute or retain trust property for such beneficiaries in any one or more of the following methods:

(a) Distribution to Beneficiary

My Trustee may distribute such trust property directly to the beneficiary.

(b) Distribution to Guardian or Conservator or Family Member

My Trustee may distribute such trust property to the beneficiary's guardian or conservator, to the beneficiary's parent or to a family member or other person who has assumed the responsibility of caring for the beneficiary.

(c) Distribution to Custodian

My Trustee may distribute trust property to any person or entity, including my Trustee, as custodian for the beneficiary under the Uniform Transfers to Minors Act, or similar statute of any state.

Paul E. Shelton Revocable Trust

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(d) Distribution to Other Persons or Entities

My Trustee may distribute trust property to other persons and entities for the use and benefit of the beneficiary.

(e) Retention in Trust

My Trustee may retain such trust property in a separate trust for the benefit of the beneficiary until the beneficiary attains 35 years of age or, in the opinion of my Trustee, is no longer incapacitated.

Until the termination of such trust, my Trustee, in its sole discretion, shall distribute as much of the net income and principal of the trust as my Trustee deems necessary or advisable for the health, education, maintenance or support of the beneficiary. Any undistributed net income shall be accumulated and added to principal.

When the beneficiary attains 35 years of age or is no longer incapacitated (as the case may be), my Trustee shall distribute the remaining trust property to the beneficiary.

If the beneficiary should die before the complete distribution of the trust property, then upon the death of the beneficiary, my Trustee shall distribute the remaining net income and principal of the trust to the then living descendants of the beneficiary, *per stirpes*.

If the beneficiary has no then living descendants, my Trustee shall distribute the remaining trust property as provided in **Article Eight** of this agreement.

Section 9.03 Application of Article

Notwithstanding the provisions of this Article, my Trustee shall have no duty or obligation to inquire into a beneficiary's ultimate disposition of any distribution. Any decision made by my Trustee under this Article shall be final, controlling and binding upon all beneficiaries.

Article Ten

Retirement Plans and Life Insurance Policies

The provisions of this Article shall apply to any retirement plans and insurance policies owned or made payable to my trust.

Section 10.01 Retirement Plans

The following provisions shall apply to retirement plans.

(a) Provisions During My Life

During my life, I reserve all rights, powers and options, including, but not limited to, the right to designate and change beneficiaries, the right to borrow money, the right to receive all payments as owner and the right to make any available elections in connection with any retirement plan whether a qualified retirement, pension, profit sharing, Keogh, individual retirement account, or any other like plan (collectively referred to as "Retirement Plan").

(b) Provisions After My Death

My Trustee, in its sole discretion, may exercise any right to determine the manner and timing of payment (by lump sum or otherwise) of Retirement Plan benefits that are permitted under any Retirement Plan and are consistent with the federal income tax rules regarding required minimum distributions under Section 401(a)(9) of the Code.

My Trustee, in its sole discretion, may make a qualified disclaimer of the benefits of any Retirement Plan payable to my trust.

My Trustee shall not be liable to any beneficiary for the death benefit election selected or for any decision regarding the disclaimer of the benefits of any Retirement Plans that are payable to my trust.

Section 10.02 Life Insurance Policies

The following provisions shall apply to insurance policies.

Paul E. Shelton Revocable Trust

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(a) Provisions During My Life

During my life, I reserve all of the rights, powers, privileges, and options, including, but not limited to, the right to designate and change beneficiaries, the right to borrow money, the right to surrender, the right to receive any payments as owner, and the right to make any available elections with respect to any insurance policy, annuity, or any other third-party beneficiary contract made payable to my trust.

My Trustee shall have no duty to exercise, or not exercise, any rights, powers, privileges or options with respect to any insurance policy, annuity contract or other third-party beneficiary contract and my Trustee shall have no obligation to pay premiums or other contractual amounts that may be payable under any such policy.

(b) Provisions After My Death

After my death, my Trustee may make all appropriate elections with respect to such policies and may collect all sums made payable to my trust or my Trustee under all such policies or contracts.

My Trustee may, in its sole discretion, exercise any settlement options or other options or rights that may be available under the terms of any policy or contract. My Trustee shall not be liable to any beneficiary on account of any election made by my Trustee with respect to any policy or contract.

Section 10.03 Liability of Payor

Persons or entities dealing in good faith with my Trustee shall not be required to see to the proper application of proceeds delivered to my Trustee, or to inquire into any provision of this agreement.

A receipt signed by my Trustee for any proceeds or benefits paid shall be a sufficient discharge to the person or entity making such payment.

Section 10.04 Collection Efforts

My Trustee shall make reasonable effort to collect all proceeds of life insurance policies or Retirement Plan benefits that are payable to my Trustee.

My Trustee may commence legal or administrative proceedings to collect the proceeds of any life insurance policy or Retirement Plan benefits, provided, however, that my Trustee

Paul E. Shelton Revocable Trust

G:\00-Client Folders\02050.shelton\pes.restatement of rta.2003.0721.d5.doc

need not commence any such proceedings until my Trustee is indemnified to its satisfaction for any expenses and liabilities it may incur as a result of such proceeding.

My Trustee may, in its sole discretion, settle or compromise any and all claims with respect to the collection of any life insurance proceeds or Retirement Plan benefits. Any such settlement made by my Trustee shall be binding on all beneficiaries.

Section 10.05 No Obligation to Purchase or Maintain Benefits

The provisions of this Article or any other provision of this agreement shall not impose any obligation, legal or otherwise, on me to purchase, invest, or maintain any Retirement Plan or life insurance policy.

Article Eleven

Trust Administration

Section 11.01 Distributions to Beneficiaries

Whenever in this agreement, my Trustee is authorized or directed to make a distribution of net income or principal to a beneficiary of this trust, my Trustee may apply for the benefit of such beneficiary any property that otherwise could be distributed directly to such beneficiary.

Section 11.02 No Court Proceedings

The trust shall be administered expeditiously, consistent with its provisions, free of judicial intervention, and without order, approval or action of any court. It shall be subject only to the jurisdiction of a court being invoked by my Trustee or by other interested parties. Proceedings to seek instructions or court determinations shall be initiated in the court having original jurisdiction over matters relating to the construction and administration of trusts. Seeking instructions or court determination shall not thereafter subject the trust to the continuing jurisdiction of the court.

I desire that any questions or disputes that may arise during the administration of the trust be resolved by mediation and if necessary, arbitration in accordance with the Uniform Arbitration Act. Each of my Trustees and/or each interested party involved in the dispute shall select an arbiter and, if necessary to establish a majority decision, the arbiters so selected shall select an additional arbiter. The decision of a majority of the arbiters so selected shall control with respect to such matter.

Section 11.03 No Bond

No Trustee acting under this trust shall be required to furnish any bond for the faithful performance of such Trustee's duties. If required by any law or court rule, no surety shall be required on such bond.

Section 11.04 Exoneration of My Trustee

No successor Trustee is obligated to examine the accounts, records or acts or in any way or manner be responsible for any act or omission to act on the part of any previous Trustee or of the Personal Representative of my estate. No Trustee shall be liable to me or to any beneficiary for the consequences of any action taken by such Trustee that

Paul E. Shelton Revocable Trust

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would, but for the prior removal of such Trustee, have been a proper exercise by such Trustee of the authority granted to such Trustee under this agreement, until actual receipt by such Trustee of notice of such removal.

Any Trustee may acquire from the beneficiaries or from their legal representatives, agreements in writing releasing such Trustee from liability that may have arisen from the acts or omissions to act of such Trustee and indemnifying such Trustee from liability therefore. Such agreements, if acquired from all the living beneficiaries or from their legal representatives, shall be conclusive and binding upon all parties, born or unborn, who may have, or may in the future acquire, an interest in the trust.

My Trustee may require a refunding agreement before making any distribution or allocation of either income or principal or may withhold distribution or allocation pending determination or release of any tax lien or other lien. The refunding agreement provision shall not apply to any distribution that qualifies for the federal estate tax charitable deduction.

Section 11.05 Trustee Compensation

(a) Individual Trustee

An individual serving as Trustee shall be entitled to fair and reasonable compensation for the services he or she renders as a fiduciary. Any corporate fiduciary serving as my Trustee shall be compensated by agreement with my individual Trustee or, in the absence of such agreement, in accordance with the corporate fiduciary's published fee schedule in effect at the time the services are rendered.

My Trustee may charge additional fees for services it provides to any trust hereunder that are not comprised within its duties as Trustee, including, but not limited to, fees for legal services, fees for tax return preparation, fees for providing corporate finance or investment banking services.

My Trustee may be reimbursed for reasonable costs and expenses incurred in carrying out its duties under this agreement.

(b) Fee Schedule for Corporate Trustee

For its services as Trustee, a corporate Trustee shall receive an amount determined by its Standard Fee Schedule in effect and applicable at the time of the performance of such services.

All trusts then being administered under this Trust or under any trust Agreements or trust established by will by me with the Corporate Trustee

shall be considered as one trust for purposes of determining the fee to be charged.

No fee (other than actual costs) shall be charged by the Trustee for distribution of principal, termination of trust, or the like.

If no Standard Fee Schedule shall be in effect at that time, it shall be entitled to reasonable compensation for the services rendered, subject to the fee limitation set forth above.

My Trustee may be reimbursed for reasonable costs and expenses incurred in carrying out its duties under this agreement.

Section 11.06 Employment of Professionals

My Trustee may appoint, employ and remove, at any time and from time to time, investment advisors, accountants, auditors, depositories, custodians, brokers, consultants, attorneys, expert advisers, agents, and employees to advise or assist the Trustee in the performance of its duties. My Trustee may act with or without independent investigation upon the recommendations of the persons or entities employed

My Trustee may reasonably compensate those persons or entities regardless of whether any person or entity so employed shall be a Trustee hereunder or shall be a corporate affiliate of a Trustee of any trust created under this agreement and regardless of whether any entity so employed shall be one in which a Trustee of a trust created under this agreement shall be a partner, member, stockholder, officer, director or corporate affiliate or shall have any other interest.

My Trustee may pay the usual compensation for such services out of principal or income as my Trustee may deem advisable, and such compensation may be paid without diminution of or charging the same against the compensation of any Trustee hereunder, and any Trustee who shall be a partner, stockholder, officer, director or corporate affiliate in any such entity shall nonetheless be entitled as a partner, member, stockholder, officer, director or corporate affiliate to receive such Trustee's share of the compensation paid to such entity.

Section 11.07 Exercise of Testamentary Power of Appointment

A testamentary power of appointment granted under this agreement may be exercised by valid will, valid revocable living trust or by any other written instrument that specifically refers to this power of appointment. The appointment may be exercised to appoint the property among the permissible appointees in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the holder of the power designates.

Paul E. Shelton Revocable Trust

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The holder of the power may grant further powers of appointment to any person to whom principal may be appointed.

My Trustee may conclusively presume that any power of appointment granted to any beneficiary in this agreement has not been exercised by the beneficiary if my Trustee has no knowledge of the existence of a valid will, valid revocable living trust or by any other written instrument exercising such power within three (3) months after the beneficiary's death.

Section 11.08 Trust Accounting

After my death and upon written request, my Trustee shall render an accounting at least annually to the income beneficiaries of any trust created in this agreement during the accounting period. Such accounting shall include the receipts, disbursements, and distributions occurring during the accounting period together with a statement of the trust property.

The assent by all income beneficiaries, to an accounting of my Trustee, other than an Interested Trustee, shall make the matters disclosed in such accounting, in the absence of fraud or manifest error, binding and conclusive upon all persons, whether or not in being, then having or who may thereafter have any interest, vested or contingent, in either income or principal. In the case of a minor or incapacitated beneficiary, that beneficiary's natural guardian or legal representative shall give the assent.

The failure of any such person to object to any account by written notice to my Trustee within 60 days of the receipt of a copy of such account shall be deemed to be an assent by such person.

The trust's financial records along with the trust documentation shall be available at reasonable times and upon reasonable notice for inspection by trust beneficiaries and their representatives. My Trustee shall not be required to furnish trust information regarding my trust to any individual, corporation, or other entity that is not a beneficiary or the representative of a beneficiary, or is not requesting such pursuant to a valid court order.

Section 11.09 Action of Trustees; Disclaimer

Unless otherwise provided in this agreement, whenever I am serving as Trustee, I may make all decisions and exercise all powers and discretions granted under this trust created under this agreement without the consent or joinder of any other Trustee.

When I am not serving as a Trustee, if two Trustees are eligible to act with respect to a given matter, then the concurrence of both shall be required for action to be taken with respect to any trust under this agreement.

Paul E. Shelton Revocable Trust

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When I am not serving as a Trustee, if more than two Trustees are eligible to act with respect to a given matter, then the concurrence of a majority of my Trustees shall be required and shall control all action to be taken with respect to any trust under this agreement.

If there is not the concurrence and joinder of a majority of trustees with respect to a matter as to which they have joint powers, I desire that the matter shall be settled by mediation and if necessary, arbitration in accordance with the Uniform Arbitration Act. Each of my Trustees shall select an arbiter and if necessary to establish a majority decision, the arbiters so selected shall select an additional arbiter. The decision of a majority of the arbiters so selected shall control with respect to such matter.

A nonconcurring Trustee may dissent or abstain from a decision of the majority. Such Trustee shall be absolved from personal liability by registering such dissent or abstention in the records of such trust, and shall thereafter act with the other trustees in any way necessary or appropriate to effectuate the decision of the majority.

Notwithstanding the foregoing and any provision of this agreement to the contrary, any beneficiary serving as a Trustee may disclaim or release, by an instrument in writing, any power as Trustee in whole or in part, irrevocably or for such period of time as such Trustee may specify, without affecting the continuance of the power in any other Trustee.

Section 11.10 Delegation of Trustee Authority; Power of Attorney

Any Trustee may, by an instrument in writing, delegate to any other Trustee the power to exercise any powers, including discretionary powers, granted my Trustee in this agreement. During any such delegation, the delegated powers may be exercised by the Trustee to whom delegated to the same extent as if the delegating Trustee had personally joined in the exercise of such power. The delegating Trustee may revoke such delegation at any time by written notice to the non-delegating Trustee.

My Trustee may execute and deliver a revocable or irrevocable power of attorney appointing any individual or corporation to transact any and all business on behalf of any trust created in this agreement. The power of attorney may grant to the attorney-in-fact all of the rights, powers, and discretion that my Trustee could have exercised.

Section 11.11 Power to Terminate Trusts

If, at any time, my Trustee, other than an Interested Trustee, in its sole discretion, determines that any trust created under this agreement is no longer economical to administer or that any trust is otherwise inadvisable to administer as a trust, or if my Trustee deems it in the best interest of my beneficiaries, my Trustee, without further responsibility, may terminate such trust or trusts and distribute the trust property, including any undistributed net income, in the following order of priority:

Paul E. Shelton Revocable Trust

G:\00-Client Folders\02050.shelton\pes.restatement of rta.2003.0721.d5.doc

- To me, if I am then living.
- To the beneficiaries then entitled to mandatory distributions of net income of the trust and in the same proportions.
- If none of the beneficiaries are entitled to mandatory distributions of net income, to the beneficiaries then eligible to receive discretionary distributions of net income of the trust, in such amounts and shares as my Trustee, other than an Interested Trustee, may, in its sole discretion, determine.

If my Trustee receives written instructions from my Trust Protector regarding the termination of any trust under this agreement, my Trustee shall follow such instructions and, absent bad faith, shall be exonerated from any liability to any person for following such instructions.

Section 11.12 Discretionary Distribution to Fully Utilize Basis Increase Upon Death of Beneficiary

If at any time there is no federal estate tax in effect and if I have given the Trustee of any trust created under this agreement the discretion to make distributions of principal to the beneficiaries of the trust, then the Trustee, other than an Interested Trustee, may, in its sole discretion, distribute to the beneficiaries of the trust then eligible for discretionary distributions of income and principal as much of the income and principal as the Trustee, from time to time, determines advisable so that the estate of the beneficiaries can take full advantage of the aggregate basis increase allowed under Section 1022 of the Internal Revenue Code.

Before making principal distributions under this Section, the Trustee should determine whether there are good reasons to retain the property in trust. These reasons may include the fact that the asset may be sold in the near future, creditor protection, protection from failed marriages and protection of assets for future generations. The Trustee shall not be liable to any beneficiary for the exercising or failing to exercise its discretion to make distributions under this Section.

Section 11.13 Merger of Corporate Fiduciary

If any corporate fiduciary acting under this agreement is merged with or transfers substantially all of its trust assets to another corporation or if a corporate fiduciary changes its name, the successor shall automatically succeed to the trusteeship as if originally named a Trustee and no document of acceptance of trusteeship shall be required.

Section 11.14 Beneficiary's Status

Until my Trustee receives notice of any incapacity, birth, marriage, death or other event upon which the right to payments may depend, my Trustee shall not be liable for acting or failing to act with respect thereto or for disbursements made in good faith to persons whose interest may have been affected by such event.

My Trustee may rely on any information provided by a beneficiary with respect to the beneficiary's assets and income. My Trustee shall have no independent duty to investigate the status of any beneficiary and shall not incur any liability for failure to do so.

Section 11.15 Discharge of Third Persons

Persons dealing in good faith with my Trustee shall not be required to see to the proper application of money paid or property delivered to my Trustee, or to inquire into the authority of my Trustee as to any transaction, and the receipt from my Trustee for any money or property paid, transferred or delivered to it shall be a sufficient discharge to the person or persons paying, transferring or delivering the same from all liability to see to the application thereof.

Section 11.16 Certificate by Trustee

A written statement of my Trustee at any time as to any facts relative to the trust may always be relied upon and shall always be conclusive evidence in favor of any transfer agent and any other person dealing in good faith with my Trustee in reliance upon such statement.

Section 11.17 Funeral and Other Expenses of Beneficiary

Upon the death of an income beneficiary of any trust created under this agreement, my Trustee may, but shall not be required to, pay from such trust the funeral and burial expenses of the deceased income beneficiary and the enforceable debts and expenses of such beneficiary.

My Trustee may rely upon any request for such payment by the personal representative or members of the family of such deceased beneficiary and the amounts included therein without verifying their validity or amounts and without being required to see to the application of the amounts so paid. Decisions on such expenses may be made by my Trustee without regard to any limitation on such expenses imposed by statute or rule of court and may be made without obtaining the approval of any court having jurisdiction over the administration of my estate.

Section 11.18 Generation-Skipping Tax Provisions

Notwithstanding any other provision of this agreement, if a trust or trust share created under this agreement would otherwise be partially exempt from generation-skipping tax after the intended allocation of a generation-skipping tax exemption to it then, my Trustee may:

(a) Division into Exempt and Nonexempt Trusts

My Trustee may divide the property of the trust or trust share into two separate trust shares so that the allocation of generation-skipping tax exemption can be made to a trust that will be entirely exempt from generation-skipping tax (the "exempt trust"). The exempt trust shall consist of the largest fractional share of the total trust assets to be divided to permit the exempt trust to be entirely exempt from generation-skipping tax. The second trust share (the "nonexempt trust") shall consist of the balance of the total trust assets to be divided. Each trust share shall participate *pro rata* in income, appreciation and depreciation to the time of division. For purposes of this allocation, asset values as finally determined for federal estate tax purposes shall be used.

(b) Administration of the Trusts

The trusts or trust shares created under this Section shall have the same terms and conditions as the original trust. To the extent possible, distributions to a non-skip person as defined by Section 2613 of the Internal Revenue Code shall be made from a nonexempt trust created under this Section of which such person is a beneficiary, and distributions to a skip person as defined by Section 2613 shall be made from an exempt trust so created of which such person is a beneficiary.

My Trustee shall administer each exempt and nonexempt trust or trust share as a separate and independent share.

Any exempt or nonexempt trust or trust share established under this agreement may be referred to by such name as may be designated by my Trustee.

Upon division or distribution of an exempt trust and a nonexempt trust in further trust or trust shares, my Trustee may allocate property from the exempt trust first to a share from which a generation skipping transfer is more likely to occur.

(c) My Intent; Trust Additions

My intent is to minimize the application of the generation-skipping tax to the trust property but not to affect the total amount of trust property that

Paul E. Shelton Revocable Trust

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any beneficiary may be entitled under this agreement and my trust shall be so construed and interpreted.

If at any time any property that has an inclusion ratio greater than zero for generation-skipping tax purposes would be added to a trust with property that has an inclusion ratio of zero, then my Trustee shall instead hold such property in a separate trust, to be held on the same terms and conditions as the original trust.

(d) Independent Trustee May Confer Power

My Trustee, excluding any Interested Trustee, may during the lifetime of a beneficiary grant the beneficiary of a trust or trust share a testamentary power exercisable, only by valid will, valid revocable living trust or by any other written instrument, to appoint all or part of such beneficiary's trust or trust share to the creditors of such beneficiary's estate. My Trustee may require, as a condition for the exercise of such power, the consent of my Trustee. Any such power granted by my Trustee shall be in writing and may be revoked at any time during the lifetime of the beneficiary to whom such power was given. My Trustee may relinquish any of the powers given to my Trustee under this subsection and may, in its sole discretion, make the relinquishment of a power personal to the Trustee or may relinquish the power for all subsequent Trustees.

Article Twelve

My Trustee's Powers

Section 12.01 Introduction to Trustee's Powers

My Trustee may exercise, without prior approval from any court, all powers conferred by this trust agreement and any other powers conferred by law, including, without limitation, those powers set forth under the common law or any fiduciary powers act or other laws of the State of South Carolina, except as otherwise specifically provided in this agreement. Each power conferred upon my Trustee by state or federal statutes shall be subject to any express limitations or contrary directions contained in this agreement.

The Trustee of a trust may have duties and responsibilities in addition to those described in this agreement. I encourage any Trustee serving under this agreement to obtain legal advice when appropriate.

Section 12.02 Rights of Persons Dealing with My Trustee

My Trustee may execute and deliver any and all instruments in writing, which our Trustee considers necessary to carry out any of the powers granted in this agreement.

A third party dealing with my Trustee shall not be required to inquire into the terms of this agreement, the authority of the Trustee, or to see to the application which the Trustee makes of funds or other property received by the Trustee.

Any person dealing with my Trustee shall be entitled to rely upon an Affidavit or a Certificate of Trust, and upon any instruments duly executed in accordance with the provisions thereof, to the same extent as such person might rely upon the original trust agreement.

Section 12.03 Powers to Be Exercised in the Best Interests of the Beneficiaries

My Trustee shall exercise the administrative and investment powers granted in this Article as my Trustee determines to be in the best interests of the beneficiaries.

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

Paul E. Shelton Revocable Trust

G:\00-Client Folders\02050.shelton\pes.restatement of tra.2003.0721.d5.doc

Section 12.04 My Trustee's Investment Powers

Except as otherwise specifically provided in this trust agreement, the investment powers of my Trustee shall include the following:

(a) Investment Powers in General

My Trustee may administer, invest and reinvest in any type of investment inside or outside the geographic borders of the United States of America or its possessions or territories that my Trustee determines is consistent with the investment goals and overall goals of my trust, taking into account my trust's overall investment portfolio.

Without limiting my Trustee's investment authority in any way, I request that my Trustee exercise reasonable care and skill in selecting and retaining trust investments. I also request that my Trustee take into account the following factors in choosing investments for my trust:

- The potential total return from the investment, both in the form of income and appreciation;
- The potential income tax consequences of the investment;
- The investment's potential for volatility and return; and
- The role the investment will play in the trust portfolio.

I request that my Trustee also consider the possible effects of inflation or deflation, changes in global and U.S. economic conditions, transaction expenses, and the need for liquidity in constructing the trust's investment portfolio.

My Trustee may delegate to any registered investment adviser or corporate fiduciary the discretion to manage trust investments.

(b) Banking Powers

My Trustee may establish bank accounts of all types in one or more banking institutions as my Trustee may choose. My Trustee may open such accounts in the name of my Trustee (with or without disclosing fiduciary capacity) or in the name of my trust. When an account is in the name of the trust, checks on that account, and authorized signatures need not disclose the fiduciary nature of the account or refer to any trust or Trustee.

Paul E. Shelton Revocable Trust

G:\00-Client Folders\02050.shelton\pes.restatement of rta.2003.0721.d5.doc

An account from which frequent disbursements are made need not be an interest bearing account. My Trustee may authorize withdrawal from an account by check, draft or other instrument or in any other manner.

(c) Contract Powers

My Trustee may sell at public or private sale, transfer, exchange property for other property, or otherwise dispose of trust property for such consideration and upon such terms and conditions as my Trustee deems advisable, including options of any duration for any such sales, exchanges, or transfers.

My Trustee may enter into any contracts, and deliver deeds or other instruments, as my Trustee deems appropriate to the purposes of my trust.

(d) Common Investments

For purposes of convenience with regard to the administration and investment of the trust property, my Trustee may invest and reinvest part or all of the trust property jointly with trust property of other trusts for which my Trustee is also serving as a Trustee. For this purpose, a corporate fiduciary acting as Trustee under this agreement may use common funds for investment.

However, when trust property is managed and invested in this manner, my Trustee shall maintain records that sufficiently identify that portion of the jointly invested assets that constitute the trust property of this trust.

(e) Farm, Ranch and Other Agricultural Powers

My Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

My Trustee may engage in the production, harvesting, and marketing of either farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

My Trustee may engage and participate in any government farm program, whether state or federally sponsored.

My Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

My Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

Paul E. Shelton Revocable Trust

G:\00-Client Folders\02050.shelton\pes.restatement of tra.2003.0721.d5.doc

My Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

(f) Real Estate Powers

My Trustee may sell at public or private sale, purchase, exchange, lease for any period, mortgage, manage, alter, improve and in general deal in and with real property in such manner and on such terms and conditions as any person might do as owner of such real property.

My Trustee may grant or release easements in or over, subdivide, partition, develop, raze improvements or abandon, any real property.

My Trustee may manage real estate in such manner as my Trustee deems best and shall have all other real estate powers requisite for such purpose.

My Trustee may enter into contracts to sell real estate, make leases and grant options to lease trust property even though the term extends beyond the termination of any trusts created under this agreement and even though the term may extend beyond the period that is required for an interest created under this agreement to vest in order to be valid under the rule against perpetuities. For such purposes, my Trustee may enter into any contracts, covenants and warranty agreements as my Trustee deems appropriate.

(g) Securities, Brokerage and Margin Powers

My Trustee may buy, sell, and trade stocks, bonds, investment companies, mutual funds, common trust funds, commodities, options and other securities of any kind and in any amount, including short sales. My Trustee may write or purchase call or put options, or other derivative securities.

My Trustee may maintain margin accounts with brokerage firms and may pledge securities to secure loans and advances made to my Trustee or to (or for the benefit of) a beneficiary of any trust created under this agreement.

My Trustee may place all or any part of the securities held by my trust in the custody of a bank or trust company. My Trustee may have all securities registered in the name of the bank or trust company or in the name of its nominee. My Trustee may appoint such bank or trust company as the agent or attorney in fact to collect, receive, receipt for and disburse any income, and generally to perform the duties and services incident to a custodian of accounts.

Paul E. Shelton Revocable Trust

G:\00-Client Folders\02050.shelton\pes.restatement of tra.2003.0721.d5.doc

My Trustee may employ a broker-dealer as a custodian for securities held by the trust and may register such securities in the name of the broker-dealer, in the name of a nominee with or without the addition of words indicating that such security is held in a fiduciary capacity, or in bearer or uncertificated form; and my Trustee may use a central depository, clearing agency or book-entry system, such as The Depository Trust Company, Euroclear or the Federal Reserve Bank of New York.

My Trustee may participate in any reorganization, recapitalization, merger or similar transaction. My Trustee may exercise or sell conversion or subscription rights for securities of all kinds and description.

My Trustee may give proxies or powers of attorney that may be discretionary and with or without powers of substitution. My Trustee may vote or refrain from voting as to any matter.

(h) Loans and Borrowing Powers

My Trustee may make secured or unsecured loans to any person (including a trust beneficiary), entity, trust or estate, on any term or on demand, with or without interest. My Trustee may enter into or modify the terms of any mortgage or security agreement granted in connection with such loans and may release or foreclose on such mortgage or security.

My Trustee may borrow money at such interest rates and other terms as it deems advisable from any person, institution or other source including, in the case of a corporate fiduciary, the power to borrow from its own banking or commercial lending department.

My Trustee may encumber trust property by mortgages, pledges or other hypothecation and shall have the power to enter into any mortgage whether as a mortgagee or mortgagor even though the term may extend beyond the termination of any trust created under this agreement and even though the term may extend beyond the period that is required for an interest created under this agreement to vest in order to be valid under the rule against perpetuities.

My Trustee may purchase, sell at public or private sale, trade, renew, modify, or extend mortgages. My Trustee may accept deeds in lieu of foreclosure.

(i) Residences and Tangible Personal Property

My Trustee may acquire, maintain, invest and reinvest in any residence for the use and benefit of the beneficiaries of any trust whether or not such

residence is income producing and without regard to the proportion that the value of the residence may bear to the total value of the trust property even if such retention involves financial risks that trustees would not ordinarily incur. My Trustee may pay or make arrangements for others to pay, or to share in the payment of, all carrying costs of such residence, including, but not limited to any taxes, assessments, insurance, and all expenses of maintaining the residence in suitable repair, and all expenses relating to the operation of the residence for the benefit of the beneficiaries.

My Trustee may acquire, maintain, invest and reinvest in articles of tangible personal property whether or not such property is income producing and may pay the expenses of the repair and maintenance of such property.

My Trustee shall have no duty to convert the property referred to in this Subsection to productive property except as otherwise required by other provisions of this agreement.

My Trustee may permit any income beneficiary of any trust to occupy any real property or use any personal property owned by the trust on such terms or arrangements as my Trustee may determine, including rent free or in consideration of payment of taxes, insurance, maintenance, repairs, or other charges.

My 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 Subsection.

(j) Insurance Powers

Except as otherwise provided in this agreement, my Trustee shall have the powers with regard to life insurance as set forth in this Subsection.

My Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on my life, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

My Trustee may purchase disability, medical, liability, long-term health care and other insurance on the behalf of and for the benefit of any trust beneficiary. My Trustee may purchase annuities and like investments for any trust beneficiary.

My Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life

insurance policy. My Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

My Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy; to reduce the amount of a policy or convert or exchange the policy; or to surrender a policy at any time for its cash value.

My Trustee may elect any paid-up insurance or any extended term insurance nonforfeiture option contained in a policy.

My Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

My Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, my Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

(k) Oil, Gas and Mineral Interests

My Trustee may acquire, maintain, develop and exploit, either alone or jointly with others, any oil, gas, coal, minerals and other natural resource rights or interests.

My Trustee may drill, test, explore, mine, develop, extract, remove, convert, manage, retain, store, sell or exchange any of such rights and interests on such terms and for such price as my Trustee deems advisable.

My Trustee may execute leases, pooling or unitization agreements and other types of agreements in connection with such oil, gas, coal, mineral or other natural resource rights or interests even though such arrangements may extend beyond the termination of any trust under this agreement.

My Trustee may execute division orders, transfer orders, releases, assignments, farm outs, and any other instruments that it deems proper.

My Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interest, and may pay the cost of such services from the principal or income of the trust property.

Paul E. Shelton Revocable Trust

G:\00-Client Folders\02050.shelton\pes.restatement of rta.2003.0721.d5.doc

Section 12.05 Closely-Held Business Interests

My Trustee may retain and continue any business or business interest in which this trust acquires an ownership interest, including, but not limited to an ownership interest as a shareholder, partner, sole proprietor, member, or participant in a joint venture.

My Trustee may create or join others in the creation of any business or investment entity.

In connection with the operation and management of any business or business interest, my Trustee shall have the power, authority and discretion set forth in this Section.

(a) No Duty to Diversify

Notwithstanding any duty to diversify imposed by state law, my Trustee may retain any business in which this trust acquires an ownership interest even though such interest may constitute all or a substantial portion of the Trust property. I recognize that the value of a non-controlling interest in a business entity may be less than the underlying value of the net assets of such entity. Nonetheless, I authorize my Trustee to continue to hold such business interests.

(b) Specific Management Powers

My Trustee shall have all power and authority to operate any business owned by this trust, directly or indirectly, including, but not limited to, the following express powers.

My Trustee may directly participate in the conduct of the business, including serving as general partner of a limited partnership, a member, a manager or managing member of a limited liability company, or as a shareholder of a corporation, or employ others to do so on behalf of the beneficiaries.

My Trustee may take part in the management of the business and delegate duties with respect to such management, with the requisite powers, to any employee, manager, partner or associate of the business, without liability for such delegation. To the extent that the business or business interest held by this trust is not one that has management powers (such as a minority stock interest, limited partnership interest, or a membership interest in a limited liability company), my Trustee shall have no obligation to supervise the management of the underlying assets, and no liability for the actions of those who manage the respective entity.

My Trustee may enter into management agreements and/or nominee agreements whereby my Trustee and the trust may serve as an exclusive

Paul E. Shelton Revocable Trust

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manager or nominee of property or property interests on behalf of any limited partnership, limited liability company or corporation.

My Trustee may act as a director, general or limited partner, associate and/or officer of the business either individually or through an officer or officers of any corporate fiduciary serving as Trustee, and my Trustee may receive compensation from the business for so acting.

My Trustee may participate with any other person, firm, corporation, company or trust in partnership either as a general or limited partner, or in any joint venture, and shall have and exercise all the powers of management and participation in the management necessary and incidental to a membership in such partnership, limited partnership, or joint venture, including the making of charitable contributions. My Trustee may at any time participate in the formation or incorporation of any such enterprise.

My Trustee may reduce, expand, limit or otherwise fix and change the operation or policy of the business and to act with respect to any other matter in connection with the business, and subject the principal and income of this trust to the risks of the business for such term or period as my Trustee may determine.

My Trustee may advance money or other property to any such business, and make loans, subordinated or otherwise, of cash or securities to the business and guarantee the loans of others made to the business. My Trustee may borrow money for the business, either alone or with other persons interested in the business, and secure any such loan or loans by a pledge or mortgage of any part of any trust property.

My Trustee may select and vote for directors, partners, associates and officers of the business.

My Trustee may enter into owners' agreements with a business in which the trust has an interest and/or with the other owners of the business. My Trustee may liquidate, either alone or jointly with others, the business or business interests.

My Trustee may generally exercise any and all powers my Trustee deems necessary with respect to the continuation, management, sale or liquidation of the business, including, but not limited to, participating in any reorganization, merger, consolidation, recapitalization, liquidation, dissolution of the business.

My Trustee may execute stockholder agreements, partnership agreements, buy-sell agreements, operating agreements for limited liability companies, and any amendments to them.

Paul E. Shelton Revocable Trust

G:\00-Client Folders\02050.shelbep\pes.restatement of tra.2003.0721.d5.doc

My Trustee may carry out the provisions of any agreement entered into by me for the sale of the business or business interest.

My Trustee may sell or liquidate the business or business interest on such price and on such terms as my Trustee deems advisable and in the best interests of the trust and the beneficiaries.

My Trustee may exercise all of the business powers granted in this trust agreement even though my Trustee may be personally interested or an involved party with respect to the business.

I also authorize my Trustee to sell any interest in a business entity or other asset held by this trust to one or more of the beneficiaries of this trust or to any trust in which a majority of the current beneficiaries of such trust are either myself or one or more of the beneficiaries of this agreement. Such sale may be made in exchange for cash, a private annuity, an installment note or any combination thereof.

(c) Business Liabilities

If any tort or contract liabilities arise from operating the business, and if the trust is a responsible party with regard to those liabilities, my Trustee shall first satisfy such liabilities from the assets of the business, and only then from the other trust property.

(d) Trustee Compensation

In addition to the Trustee compensation set forth in Section 11.05, my Trustee may receive additional reasonable compensation for its services in connection with the operation of the business. Compensation for these services may be paid from the business property, other trust property, or both, as my Trustee deems appropriate in its sole and absolute discretion.

(e) Conflicts of Interest

My Trustee may exercise all powers, authorities and discretion granted under this Section even if my Trustee individually owns a personal interest in the business or is otherwise interested in the business.

Section 12.06 My Trustee's Administrative Powers

In addition to the other powers granted my Trustee in other provisions of this trust, my Trustee shall have the following administrative powers:

(a) Power to Merge or Sever Trusts

My Trustee may merge and consolidate any trust created in this agreement with any other trust created by me, or by any other person at any other time, if the other trust contains substantially the same terms for the same beneficiaries, and has at least one Trustee in common with the trust or trusts created in this agreement.

My Trustee may administer such merged and consolidated trusts as a single trust or unit. If, however, such a merger or consolidation does not appear feasible, as determined in the sole and absolute discretion of my Trustee, my Trustee may consolidate the assets of such trusts for purposes of investment and trust administration while retaining separate records and accounts for the respective trusts.

My Trustee may sever any trust on a fractional basis into two or more separate and identical trusts or may segregate by allocation to a separate account or trust, a specific amount or asset from the trust property of any trust. Income earned on a segregated amount or specific asset after the segregation, passes with the amount or asset segregated. Each separate trust must be held and administered upon substantially identical terms and conditions of the trust from which it was severed.

Subject to the terms of the trust, my Trustee may consider differences in federal tax attributes and other pertinent factors in administering the trust property of any separate account or trust, in making applicable tax elections, and in making distributions. A separate trust created by severance must be treated as a separate trust for all purposes from the date on which the severance is effective. The effective date of the severance may be retroactive to a date before the date on which the Trustee exercises such power.

(b) Income and Principal Powers

My Trustee may determine in a fair, equitable, and practical manner how all Trustee's fees, disbursements, receipts, and wasting assets shall be credited, charged, or apportioned between principal and income.

My Trustee may set aside from trust income reasonable reserves for taxes, assessments, insurance premiums, repairs, depreciation, obsolescence, depletion, and for the equalization of payments to or for the beneficiaries; it may select any and all accounting periods with regard to the trust property.

(c) Nominee Powers

My Trustee may hold real estate, securities or any other trust property in the name of a nominee or in any other form without disclosing the existence of any trust or its fiduciary capacity.

(d) Settlement Powers

My Trustee may settle, by compromise, adjustment, arbitration or otherwise any and all claims and demands in favor of or against any trust created under this agreement. My Trustee may release or abandon any claims in favor of this trust.

(e) Distribution Powers

My Trustee may make any distribution or division of trust property without the consent of any beneficiary. My Trustee may make distributions in cash or in kind, or partly in each, in such proportion and at such values as my Trustee shall determine.

My Trustee may allocate undivided interests in specific assets to any beneficiary or trust share in such kind and proportion as my Trustee shall determine, even though the property allocated to one beneficiary may be different from that allocated to another beneficiary.

Such determinations may be made by my Trustee without regard to the basis or other income tax attributes of the property.

(f) Payment of Taxes and Expenses

Except as otherwise provided in this agreement, my Trustee is authorized to pay all property taxes, assessments, fees, charges, and other expenses incurred in the administration or protection of this trust. All such payments shall be a charge against the trust property and shall be paid by my Trustee out of the income, or to the extent that the income is insufficient, then out of the principal of the trust property. The determination of my Trustee in its sole discretion with respect to all such matters shall be conclusive upon the beneficiaries of this trust.

(g) Retention and Abandonment of Trust Property

My Trustee may retain, without liability for depreciation or loss resulting from such retention, any property constituting the trust estate of any trust created under this agreement at the time of its creation, at the time of my death or as the result of exercising any stock option. My Trustee may retain such property, notwithstanding the fact that such property may not be of the character prescribed by law for the investment of assets held by a

Paul E. Shelton Revocable Trust

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fiduciary, and notwithstanding the fact that such retention may result in inadequate diversification under any applicable Prudent Investor Act or other such law.

My Trustee may hold property which is non-income producing or is otherwise nonproductive if the holding of such property is, in the sole and absolute discretion of my Trustee, in the best interests of the beneficiaries.

Notwithstanding the forgoing, my Trustee, other than times I am serving as Trustee, shall invest contributions of cash and cash equivalents as soon as reasonably practical after such assets have been acquired by the trust. However, my Trustee is permitted to retain a reasonable amount in cash or money market accounts in order to pay anticipated expenses and other costs and to provide for anticipated distributions to, or for the benefit of, a beneficiary.

My Trustee may also abandon any trust property my Trustee deems to be of insignificant value.

(h) Environmental Powers

My Trustee shall have the powers set forth in this Subsection to deal with any actual or threatened contamination of trust property by any hazardous substance and shall have all other power necessary or appropriate to deal with or respond to with any other environmental matter affecting the trust property.

My Trustee shall have the power to inspect trust property to determine compliance with or to respond to any environmental law affecting trust property. "Environmental Law" shall mean any federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment or of human health.

My Trustee may refuse to accept property if my Trustee determines that such property is or may be contaminated by any hazardous substance or is or was used for any purpose involving hazardous substances that could create liability to the trust or to my Trustee.

My Trustee may use and expend trust property to (i) conduct environmental assessments, audits or site monitoring; (ii) take remedial action to contain, clean up or remove any hazardous substance including a spill, discharge or contamination; (iii) institute, contest or settle legal proceedings brought by a private litigant or any local, state, or federal agency concerned with environmental compliance; (iv) comply with any order issued by any court or by any local, state, or federal agency directing an assessment, abatement or clean-up of any hazardous substance; and (v)

employ agents, consultants and legal counsel to assist my Trustee in these actions.

My Trustee shall not be liable for any loss or reduction in value sustained by my trust as a result of the retention by my Trustee of property on which hazardous materials or substances requiring remedial action are discovered unless my Trustee contributed to that loss or reduction in value through willful misconduct or gross negligence.

My Trustee shall not be liable to any beneficiary or to any other party for any decrease in the value of trust property as a result of my Trustee's compliance with any federal, state, or local environmental law, including any reporting requirement.

My Trustee may release, relinquish or disclaim any power held by my Trustee that my Trustee, in its sole discretion, determines may cause my Trustee to incur individual liability under any Environmental Law.

(i) Qualified Family Owned Business Interests Deduction

My Trustee, other than an Interested Trustee, shall have the power to amend the terms of any trust holding "qualified family-owned business interests," as defined in Section 2057 of the Internal Revenue Code, in order to permit trust property to qualify for the "family owned business deduction," including an amendment that changes beneficial interests and that directs the segregation of trust property into more than one trust.

Section 12.07 Limitation on Trustee's Powers

All powers granted to my Trustee under this agreement or by applicable law shall be limited as set forth in this Section, unless explicitly excepted by reference to this Section. However, the limitations set forth in this Section shall not apply to me.

Limitations on the Powers of an Interested Trustee

An Interested Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal, or the termination of the trust to or for the benefit of a beneficiary, to the extent that the exercise of such discretion is other than for the health, education, maintenance or support of a beneficiary as described under Sections 2041 and 2514 of the Internal Revenue Code.

(a) No Distributions in Discharge of Support Obligation of a Trustee

A Trustee may not exercise or participate in the exercise of discretion with respect to the distribution of income or principal of any trust administered under the terms of this Agreement to any person my Trustee is legally obligated to support, to the extent such distribution discharges the support obligation of my Trustee.

(b) Insurance Policy on the Life of a Trustee

If a policy that insures the life of a Trustee is held as part of the trust property, such Trustee shall have no right to exercise any powers or rights in such policy, and such powers and rights shall be exercised solely by the other Trustee or Trustees serving under this agreement.

If the insured Trustee is the only then acting Trustee, then the powers with respect to the insurance policy on the life of the Trustee shall be exercised by a Special Independent Trustee designated under the provisions of this agreement dealing with trustee succession.

If any rule of law or court decision construes the ability of the insured Trustee to name a Special Independent Trustee as an incident of ownership of the life insurance policy on the insured's life, the Special Independent Trustee shall be selected by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

(c) Insurance Policy on a Beneficiary's Life

If a policy that insures the life of a beneficiary of a trust created under this agreement is held as part of the trust property, the beneficiary acting individually or as Trustee shall not have any power over such policy of insurance, the cash value, or the proceeds thereof. The intent of this denial of any power is to prevent an insured beneficiary from having any power that would constitute an incident of ownership over the policy.

In addition, no distributions of income or principal to the insured beneficiary shall be satisfied out of the insurance policy, the cash value or any other economic benefit of the policy.

The limitations of this Subsection shall not apply if the proceeds of such insurance policy would, upon the death of the beneficiary, be included in the gross estate of such beneficiary for federal estate tax purposes for any reason other than the limitations of this Subsection.

Article Thirteen General Provisions

Section 13.01 Maximum Term for Trusts

Notwithstanding any other provision of this agreement to the contrary, unless sooner terminated under other provisions hereof, any trust created under this agreement shall terminate 21 years after the last to die of me and my descendants and the descendants of my maternal and paternal grandparents living at the time of my death.

At that time, the remaining trust property shall vest in and be distributed to those persons then entitled to mandatory distributions of net income of the trust and in the same proportions. If none of the beneficiaries are entitled to mandatory distribution of net income, the remaining trust property shall vest in and be distributed to the beneficiaries then eligible to receive discretionary distributions of net income of the trust in equal shares per stirpes.

Section 13.02 Spendthrift Provision

Neither the income nor the principal of the trust property shall be assigned, anticipated or alienated in any manner by any beneficiary; nor shall it be subject to attachment, bankruptcy proceedings or any other legal process, or to the interference or control of creditors or others.

Nothing contained in this Section shall restrict in any way the exercise of any power of appointment granted in this agreement.

Section 13.03 Contest Provision

If any beneficiary of this trust or any trust created under this trust agreement, alone or in conjunction with any other person,

- contests by a claim of undue influence, fraud, menace, duress or lack of testamentary capacity, or otherwise objects in any court to the validity of (a) this trust, (b) any subtrust created under the terms of this agreement, (c) any other trust created under this trust agreement, (d) my Will, or (e) any beneficiary designation of an annuity, retirement plan, IRA, Keogh, pension or profit sharing plan or insurance policy signed by me, (collectively referred to hereafter in this Section as "Document" or "Documents") or any amendments or codicils to any Document;

Paul E. Shelton Revocable Trust

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- seeks to obtain an adjudication in any court proceeding that a Document or any of its provisions is void, or otherwise seeks to void, nullify or set aside a Document or any of its provisions;
- files suit on a creditor's claim filed in a probate of my estate, against my trust estate, or any other Document, after rejection or lack of action by the respective fiduciary;
- files a petition or other pleading to change the character (community, separate, joint tenancy, partnership, domestic partnership, real or personal, tangible or intangible) of property already so characterized by a Document;
- claims ownership in a court proceeding to any asset I hold in joint tenancy, other than as a surviving joint tenant;
- files a petition to determine domestic partnership property as my cohabitant;
- files a petition for probate homestead in a probate proceeding of my estate without the prior written consent the personal representative designated in my Will;
- files a petition for family allowance in a probate of my estate without the prior written consent of the personal representative designated in my Will;
- files a petition to impose a constructive trust or resulting trust on any assets of the trust estate; or
- Interferes with, disrupts, or attempts to interfere with or disrupt any of my funeral or burial plans; or
- participates in any of the above actions in a manner adverse to the trust estate, such as conspiring with or assisting any person who takes any of the above actions,

then the right of such beneficiary to take any interest given to such beneficiary under this trust or any trust created under this trust agreement shall be determined as it would have been determined had such beneficiary predeceased me without surviving issue.

My Trustee is hereby authorized to defend, at the expense of the trust estate, any violation of this paragraph. A "contest" shall include any action described above in an arbitration proceeding and shall not include any action described above solely in a mediation not preceded by a filing of a contest with a court, notwithstanding the foregoing.

This Section 13.03 shall not apply so as to cause a forfeiture of any distribution otherwise qualifying for the federal estate tax charitable deduction.

Paul E. Shelton Revocable Trust

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Section 13.04 Survivorship Presumption

If any beneficiary shall be living at my death, but die within 10 days thereafter, then such beneficiary shall be deemed to have predeceased me for all purposes of this agreement.

Section 13.05 Changing the State of Administration

After my incapacity or death, the Trustee of any trust created under this agreement may, in its sole discretion, remove all or any part of the property of, or the situs of administration of, such trust from one jurisdiction to another and elect, by an instrument filed with the trust records, that thereafter such trust shall be construed, regulated and governed as to administration by the laws of such other jurisdiction. The Trustee may do so for any purpose the Trustee deems appropriate, including the minimization of any tax in respect of such trust or any beneficiary of such trust.

If necessary to such change of situs, a corporate fiduciary in the new situs may be appointed as a Trustee hereunder by the unanimous consent of all of the beneficiaries then entitled to receive distributions of net income under such trust who have attained age 21 and are not incapacitated and if there are no such beneficiaries, by my Trustee then serving.

Section 13.06 Definitions

For purposes of this agreement, the following definitions shall apply:

(a) Adopted and Afterborn Persons

A legally adopted person in any generation and his or her descendants, including adopted descendants, shall have the same rights and be treated in the same manner under this agreement as natural children of the adopting parent, provided such person is legally adopted prior to attaining the age of 18 years.

A fetus in utero that is later born alive shall be considered a person in being during the period of gestation.

However, a person's children or descendants shall not include an individual who is such person's child or descendant by virtue of legal adoption if such individual was adopted on or after October 31st of the year following the year of my death and is older than the oldest living child or descendant of such person on said date.

(b) Agreement

The terms "this agreement" shall refer to this agreement and all trusts created under the terms of this agreement.

(c) Available GST Exemption

The term "available GST Exemption" means the GST exemption provided in Section 2631 of the Internal Revenue Code in effect at the time of my death reduced by the aggregate of the amount, if any, of my exemption allocated to my lifetime transfers and the amount, if any, specifically allocated to other property of my gross estate.

For purposes of this agreement, if at the time of my death I have made gifts with an inclusion ratio of greater than zero for which the gift tax return due date has not expired (including extensions) and I have not yet filed a return, it shall be deemed that my generation-skipping transfer exemption has been allocated to these transfers to the extent necessary (and possible) to exempt the transfer(s) from generation-skipping transfer tax.

(d) Descendants

The term "descendants" shall include a person's lineal descendants of all generations.

(e) Education

For purposes of this agreement, the term "education" is intended to be an ascertainable standard in accordance with Section 2041 and Section 2514 of the Internal Revenue Code and shall include, but not be limited to:

- Enrollment at private elementary, junior and senior high schools, including boarding schools;
- Undergraduate and graduate study in any field at a college or university;
- Specialized, vocational or professional training or instruction at any institution, including private instruction; or
- Any other curriculum, institution or activity that my Trustee, in its sole discretion, deems useful for developing the abilities and interest of the beneficiary including, without limitation, athletic training, musical instruction, theatrical training, the arts and travel.

Paul E. Shelton Revocable Trust

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For purposes of this agreement, education shall also include distributions made by my Trustee for expenses such as tuition, room and board, fees, books and supplies, tutoring, transportation, and reasonable allowance for living expenses.

(f) Grantor

"Grantor" shall have the same legal meaning as "Settlor," "Trustor" or any other term referring to the maker of a trust.

(g) Incapacity

A person shall be deemed incapacitated in the following circumstances, except as otherwise provided in this agreement:

(1) The Opinion of Two Licensed Physicians

An individual shall be deemed incapacitated whenever, in the opinion of two licensed physicians, such individual is so incapacitated that he or she is unable to effectively manage his or her property or financial affairs whether such incapacity is a result of age, illness, use of prescription medications, drugs or other substances, or any other cause.

An individual shall be deemed restored to capacity whenever that individual's personal or attending physician signs a written opinion that such individual is able to effectively manage his or her property and financial affairs.

(2) Court Determination

An individual shall be deemed incapacitated if a court of competent jurisdiction determines that such individual is legally unable to effectively manage his or her property or financial affairs.

(3) Detention, Disappearance or Absence

An individual shall be deemed incapacitated whenever he or she cannot effectively manage his or her affairs due to such individual's unexplained disappearance or absence for more than 30 days, or whenever he or she is detained under duress.

An individual's disappearance or absence or detention under duress may be established by an affidavit of any current or successor Trustee named in this agreement, or, if

Paul E. Shelton Revocable Trust

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no Trustee is serving under this agreement, by the affidavit of any beneficiary under this agreement. The affidavit shall describe the circumstances of an individual's detention under duress, or disappearance or absence and may always be relied upon by any third party dealing in good faith with my Trustee in reliance upon the affidavit.

(h) Income Beneficiary

For purposes of this agreement "income beneficiary" shall mean any beneficiary of a trust who is then entitled to receive mandatory distributions of the net income of such trust or who is eligible to receive discretionary distributions of such net income.

Unless otherwise provided in this agreement, a "majority" of the income beneficiaries shall mean any combination of income beneficiaries who, if all accrued net income were distributed on the day of a vote by the beneficiaries, would receive more than 50% of that accrued net income. For purposes hereof, beneficiaries who are eligible to receive discretionary distributions of net income shall be deemed to be recipients of such income in equal shares.

(i) Independent Trustee

For any trust created under the terms of this agreement, "Independent Trustee" means a Trustee who is not an Interested Trustee as defined in subparagraph (j). Only an Independent Trustee may exercise those powers granted exclusively to an Independent Trustee. Whenever this agreement specifically prohibits an Interested Trustee from exercising discretion or performing an act, then only an Independent Trustee may exercise that discretion or perform that act. An Independent trustee shall not be liable to any person for any good faith exercise or nonexercise of its discretion under this agreement.

(j) Interested Trustee

For any trust created under the terms of this agreement, "Interested Trustee" means a Trustee who is a transferor of property to the trust, including a person whose qualified disclaimer resulted in property passing to the trust, a beneficiary of the trust or a Trustee whom the beneficiary can remove and replace by appointing a Trustee that is related or subordinate to the beneficiary within the meaning of Section 672(c) of the Internal Revenue Code.

For these purposes a beneficiary of a trust means a person who pursuant to the terms of the trust is or in the future may be eligible to receive income

or principal from the trust. A person shall be considered a beneficiary of a trust even if he or she has only a remote contingent remainder interest in the trust. However, a person shall not be considered a beneficiary of a trust if the person's only interest is as a potential appointee under a testamentary power of appointment.

(k) Internal Revenue Code and Treasury Regulations

References to the "Internal Revenue Code" or "Code" or to provisions thereof are to the Internal Revenue Code of 1986. References to the "Regulations" or "Regs" are to the Treasury Regulations under the Internal Revenue Code. If by the time in question a particular provision of the Internal Revenue Code has been renumbered, or the Internal Revenue Code has been superseded by a subsequent federal tax law, the reference shall be deemed to be made to the renumbered provision or to the corresponding provision of the subsequent law, unless to do so would clearly be contrary to my intent as expressed in this agreement. A similar rule shall apply to references to the Regulations.

(l) Legal Representative or Personal Representative

As used in this agreement, the terms "legal representative" or "personal representative" shall mean a person's guardian, conservator, executor, administrator, Trustee, or any other person or entity personally representing a person or the person's estate.

(m) Per Stirpes

Whenever a distribution is to be made to a person's descendants *per stirpes*, the distribution shall be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

(n) Qualified Retirement Benefits

"Qualified Retirement Benefits" means any qualified retirement plan, individual retirement account ("IRA") or other retirement arrangement subject to the "minimum distribution rules" of Section 401(a)(9) of the Code, or other comparable provisions of law

(o) Shall and May

Unless otherwise specifically provided in this agreement or by the context in which used, I use the word "*shall*" in this agreement as a command, directive or requirement, and the word "*may*" in this agreement as

Paul E. Shelton Revocable Trust

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allowing or permitting, but not requiring, the taking or omission of any action. In the context of a Trustee, I intend that the word "may" shall mean that the Trustee is acting in that Trustee's sole and absolute discretion unless otherwise stated by me.

(p) Trust

The terms "this trust," "this revocable living trust," or "this trust agreement" shall refer to this agreement and all trusts created under the terms of this agreement.

(q) Trustee

The term "Trustee" refers to the Trustee named in Article One as well as any successor, substitute, replacement or additional person, corporation or other entity from time to time acting as the Trustee, whether there shall be one or more Trustees acting from time to time.

(r) Trust Property

The words "trust property" or words of similar import shall be construed to mean all property at any time held by my Trustee under this agreement, including all property that it may acquire at any time from any source.

Section 13.07 General Provisions

The following general matters of construction shall apply to the provisions of this agreement:

(a) Duplicate Originals

This agreement may be executed in any number of counterparts, each of which shall be deemed to be an original. Any person may rely upon a copy of this agreement certified under oath by my Trustee to be a true copy, to the same effect as if it were the original.

(b) Gender, Number, Captions

Words denoting the masculine or feminine gender shall be construed to mean or include the opposite gender, and the singular form shall be construed to include the plural and the plural the singular, as the context requires or admits.

The captions of Articles, Sections, and Subsections used in this agreement are for reference purposes only and shall have no effect on the interpretation of this agreement.

Paul E. Shelton Revocable Trust

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(c) Governing State Law

This agreement shall be governed, construed and administered according to the laws of the State of South Carolina as from time to time amended, except as to trust property required by law to be governed by the laws of another jurisdiction and unless my Trustee elects to change the State of Administration as provided in this Article.

(d) Notices

Whenever this agreement calls for notice, unless otherwise stated, such notice shall be in writing and shall be personally delivered with proof of delivery, or mailed postage prepaid by certified mail, return receipt requested, to the last known address of the party requiring notice. The notice shall be effective on the date personally delivered or the date of the return receipt. If there is proof of mailing and the return receipt is not received, notice shall be effective on the date it would normally have been received via certified mail.

(e) Severability

The invalidity or unenforceability of any provision of this agreement shall not affect the validity or enforceability of any other provision of this agreement. If a court of competent jurisdiction determines that any provision is invalid, the remaining provisions of this agreement shall be interpreted and construed as if any invalid provision had never been included in this agreement.

I have executed this agreement on the day and year first above written. This agreement shall be effective when signed by me, whether or not now signed by a Trustee.

I have executed this restated living trust on this 21th day of July, 2003. I certify that I have read this restated living trust, that I understand it, and that it correctly states the provisions under which my trust property is to be administered and distributed by my Trustee.

WITNESSES:

[Signature]

[Signature]

Paul E. Shelton

Paul E. Shelton, Grantor

[Signature]

[Signature]

Paul E. Shelton

Paul E. Shelton, Trustee

The National Bank of South Carolina,
Successor Trustee

Alex H. Crane

Nancy V. Cunningham by [Signature]

Thomas H. Ketchin III, Vice President and
Trust Officer

Paul E. Shelton Revocable Trust

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STATE OF SOUTH CAROLINA

)

) ss.

COUNTY OF CHARLESTON

)

I, a Notary Public, within and for the State and County aforesaid, do hereby certify that the foregoing instrument of writing was this day produced to me in the above state and County by **Paul E. Shelton**, as **Grantor** and as **Trustee**, party hereto and was executed and acknowledged by her to be her free act and voluntary deed.

Witness my signature this 21th day of July, 2003.

[Seal]



Notary Public for South Carolina

My commission expires: February 7, 2010

STATE OF SOUTH CAROLINA

)

) ss.

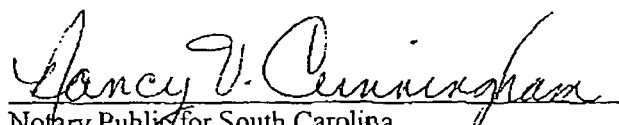
COUNTY OF CHARLESTON

)

I, a Notary Public, within and for the State and County aforesaid, do hereby certify that the foregoing instrument of writing was this day produced to me in the above state and County by **Thomas H. Ketchin III**, **Vice President and Trust Officer**, as **Successor Trustee**, party hereto and was executed and acknowledged by him to be his free act and voluntary deed.

Witness my signature this 24th day of July, 2003.

[Seal]



Notary Public for South Carolina

My commission expires: 1/20/2005

Paul E. Shelton Revocable Trust

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Schedule A

All assets owned by the Trust prior to amendment

Title not Searched

Quit Claim Deed

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

KNOW ALL MEN BY THESE PRESENTS THAT Paul E. Shelton, in the State aforesaid, for and in consideration of the sum of Five Dollars (\$5.00) has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release unto Paul E. Shelton, Trustee, Paul E. Shelton Revocable Trust a Memorandum of which trust dated January 23, 2002 is recorded in the R.M.C. Office for Charleston County on even date, all of his right, title, and interest in the following described property:

THE THREE PARCELS OF LAND WHICH ARE DESCRIBED ON THE ATTACHED EXHIBIT A WHICH IS HEREBY INCORPORATED HEREIN AND TO WHICH EXHIBIT A REFERENCE IS HEREBY CRAVED.

TMS # 439-13-00-021
TMS # 439-13-00-109
TMS # 439-13-00-051

This being the same property which was conveyed to the Grantor by Deed of Distribution dated May 16, 1999, Estate of Carolyn A. Shelton, Charleston County Probate Court Case No. 1999-ES-10-0773, by Paul E. Shelton, Personal Representative, and to Carolyn A. Shelton (deceased) and Grantor by Deed of James D. Lubs and Harold R. Lubs, Committee for Burness K. Lubs dated August 11, 1970 and recorded in Book A-95 at Page 246, and by Master's Deed dated May 5, 1970 recorded in Book M-94 at Page 315, and by Deed of James D. Lubs and Harold R. Lubs, Executors for Herbert L. Lubs dated August 25, 1970, recorded in Book A-95 at Page 238, Charleston County RMC.

Grantee's Address
Paul E. Shelton, Trustee
Paul E. Shelton Revocable Trust
P.O.Box 583
Folly Beach, South Carolina 29439

TOGETHER WITH ALL AND SINGULAR the Rights, Members, Hereditaments, and Appurtenances to the said premises belonging, or in anywise incident or appurtenanting.

TO HAVE AND TO HOLD all and singular the said premises before mentioned unto the said Paul E. Shelton, Trustee, Paul E. Shelton Revocable Trust, his successors and assigns forever.

IN WITNESS WHEREOF Paul E. Shelton has caused these Presents to be executed this 23d day of January, 2002.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Susan Badrick

WITNESS

Paul E. Shelton

Paul E. Shelton, Grantor

Beatrice A. Loring

WITNESS

PERSONALLY APPEARED BEFORE ME the undersigned who, on oath says that she saw the within named Paul E. Shelton sign the within Deed, and that she, with the other witness above subscribed, witnessed the execution thereof.

Susan Badrick

WITNESS

SWORN TO BEFORE ME THIS
23d day of January, 2002.

Beatrice A. Loring

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 3/15/2009

EXHIBIT "A"

All that certain lot of land, situate, lying and being on Folly Island in the County of Charleston, State aforesaid, known and designated as Lot Number Twelve Hundred Ten (1210), East Atlantic Avenue, on a Plat of the Lands of Folly Beach Corporation made by Jefferson Construction Company and dated February 1920, said plat being recorded in Plat Book C, Page 158, and having such metes and bounds as are shown on said plat.

Said premises are conveyed subject in all respects to all the reservations, covenants, restrictions and limitations set forth in Exhibit A annexed to and made a part of the deed from Folly Beach Corporation to Jack H. Meyers Dated the first day of June 1920, and recorded in the RMC Office aforesaid in Book F-25, Page 692, as full in all respects as if herein again written and as if a copy of said Exhibit were on this deed.

TMS # 439-13-00-021

ALSO

All that piece, parcel or lot of land, with the buildings and improvements thereon, situate, lying and being on Folly Island, County of Charleston, State of South Carolina, known and designated as Lot Twelve Hundred Ten (1210) East Ashley Avenue, on a plat of the lands of the Folly Beach Corporation made by Jefferson Construction Company, dated February 1920, and recorded in the RMC Office for Charleston County in Plat Book C, Page 158, and having such metes and bounds as are shown therein.

Measuring and containing Seventy (70) feet on the North and South lines and One Hundred Fifty (150)

feet on the East and West lines, be said dimensions, more or less.

Butting and bounding North on Cooper Avenue, East on Thirteenth Street, South on Ashley and West on Lot 1209 East Ashley Avenue on said plat.

TMS # 439-13-00-109

ALSO

All that certain lot of land, lying and being on Folly Island, in the County of Charleston, Sate of South Carolina, bounding Arctic Avenue on the Southeast and Ashley Avenue on the Northwest and measuring thereon Seventy (70) feet by One Hundred Fifty (150) feet in depth and known and designated as Lot 1210 Arctic Avenue East on a plat of Folly Beach Corporation made by Jefferson Construction Company dated February 1920 and recorded in the RMC Office for Charleston County in Plat Book C, page 158 and having such metes and bounds as are shown thereon.

TMS # 439-13-00-051

BK Y396PG894

STATE OF SOUTH CAROLINA
COUNTY OF Charleston

AFFIDAVIT

Date of Transfer of Title
(Closing Date) 1/23/02

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

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred BY Paul E. Shelton
TO Paul E. Shelton, Trustee, Paul E. Shelton Revocable Trust ON 1/23/02
3. Check one of the following: The DEED is
 - (a) ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
 - (c) ☒ EXEMPT from the deed recording fee because (exemption# 1)
(Explanation if required) No consideration - Intra Family Transfer to Trust
(If exempt, please skip items 4-6, and go to item 7 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$
 - (b) ☐ The fee is computed on the fair market value of the realty which is \$
 - (c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$
5. Check YES ☐ or NO ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$
6. The DEED Recording Fee is computed as follows:
 - (a) the amount listed in item 4 above
 - (b) the amount listed in item 5 above (no amount place zero)
 - (c) Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative
8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn to before me this 23rd
day of January, 2002
Notary Public for South Carolina
My Commission Expires 1/24/07

Beatrice D. Linz
Grantor, Grantee, or Legal Representative
connected with this transaction
Beatrice D. Linz
Print or Type Name here

RECORDER'S PAGE

This page **MUST** remain with
the original document.



BK Y396PG895

Beatrice A. King
1002 Landfall Way
Ste 107

Johns Island, SC
29455

102
R

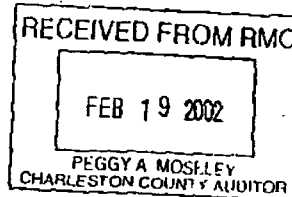
FILED

Y396-890

2002 FEB 14 AM 10:03

CLARENCE LYBRAND
REGISTER
CHARLESTON COUNTY SC

P/C
Recording Fee 10.00
State Fee _____
County Fee EMPTY
Postage _____
TOTAL 10.00



**PID VERIFIED
BY ASSESSOR**

REP LMG

DATE 2/19/02

(843) 652-4800 2 Courthouse Square Charleston, SC 29401



EXCLUSIVE RIGHT TO SELL AGREEMENT



LISTING AGREEMENT

In consideration of the covenants herein contained, Paul Shelton, Sole Property Owner(s) (hereinafter called "OWNER") and Bobby Sheryl Agent Owned, Real Estate Company (hereinafter called "BROKER"), agree as follows:

For the period of time beginning on 2/17, 2003, and ending at midnight on 4/17, 2003.

Owner hereby grants to Broker the sole and exclusive right to sell the real property known as:

Lot 1210 Block 1 Section 1 Subdivision 1

Address 1220 EAST Ashley Ave

Tax Map # 01/439-13-00-109 City Folly Beach Zip 29439

County of Charleston, State of South Carolina.

The real estate described herein includes all improvements, fixtures, appurtenances, and the additional property, if any, described here.

AGENCY RELATIONSHIPS: Broker has advised Owner of Broker's general company policy regarding cooperating with Subagents, Buyers Agents or both. Owner has read and signed the Acknowledgment of Agency Disclosure as required by Section 40-57-139 (as amended) of the Code of Laws of South Carolina, 1976. Owner authorizes the Broker to cooperate and to compensate the following:

(CHECK ALL APPLICABLE CHOICES)

☒ SUBAGENTS REPRESENTING ONLY THE OWNER.

☐ BUYER AGENTS REPRESENTING ONLY THE BUYER.

☒ OWNER AGREES THAT BROKER MAY REQUEST PERMISSION TO BECOME A DUAL AGENT. IT IS UNDERSTOOD THAT OWNER WILL BE NOTIFIED THAT A LICENSEE IS ACTING AS A DUAL AGENT BEFORE BEING ASKED TO CONSIDER AN OFFER TO PURCHASE THE SUBJECT PROPERTY. IF THE REQUIRED CONSENT IS OBTAINED FROM THE OWNER, A SEPARATE ACKNOWLEDGMENT MUST BE OBTAINED USING THE REAL ESTATE COMMISSION APPROVED "DISCLOSURE AND CONSENT TO DUAL AGENCY" FORM PURSUANT TO SECTION 40-57-137(M) OF THE SOUTH CAROLINA REAL ESTATE LICENSE LAW.

☐ NONE OF THE ABOVE. (If this box is checked, property cannot be placed in the multiple listing service.)

The form of agency in a transaction will be disclosed verbally to the Owner's Agent at the time of initial contact by all cooperating real estate agents. Further, a written disclosure of agency shall be provided to the Owner at the time an offer to purchase is submitted for the Owner's consideration.

TERMS: As follows: Handwritten

1. Broker agrees to employ Broker's best efforts to sell or to secure a contract for the sale of the property for a price of 435,000 ⁰⁰ Dollars (\$ 435,000) and in return Owner agrees to pay Broker a fee of \$ or a commission of 7.5 % of gross sales price if Broker, Owner, another broker, or any other person or company produces a Buyer who is ready, willing, and able to purchase the property on the terms described above or on any terms acceptable to Owner. The brokerage fee shall be earned, due and payable when an agreement to purchase, option, exchange, lease or trade is signed by Owner. However, if Owner shall fail or refuse to sell the described property for the price and terms set forth herein, or if Owner shall fail or refuse to complete the sale of such property under any written Agreement to Buy and Sell Real Estate to which Owner has agreed, Broker's full fee shall be due and payable by Owner.

Owner agrees to pay all costs, including reasonable attorney's fees, which may be incurred by Broker in the collection of a fee due by Owner under this Agreement.

Broker agrees to defer the commission until the closing date or extension thereof stated in the agreement or until default by Owner. Deferral is agreed to solely as an accommodation to Owner and such deferral shall in no way be construed as a waiver of the brokerage fee. Closing Attorney is hereby irrevocably directed to deduct and pay said Broker's fee from the proceeds of the sale.

If the property is sold within 30 days of the expiration or termination of this Agreement (which shall be the "protection period") to a Buyer to whom the property was submitted by Owner, Broker, another broker, or any other person or firm during the term of this Agreement, Broker's full fee shall be payable by Owner. The protection period shall be terminated if Owner enters into a listing agreement with another broker during the protection period.

2. For purposes of this Agreement, a sale shall be defined as any transfer of a legal, equitable or beneficial interest in the subject property, whether for money or in exchange of other property, and shall include, but not be limited to, any transfer of the ownership interest in any corporation, limited partnership, partnership, or other entity.

EARNEST MONEY: Owner authorizes and designates Broker to accept and hold on behalf of Owner any earnest money or escrow deposit made in accordance with the terms of any agreement to buy and sell real estate for the property. In the event of default or forfeiture by a prospective buyer, Owner will reimburse Broker any costs incurred by Broker including attorney's fees as a result of the release of payment to Owner of any of the earnest money deposited, and such reimbursement may be made by Broker from the earnest money deposit. All earnest money will be deposited in Broker's escrow account.

OWNER UNDERSTANDS THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, BROKER WILL NOT DISBURSE EARNEST MONEY TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

SIGNS: Owner grants to Broker the exclusive right to display "For Sale," "Under Contract," "Sale Pending," (or other similar) signs on the property and to remove other such signs.

BROKER'S DUTY: Broker agrees to employ the best efforts of Broker and Broker's agents and staff to secure a contract of sale for the described property upon such terms as may be agreeable to Owner. Broker's efforts shall include directing the efforts of Broker's organization to bring about the sale, advertising the described property as Broker deems advisable in those advertising media of merit customarily used in the area, furnishing such additional information as is necessary to cooperating real estate brokers and assisting such brokers in effecting a sale of property, and keeping Owner informed as to the progress of Broker's efforts in finding a Buyer for the described property.

MAINTENANCE: Owner agrees to maintain the property, including lawn, shrubbery, and grounds until the day of closing or possession, whichever occurs first. Owner also warrants that all heating, air conditioning, electrical, and plumbing systems as well as built-in or appurtenant equipment or appliances shall be in operative condition on the day of closing or possession, whichever occurs first. Unless otherwise agreed herein, Owner shall deliver the premises to the Buyer with no broken panes; no torn or missing door screens or window screens; and with no missing or broken hardware, lighting, or plumbing fixtures.

AGREEMENT TO SELL: When a Buyer is found for said property, the Owner shall enter into a written sales agreement which will contain the terms and conditions of sale, the customary provisions as to the examination of the title, the curing of any defects in title, the prorations of taxes, rents, and applicable property expenses.

LEAD-BASED PAINT: For dwellings built before 1978, and as required by applicable law, a Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards (the "Disclosure" must be signed by Owner and attached to this agreement. Owner represents that either (1) the improvements on the property were all constructed after December 31, 1977, or (2) the Disclosure has been fully completed and is attached to this agreement. Owner agrees to provide Broker with any such additional information or reports as may come to Owner's possession during the term of this agreement. Owner acknowledges that Broker has informed Owner of the Owner's obligations to provide a buyer of the property with the pamphlet "Protect your Family from Lead in Your Home," to provide information to a buyer of the property with copies of available records and reports with respect to the property and lead-based paint and lead-based paint hazards, all pursuant to 42USC4582(d), as amended.

MEDIATION CLAUSE: Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by Owner or Broker in connection with the services to which this Agreement pertains, including without limitation, allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

FAIR HOUSING: Owner and Broker agree that this property is offered without regard to race, color, religion, sex, handicap, familial status, or national origin and is listed in full compliance with local, state, and federal fair housing laws.

FACSIMILE: The parties agree that this Agreement may be communicated by use of a fax, or other secure electronic means, including but not limited to the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

OTHER TERMS AND CONDITIONS:

THE UNDERSIGNED HEREBY WARRANT THAT THEY OWN THE PROPERTY AND/OR HAVE THE AUTHORITY TO EXECUTE THIS AGREEMENT. THIS IS A LEGALLY BINDING AGREEMENT. OWNER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. OWNER ACKNOWLEDGES RECEIPT OF A COPY OF THIS AGREEMENT.

IN WITNESS WHEREOF, this agreement has been duly executed by the parties.

Owner: Paul E. Shelton Date 2/17/03 Time 3:30 Email _____

Witness: Bobby Shealy Date 2/17/03 Time 3:30

Owner: _____ Date _____ Time _____ Email _____

Witness: _____ Date _____ Time _____

Owner's Mailing Address: Pox 583 Folly Beach SC 29439

Business Phone: _____ Home Phone: 588-2079

Real Estate Company: Agent Owned Realty

By: Bobby Shealy Date 2/17/03 Time 3:30

Real Estate Company's Mailing Address: 902 Savannah Hwy Phone: 769 5100

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☐ Buyer ☐ Seller ☐ Buyer ☐ Seller have read this page

FORM 220 Rev 04/02
PAGE 3 OF 3

00529



Arthur Ravenel Jr Company

AGREEMENT TO BUY AND SELL REAL ESTATE RESIDENTIAL

1. PARTIES: This legally binding Agreement entered into on June 10, 2003

between, Buyer(s), Dr. Edward Gilbreth, (hereinafter called "BUYER"), and
Seller(s), Paul E. Shelton, A Revocable Trust, (hereinafter called "SELLER"). The

property shall be deeded in the name(s) of: Same

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the
following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____

Address 1220 East Ashley Avenue

Tax Map # 439-13-00-109 City Folly Beach Zip 29439

County of Charleston, State of South Carolina.

Seller represents that the property is connected to ☐ public sewer system or to ☒ septic tank or to ☐ public water or
to ☐ well system or to ☐ other _____

No personal property will convey as a part of this sale, except as described: all appliances belonging to owner

3. CONVEYANCE SHALL BE MADE: Conveyance shall be made subject to all easements as well as covenants of record
(provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller
agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except
as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place
of closing, and transaction closed on or before September 15, 2003, not later than 9:00 p.m. Time is of the
essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and
Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to closing.

4. POSSESSION: Possession of said property will be given to Buyer on the day of closing. Seller agrees to deliver property
free of debris and in a clean condition. The property, included but not limited to, landscaping and lawn, shall be maintained
in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear
accepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a
separate agreement to be executed prior to closing or occupancy.

5. PURCHASE PRICE shall be Four hundred and ninety five thousand dollars, \$495,000

6. METHOD OF PAYMENT: Purchase price shall be paid as follows: ☒ Cash, or ☒ Subject to Financing. Financing to
be obtained by ☒ Conventional ☐ Seller ☐ VA ☐ FHA ☐ Other terms: 415,000 \$415,000

7. EARNEST MONEY: This offer is accompanied by an earnest money deposit of \$5000.00
Buyer and Seller authorize Agent Owned, as Escrow Agent, to hold and
disburse earnest money according to the terms of this agreement. Earnest money paid by ☐ Cash, ☒ Check, or ☐ Other.
Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be
deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the
consummation of this sale, the earnest money deposit shall be credited to the buyer.

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT
HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES
HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT
JURISDICTION HAS DIRECTED A DISBURSEMENT.

BUYER ☐ BUYER ☐ SELLER SELLER HAVE READ THIS PAGE

FORM 310 PAGE 1 of 6

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a _____% loan (loan-to-value ratio) within 10 days from the execution of this Agreement and shall provide Seller with satisfactory loan approval within 30 days. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action which is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above conditions, Buyer shall be in default of this agreement subject to the terms of paragraph 16.
FHA Mortgage Insurance ☐ will ☐ will not be added to the mortgage. VA funding fee ☐ will ☐ will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: _____

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☐ will ☐ will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐ Buyer or ☐ Seller not to exceed \$ _____

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at n/a o'clock _____ M. on _____ unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 30 days consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorrations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorrations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

☒ BUYER ☐ BUYER ☐ SELLER ☒ SELLER HAVE READ THIS PAGE

FORM 310 PAGE 2 of 6

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller, or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents has fully met the requirements of Section 27-50-70 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances prior to the day of closing or possession. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified within 15 working consecutive days after both parties have signed this Agreement. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certificates, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before closing, 20 . Time is of the essence. If Buyer fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.

If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

 BUYER ☐ BUYER ☐ SELLER  SELLER HAVE READ THIS PAGE

FORM 310 PAGE 3 of 6

(E) Repairs: The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, and the dwelling structurally sound and wood infestation treatment, if any, required by section (D) above, to be paid by Seller. If the Seller refuses to make these repairs and treatment, the Buyer shall have the option to (1) accept the property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) Residential Dwellings Built before 1978: (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on _____, 20_____. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☒ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) Megan's Law: The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer agrees that the Buyer has the sole responsibility to obtain any such information. The Buyer understands that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) Disclaimer: The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller. Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. APPRAISED VALUE: (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

 BUYER ☐ BUYER ☐ SELLER  SELLER HAVE READ THIS PAGE

FORM 310 PAGE 4 of 6

21. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at ☐ Buyer's ☒ Seller's expense.

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on the reverse, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. **TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION:** According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker may place deposited earnest monies into an interest bearing trust account and that Broker will retain all interest incurred in said account in which case all interest earned on Broker's interest bearing trust account shall be donated on a regular basis to a charity of Broker's choice.

28. **CONTINGENCIES:** These stipulations shall preempt printed matter herein (attach and reference addendum if necessary) 1. Contingent upon Buyer being able to do short term rentals starting spring of 2004. Contingent upon Buyer getting first right of refusal in the purchase of 1219 East Ashley Avenue, Folly Beach, SC owned by subject's owner.

with Bobby Shealy Affiliated Realty as agent, etc.

☒ BUYER

☐ BUYER

☐ SELLER

☒ SELLER HAVE READ THIS PAGE

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: Edward H. Gullisen Date 6/10/03 Time 11:00 AM
WITNESS: Eva Ravenel Date 6/10/03 Time 11:00 AM

BUYER: _____ Date 4/10/03 Time 3:30 PM
WITNESS: _____ Date _____ Time _____

SELLER: Paul E. Shelton Date _____ Time _____
WITNESS: Bob Sheary Date 6/10/03 Time 3:30 PM

SELLER: _____ Date _____ Time _____
WITNESS: _____ Date _____ Time _____

LISTING AGENT AND COMPANY Eva Ravenel Bob Sheary / Agent Ornel
Arthur Ravenel Jr. Co

SELLING AGENT AND COMPANY Eva Ravenel Arthur Ravenel Jr Company

ESCROW AGENT ACKNOWLEDGMENT _____

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FORM 310 PAGE 6 of 6



**AGREEMENT TO BUY AND SELL REAL ESTATE
RESIDENTIAL - SUBJECT TO FINANCING or CASH TERMS**

1. **PARTIES:** This legally binding Agreement entered into on September 2, 2003 between, Buyer(s), Dr. Edward Gilbreth, (hereinafter called "BUYER"), and Seller(s), Shirley A. Huggins, Trustee of Paul E. Shelton Charitable Remainder Trust dtd 8/29/03 (hereinafter called "SELLER"). The property shall be deeded in the name(s) of: SAME

2. **PROPERTY TO BE SOLD:** Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the following described property with improvements and fixtures thereon:

Lot _____ Block _____ Section _____ Subdivision _____

Address 1220 EAST Ashley AVENUE

Tax Map # 439-13-00-109 city Folly Beach Zip 29439

County of Charleston, State of South Carolina.

Seller represents that the property is connected to ☒ public sewer system or to ☒ septic tank or to ☐ public water or to ☐ well system or to ☐ other _____

No personal property will convey as a part of this sale, except as described: (attach addendum if necessary) All appliances belonging to owner

3. **CONVEYANCE SHALL BE MADE:** Conveyance shall be made subject to all easements as well as covenants of record (provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations. Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances, except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated place of closing, and transaction closed on or before September 15, 2003, not later than 5:00 p.m. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior closing.

4. **POSSESSION:** Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear accepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a separate agreement to be executed prior to closing or occupancy.

5. **PURCHASE PRICE** shall be Four hundred fifteen thousand dollars, \$ 415,000.

6. **METHOD OF PAYMENT:** Purchase price shall be paid as follows: ☐ Cash; or ☒ Subject to Financing. Financing to be obtained by ☒ Conventional ☐ Seller ☐ VA ☐ FHA ☐ Other Terms: _____

7. **EARNEST MONEY:** This offer is accompanied by an earnest money deposit of \$ 5000.00. Buyer and Seller authorize Agent Owned, as Escrow Agent, to hold and disburse earnest money according to the terms of this agreement. Earnest money paid by ☐ Cash, ☐ Check, or ☐ Other. Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the consummation of this sale, the earnest money deposit shall be credited to the Buyer.

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE BROKER HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

☐ BUYER ☐ BUYER ☐ SELLER ☐ SELLER HAVE READ THIS PAGE

FORM 310
PAGE 1 of 5

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation is contingent on Buyer obtaining said loan. Buyer shall apply for a _____ % loan (loan-to-value ratio) within 30 days from the execution of this Agreement and shall provide Seller with satisfactory loan approval within 10 days. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above conditions, Buyer shall be in default of this agreement subject to the terms of paragraph 18. FHA Mortgage Insurance ☐ will ☐ will not be added to the mortgage. VA funding fee ☐ will ☐ will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.

(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: _____

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☐ will ☐ will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐ Buyer or ☐ Seller not to exceed \$ NA.

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at NA o'clock _____ M. on _____ unless accepted or countered by Seller in written form prior to such time.

12. **SPECIAL STIPULATIONS:** These stipulations shall preempt printed matter herein:

Contingent upon Buyer being able to do short term
rentals starting spring of 2004.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorrations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorrations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law or terminate this Agreement with a five day written notice. If terminated, both parties shall execute written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If termination is because of default by Buyer, Seller shall have the option of pursuing any remedy provided by law. If termination is because of default by Seller, the Seller shall pay and be limited to the Actual Cost Incurred (refer to Paragraph 17). If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until court of competent jurisdiction dictates legal disposition.

☐ BUYER ☐ BUYER ☐ SELLER ☐ SELLER HAVE READ THIS PAGE FORM 310
PAGE 2 of 5

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) **Disclaimer:** Except as to a new home being sold by the builder, where the builder's warranty applies, the Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller. Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

(B) **Inspection:** Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to radon gas, lead-based paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances prior to the day of closing or possession. In the event repairs are necessary to place the heating system, air conditioning, plumbing, electrical system, and any appliances to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified within 10 days after both parties have signed this Agreement. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. Seller agrees to place the heating system, air conditioning, plumbing, electrical system and any appliances to be conveyed in operative condition, and to make the roof free of leaks, and the dwelling structurally sound, subject to limitations in section (E). The aforementioned shall be done on or before the closing or possession, whichever occurs first. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before Closing. If Buyer fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in its agreement. If the infestation report reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.

If the property to be sold has not been previously occupied, Seller shall certify that the dwelling has been treated by soil boring for the prevention of termites and other wood destroying organisms and shall provide the Buyer, at closing, a written certification from a licensed pest control operator.

(E) **Repairs:** The cost of all repairs to heating system, air conditioning, plumbing, electrical system and any appliances to be conveyed, and to make the roof free of leaks, and the dwelling structurally sound and treatment, if any, required by section (D) above, to be paid by Seller. If the Seller refuses to make these repairs, the Buyer shall have the right to terminate this Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

☐ BUYER ☐ BUYER ☐ SELLER ☐ SELLER HAVE READ THIS PAGE FORM 310
PAGE 3 of 3

(F) Residential Dwellings Built before 1978: (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on _____. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within _____ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have _____ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☒ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

20. **APPRAISED VALUE:** The lot or parcel with building and improvements thereon, if any, must appraise, according to the lender's appraisal or other appraisal as agreed, for the selling price or the Seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced price. However, if Seller does not agree to sell at appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation.

21. **DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty or warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

22. **COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures as ☐ Buyer's ☐ Seller's expense.

23. **MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding. This mediation clause shall survive for a period of 120 days after the date of the closing.

The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

24. **SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

☐ BUYER ☐ BUYER ☐ SELLER ☐ SELLER HAVE READ THIS PAGE FORM 310
PAGE 4 of 5

25. **ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on the reverse, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular shall include plural, and use of any gender shall include all.

26. **FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

27. **TIME IS OF THE ESSENCE:** The parties agree that whenever a performance time is stipulated in this agreement, all stipulated times shall be considered essential. **TIME IS OF THE ESSENCE** as to the obligations of the parties under this agreement.

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

IN WITNESS WHEREOF, this Agreement has been duly executed by the parties.

BUYER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

BUYER: Edward M. Bellagata Date 9/10/03 Time _____

WITNESS: [Signature] Date _____ Time _____

* SELLER: Shirley A. Huggins Date 9/2/03 Time 2:40 PM

Shirley A. Huggins, Trustee of the E. Skiffington Charitable Remainder Trust add 8/29/03

WITNESS: [Signature] Date 9/2/03 Time 2:40 PM

ALTHEA L. ESSE

SELLER: _____ Date _____ Time _____

WITNESS: _____ Date _____ Time _____

LISTING AGENT AND COMPANY Eva Ravonel / Arthur Ravonel & Co.

SELLING AGENT AND COMPANY Bobby Shealy / Agent General Realty

ESCROW AGENT ACKNOWLEDGMENT _____

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

TITLE NOT EXAMINED
BY COTHRAN LAW OFFICE

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, THAT THE UNDERSIGNED, PAUL E. SHELTON, TRUSTEE, PAUL E. SHELTON REVOCABLE TRUST A MEMORANDUM OF WHICH TRUST DATED JANUARY 23, 2002 IS RECORDED IN THE R.M.C. OFFICE FOR CHARLESTON COUNTY ON FEBRUARY 14, 2002 IN BOOK C 397 AT PAGE 330, GRANTOR, in the State aforesaid, in consideration of the sum of ONE and 00/100 (\$ 1.00) DOLLAR, to me in hand paid at and before the sealing of these presents by SHIRLEY A. HUGGINS, TRUSTEE OF THE PAUL E. SHELTON CHARITABLE REMAINDER TRUST DATED AUGUST 29, 2003, GRANTEE, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these Presents do grant, bargain, sell, and release unto the said SHIRLEY A. HUGGINS, TRUSTEE OF THE PAUL E. SHELTON CHARITABLE REMAINDER TRUST DATED AUGUST 29, 2003, GRANTEE, its successors and assigns forever, all the undersigned's interest in the following described property, to wit:

ALL that piece, parcel or lot of land, with the buildings and improvements thereon, situate, lying and being on Folly Island, County of Charleston, State of South Carolina, known and designated as Lot Twelve Hundred Ten (1210) East Ashley Avenue, on a plat of the lands of Folly Beach Corporation made by Jefferson Construction Company, dated February 1920, and recorded in the RMC Office for Charleston County in Plat Book C, Page 158, and having such metes and bounds as are shown therein.

Measuring and containing Seventy (70) feet on the North and South lines and One Hundred Fifty (150) feet on the East and West lines, be said dimensions, more or less.

Butting and bounding North on Cooper Avenue, East on Thirteenth Street, South on Ashley and West on Lot 1209 East Ashley Avenue on said plat.

Being a portion of the same of property conveyed to Grantor by deed of Paul E. Shelton dated January 23, 2002, and recorded in the Charleston County RMC Office on Book Y 396 at Page 890 on February 14, 2003. The current street address of the conveyed property is 1220 East Ashley Avenue.

TMS # 439-13-00-109

Grantee's Address: Shirley A. Huggins, Trustee, Paul E. Shelton Charitable
Remainder Trust, 1028 SE 13th Court, Deerfield Beach, Florida
33441

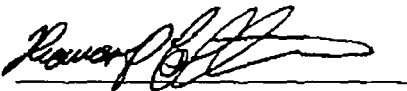
TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

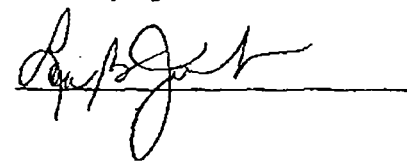
TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said **SHIRLEY A. HUGGINS, TRUSTEE OF THE PAUL E. SHELTON CHARITABLE REMAINDER TRUST DATED AUGUST 29, 2003, GRANTEE**, its successors and assigns forever.

AND the undersigned does hereby bind itself and its successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said **SHIRLEY A. HUGGINS, TRUSTEE OF THE PAUL E. SHELTON CHARITABLE REMAINDER TRUST DATED AUGUST 29, 2003, GRANTEE**, its successors and assigns forever.

WITNESS its Seal, this 29th day of August in the year of our Lord two thousand and three.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

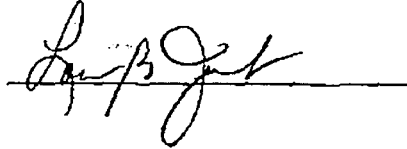





Paul E. Shelton, Trustee, Paul E.
Shelton, Revocable Trust dated January
23, 2002

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named **Paul E. Shelton, Trustee, Paul E. Shelton, Revocable Trust dated January 23, 2002** sign, seal and as its act and deed, deliver the within written Deed, and that s/he with the other witness witnessed the due execution thereof.



SWORN to before me this 29th

day of August, 2003.

 (LS)
Notary Public for South Carolina
My Commission Expires: 02/07/2010

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

Date of Transfer of Title
(Closing Date) Aug 29, 2003

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

1. I have read the information on this Affidavit and I understand such information. BK T464PG773
2. The property is being transferred BY Paul E. Shelton, Trustee, Paul e. Shelton Revocable Trust dated 01/23/2002
TO Shirley A. Huggins, Trustee of the Paul E. Shelton Charitable Remainder Trust dated August 29, 2003
ON Aug 29, 2003.
3. Check one of the following: The DEED is
(a) ☐ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) ☐ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
(c) ☒ EXEMPT from the deed recording fee because (exemption# 9)
(Explanation If required) No consideration - qualified family trust to qualified charitable trust transfer
(If exempt, please skip items 4-6, and go to item 7 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
(a) ☐ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
(b) ☐ The fee is computed on the fair market value of the realty which is \$ _____.
(c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES or NO to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The DEED Recording Fee is computed as follows:
(a) _____ the amount listed in item 4 above
(b) _____ the amount listed in item 5 above (no amount place zero)
(c) _____ Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: _____
Attorney
8. Check if Property other than Real Property is being transferred on this Deed.
(A) ☐ Mobile Home
(B) ☐ Other
9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased CASE NUMBER _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Rep. in the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.
10. I understand that a person required to furnish this affidavit who wilfully furnished a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Sworn to before me this 29th day of August, 2003

Notary Public for South Carolina
My Commission Expires 06/01/2010


Thomas P. Cothran, Esquire

BK T464PG774

RECORDER'S PAGE

This page Must remain with
the original document.



Cottrax Law Office
81 Vincent Dr.
Mt. Pleasant, SC 29464

PA

Recording

Fee 10.00

State

Fee 0.00

County

Fee 0.00

Postage .50

TOTAL 10.50

B

FILED

T464-770

2003 AUG 29 PM 1:43

CHARLES LYBRAND
REGISTER
CHARLESTON COUNTY SC

**PID VERIFIED
BY ASSESSOR**

REP WNG

DATE 9/18/03

RECEIVED FROM RMC

SEP 18 2003

PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

(843) 958-4800 2 Courthouse Square Charleston, SC 29401

00545

2KF 469PG278

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that Shirley A. Huggins, Trustee of the Paul E. Shelton Charitable Remainder Trust Dated August 29, 2003, in the State aforesaid, for/and in consideration of the sum of Four Hundred Fifteen Thousand and 00/100 DOLLARS (\$415,000.00), to me in hand paid at and before the sealing of these Presents by Edward M. Gilbreth and Bonnie L. Gilbreth, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said Edward M. Gilbreth and Bonnie L. Gilbreth as joint tenants with rights of survivorship and not as tenants in common, the following described property, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO
AND INCORPORATED HEREIN BY REFERENCE FOR LEGAL DESCRIPTION.

TMS Number: 439-13-00-109

Address of Grantee(s):
3 Legare Street
Charleston, SC 29401

This is the same property conveyed to the Grantor by deed of conveyance from Paul E. Shelton, Trustee, Paul E. Shelton Revocable Trust A Memorandum of Which Trust Dated January 23, 2002, dated August 29, 2003, and recorded Aug 29, 2003, in Book T464, page 770, in the R.M.C. Office for Charleston County, South Carolina.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said Edward M. Gilbreth and Bonnie L. Gilbreth as joint tenants with rights of survivorship and not as tenants in common, their heirs and assigns, forever.

AND subject to the exceptions set forth above, I do hereby bind myself and my heirs, executors, and administrators, to warrant and forever defend, all and singular, the premises before mentioned unto the said Edward M. Gilbreth and Bonnie L. Gilbreth, their heirs and assigns, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS my Hand and Seal this 20th day of September, in the year of our Lord Two Thousand Three and in the Two Hundred and Twenty-eighth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Joann Crossin
Witness #1

Paula Jensen
Witness #2

Shirley A. Huggins
Trustee of the Paul E. Shelton
Remainder Trust Dated August 29,
2003
Shirley A. Huggins, Trustee of the
Paul E. Shelton Charitable
Remainder Trust Dated August 29,
2003

STATE OF FLORIDA)
COUNTY OF Broward)

The foregoing instrument was acknowledged before me by Shirley A. Huggins, Trustee of the Paul E. Shelton Charitable Remainder Trust Dated August 29, 2003, this 20 day of September, 2003.

[Signature] (SEAL) Signature Only for Shirley A. Huggins
Notary Public for Florida
My commission expires: Aug 30 2006

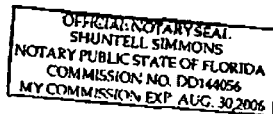


EXHIBIT A

ALL that piece, parcel or lot of land, with the buildings and improvements thereon, situate, lying and being on Folly Island, County of Charleston, State of South Carolina, known and designated as Lot Twelve Hundred Ten (1210) East Ashley Avenue, on a plat of the lands of Folly Beach Corporation made by Jefferson Construction Company, dated February 1920, and recorded in the RMC Office for Charleston County in Plat Book C, page 158, and having such metes and bounds as are shown therein.

Measuring and containing Seventy (70) feet on the North and South lines and One Hundred Fifty (150) feet on the East and West lines, be said dimensions, more or less.

Butting and Bounding North on Cooper Avenue, East on Thirteenth Street, South on Ashley and West on Lot 1209 East Ashley Avenue on said plat.

Exhibit "D"

Certification of Trust for The Paul E. Shelton Charitable Remainder Trust

The Paul E. Shelton Charitable Remainder Trust was established on August 29, 2003. The Grantor of the Paul E. Shelton Charitable Remainder Trust is Paul E. Shelton. The initial and current Trustee is Shirley A. Huggins.

This trust is irrevocable.

The signature of Shirley A. Huggins as trustee is sufficient to exercise the powers of the Trustee.

The Tax Identification Number of the Trust is 57-6204738.

Title to assets in the Trust shall be taken as follows:

Shirley A. Huggins, or her successors in trust under the Paul E. Shelton Charitable Remainder Trust, dated August 29, 2003.

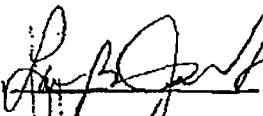
In addition, for titling purposes, any description referring to the trust shall be effective if it includes the name of the trust, the name of at least one initial or successor Trustee, and any reference indicating that property is being held by a Trustee in a fiduciary capacity.

Section 7.14 authorizes the Trustee to sell any real estate owned by the Trust.

No provisions of the Paul E. Shelton Charitable Remainder Trust would cause the representations in this Certificate of Trust to be incorrect.



Shirley A. Huggins, Trustee
Shirley A. Huggins, Trustee



Thomas P. Coghlan, Attorney for Trustee
Thomas P. Coghlan, Attorney for Trustee

Certification of Trust for the Paul E. Shelton Charitable Remainder Trust

Page 1 of 2

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BKF 469PG281

STATE OF FLORIDA

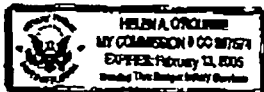
COUNTY OF Broward

) ss. ACKNOWLEDGEMENTS

I, a Notary Public, within and for the State and County aforesaid, do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County by Shirley A. Higgins, as Attorney for Trustee, party herein, and was executed and acknowledged by Shirley A. Higgins to be Shirley A. Higgins' free act and voluntary deed.

Witness my signature this 25 day of September, 2003.

[Seal]



Notary Public
My commission expires: _____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

) ss. ACKNOWLEDGEMENTS

I, a Notary Public, within and for the State and County aforesaid, do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County by Thomas P. Cuthran, as Attorney, party herein, and was executed and acknowledged by Thomas P. Cuthran to be Thomas P. Cuthran's free act and voluntary deed.

Witness my signature this 25 day of September, 2003.

[Seal]

Notary Public
My commission expires: 06/01/2010

Certification of Trust for the Paul E. Shelton Charitable Remainder Trust

Page 2 of 2

0:\09-Client Files\028352\04127\027\Cert of Trust - CRT20030224.doc

RF 469PG282

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

DF 4693286
Date of Transfer of Title
Closing Date _____

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

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred BY Shirley A. Huggins, Trustee of the Paul E. Shelton Charitable Remainder Trust Dated August 29, 2003 TO Edward M. Gilbreth and Bonnie L. Gilbreth ON September 24, 2003.
3. Check one of the following: The DEED is
(a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
(c) _____ EXEMPT from the deed recording fee because (exemption #) _____
(Explanation If required) _____ (If exempt, please skip items 4-6, and go to item 7 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
(a) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$415,000.00.
(b) _____ The fee is computed on the fair market value of the realty which is \$.
(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$.
5. Check YES ___ or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If YES, the amount of the outstanding balance of this lien or encumbrance is \$.
6. The DEED Recording Fee is computed as follows:
(a) \$415,000.00 the amount listed in item 4 above
(b) 0 the amount listed in item 5 above (no amount place zero)
(c) \$415,000.00 Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative of Purchaser
8. Check if Property other than Real Property is being transferred on this Deed. (a) ___ Mobile Home (b) ___ Other
9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased CASE NUMBER _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Rep. in the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.
10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Thomas G. Buist, Esq.
Grantor, Grantee, or Attorney that prepared this form
Thomas G. Buist, Esq.
Print or Type Name here

Sworn to before me this 24th
day of September, 2003.
[Signature]
Notary Public for South Carolina
My Commission Expires 5/23/10

RECORDER'S PAGE

This page Must remain with
the original document.



BUEST, BYARS, PEARCE & TAYLOR, LLC
1061 CHUCK DAWLEY BLVD.
MT. PLEASANT, SC 29464

MD - 988

PAZ
cfw

BKF 469PG284

Recording

Fee 12.00

State

Fee 1,079.00

County

Fee 456.50

Postage

TOTAL 1,547.50

A

FILED
F469-278
2003 SEP 29 AM 8:40
CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

**PID VERIFIED
BY ASSESSOR**

REP LMG

DATE 10/20/03

RECEIVED FROM RMC

OCT 20 2003

PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

RIGHT OF FIRST REFUSAL

WHEREAS, by contract dated June 10, 2003, Paul E. Shelton agreed to convey to Edward Gilbreth certain real estate in Charleston County South Carolina known as 1220 East Ashley Avenue, Folly Beach, South Carolina 29439 (TMS # 439-13-00-109); and

WHEREAS, as part of the consideration for said sale Paul E. Shelton agreed to give Edward Gilbreth a right of first refusal to purchase real estate in Charleston County South Carolina known as 1219 East Ashley Avenue, Folly Beach, South Carolina 29439 (TMS # 439-13-00-021 and TMS # 439-13-00-051), herein after called the Property;" and

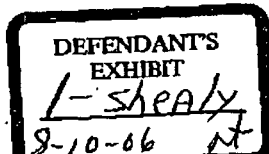
WHEREAS, Bobby Shealy and Eva Ravenel were an integral part of the sale process and as part of the contract dated June 10, 2003, Bobby Shealy was given the right to be the real estate agent of record in any such right of first refusal sale, with Eva Ravenel being inadvertently omitted from that provision of the contract; and

WHEREAS, Paul E. Shelton has conveyed 1220 East Ashley Avenue to a third party who does not own the Property subject to this right of first refusal, Paul E. Shelton for additional good and valuable consideration in hand paid and acknowledged is willing to honor the grant of the right of first refusal given in the contract dated June 10, 2003; and

WHEREAS, Edward Gilbreth, Bobby Shealy, and Eva Ravenel have each given Paul E. Shelton the sum of One Hundred (\$100.00) Dollars along with other good and valuable consideration in payment of the rights herein granted, the receipt of which by Paul E. Shelton is hereby acknowledged;

NOW THEREFORE, Know All Men By These Presents it is agreed by and among Paul E. Shelton, Edward Gilbreth, Eva Ravenel, and Bobby Shealy as follows:

(1) Should Paul E. Shelton elect to sell the Property, Edward Gilbreth shall have a right of first refusal with respect to purchasing the Property. Upon the receipt of a bona fide offer for the purchase and sale of the Property which Paul E. Shelton decides to accept, Paul E. Shelton shall deliver a written copy of such offer to Edward Gilbreth. Thereafter Edward Gilbreth shall have five (5) business days within which to notify Paul E. Shelton of his desire to purchase the Property in accordance with the terms and conditions of such offer to purchase and sale.



(2) This right of first refusal shall be deemed to be waived and void upon the happening of any of the following events:

(a) That five (5) business days pass after a written copy of an offer purchase and sale of the business is delivered to Edward Gilbreth and Edward Gilbreth does not agree to purchase under the identical terms and conditions set forth therein; or

(b) That after receipt of such offer and after a reasonable effort by Paul E. Shelton to locate Edward Gilbreth his whereabouts remain unknown to Paul E. Shelton; or

(c) That Edward Gilbreth is deceased; or

(d) That Edward Gilbreth has defaulted on a contract to purchase the business after having accepted the terms and conditions of such an offer pursuant to the right of first refusal.

(3) The filing of an affidavit by Paul E. Shelton or the Personal Representative of his estate to the effect that any one of the events set forth in Paragraph (2) above has occurred shall be conclusive evidence that the within right of first refusal is waived, void, and without effect, and any third party purchaser, any lender, or any other person shall be entitled to rely on such affidavit without obligation of further inquiry.

(4) Time shall be of the essence to this agreement and subsequent agreements between the parties.

(5) Definitions

(a) The term "the Property" shall refer to 1219 East Ashley Avenue, Folly Beach, South Carolina 29439 (TMS # 439-13-00-021 and TMS # 439-13-00-051).

(b) Reference to a named party shall include his or her lifetime representative, including but not limited to Agent under any power of attorney, Conservator, Guardian, Committee, or the like, and his or her estate, Executor, or Personal Representative.

(i) The death of Paul E. Shelton shall not void the rights of Edward Gilbreth, Eva Ravenel, and Bobby Shealy under this agreement

(ii) The death of Edward Gilbreth, Eva Ravenel, and Bobby Shealy shall void the rights under this agreement of any such deceased person unless Edward Gilbreth has delivered this exercise of the right of first refusal to Paul E. Shelton prior to the death of such person.

(c) The term "real estate agent of record" shall mean Bobby Shealy and Eva Ravenel and Bobby Shealy shall be deemed the listing agent and Eva Ravenel shall be deemed the selling agent as to a sale of the Property from Paul E. Shelton to Edward Gilbreth. Bobby Shealy shall be deemed the listing agent as to any other sale of the Property.

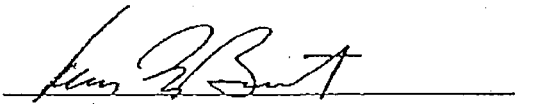
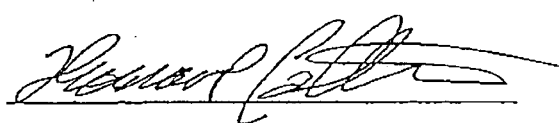
WITNESS its Seal, this 24th day of September in the year of our Lord two thousand and three.

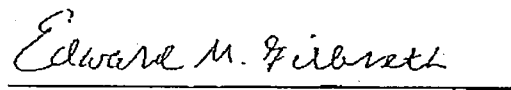
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:



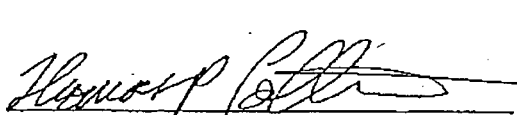


PAUL E. SHELTON


EDWARD GILBRETH





BOBBY SHEALY

EVA RAVENEL

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named PAUL E. SHELTON sign, seal and as his act and deed, deliver the within written Right of First Refusal, and that s/he with the other witness witnessed the due execution thereof.

SWORN to before me this 24th

day of September, 2003.

Wm. B. Smith (LS)

Notary Public for South Carolina

My Commission Expires: 3/30/2009

COUNTY OF CHARLESTON

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named EVA RAVENEL sign, seal and as her act and deed, deliver the within written Right of First Refusal, and that s/he with the other witness witnessed the due execution thereof.

Robert C. Allen

SWORN to before me this 25th
day of September, 2003.



Notary Public for South Carolina
My Commission Expires: 3/30/2009

COTHRAN LAW OFFICE LLC

Thomas P. Cothran
Attorney & Counselor at Law
LL.M. in Estate Planning

81 Vincent Drive
Mt. Pleasant, South Carolina 29464
(843) 856-0433

Fax (843) 856-0442
Tom@CothranLawOffice.com

July 5, 2005

Mr. Bobby Shealy
Castle Rock Real Estate Company, LLC
925-C Wappoo Road
Charleston, SC 29407

Re: Estate of Paul E. Shelton
Our File: 02050.02

Dear Bobby:

I have reviewed the *First Right of Refusal* closely to determine your role. The document expressly "deems" you as listing agent. I believe that this is not the same as naming you as listing agent. To deem, is to consider or have an opinion about *but* is not the same as having a provision that expressly *names* you as the actual official listing agent. Nothing in the *First Right of Refusal* restricts other actions by the owner.

The Personal Representative has instructed me to inform you that she does not wish for you to take any action regarding this property until she gives you explicit written instructions. Therefore, please discontinue any activities you may have started and do not commence any further activities.

Your entitlement to a commission, if any, as the "deemed" agent will be dealt with at a future time.

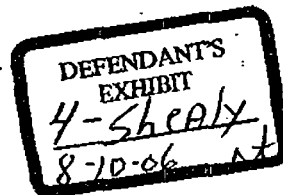
With kind regards, I am

Sincerely,



Thomas P. Cothran
TPC/lbj

cc: Shirley A. Huggins, Personal Representative



Shelton Estate 00038

From: BOBBYSHEALY@aol.com

To: hugss@comcast.net

Subject: touching base

Date: Sat, 26 Feb 2005 12:53:47 +0000

Shirley,

Hope this finds you fine and well. Eva Ravenel, the agent representing Dr. Gilbreath called me yesterday inquiring about Paul's house. Seems he is very interested in seeing it. Any chance of giving him a look any time soon? Just wanted to touch base about the status. I knew you were thinking about renting it for a while. *

Take care,

BOBBY SHEALY
REALTOR-SHAREHOLDER
THE AGENTOWNED REALTY CO
902 SAVANNAH HIGHWAY, CHARLESTON SC 29407
CELL: 843-442-7373
FAX: 843-588-6613
WWW.BOBBYSELLSCHARLESTON.COM

[[Back](#)]

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APR 17 2006



Shelton Estate 00026

<http://mailcenter.comcast.net/wmc/v/wm/443D1EAE0006EABE000032F222058891169C...> 4/12/2006

00560

Subj: **Re: 1219 East Ashley**
Date: 6/8/2005 6:05:06 PM Eastern Daylight Time
From: hugss@comcast.net
To: BOBBYSHEALY@aol.com

Thanks Bobby. My feeling is that he should have the first opportunity for the house. I have had several people contact me and are very anxious to see it. When I was there, Dr. Gilbreath is the only one I let view it. I will, of course, actively market it later this month. I plan to be at Folly July 4 weekend/week and hope to complete removal of personal items at that time. I will contact the people that have contacted me to see if anyone wants to see it at that time.

By the way, keep in mind that Paul's house is on 2 lots..1/2 of front lot went to city, but "space wise" it is 2 lots...1 & 1/2 lots for the sale.

Talk to you soon...
Shirley

----- Original message -----

Shirley,

I faxed it to her office last night about 11:30. So it may be tonight when Dr. Gilbreath gets home that she is able to meet with him. I felt that he should sign some sort of acknowledgment that he had been notified. The original First Right Of Refusal states that he must be given the opportunity to meet any future acceptable offers. My feeling is that he is going to wait until that time. As soon as I get a response from her, I will be in touch.

Have a great day!

BOBBY SHEALY
REALTOR-OWNER
CASTLE ROCK REAL ESTATE COMPANY, LLC
925-C WAPPOO ROAD, CHARLESTON, SC 29407
CELL: 843-442-7373
FAX: 843-588-6613
WWW.BOBBYSHEALY.COM



From: BOBBYSHEALY@aol.com
To: hugss@comcast.net
Subject: (no subject)
Date: Sun, 12 Jun 2005 17:39:26 +0000

Shirley,

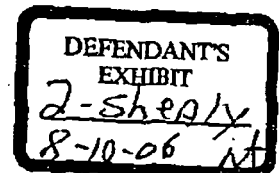
I have received a verbal response from Eva Ravenal that at this time and price Dr. Gilbreath will not move forward with his First Right of Refusal. I had expected this somewhat. They did not want to put anything in writing. I think they are waiting to see what happens with the other interest. Keep me posted on your arrival and plans and let me know if there is anything I can do for you.

Have a great day!

BOBBY SHEALY
REALTOR-OWNER
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Shelton Estate 00036

<http://mailcenter.comcast.net/wmc/v/wm/44280607000A515B000031D822007510909C9...> 3/27/2006

00562

FROM :
Comcast Message Center

FAX NO. : 9543609782

Mar. 27 2006 11:52AM P3
Page 1 of 1

From: BOBBYSHEALY@aol.com
To: hugss@comcast.net
Subject: Touching Base
Date: Thu, 23 Jun 2005 23:24:36 +0000

Shirley:

Thank you for your e-mail, please let me know what further assistance I can be in handling the sale of Paul's home. Based upon the documentation provided to me by the Estate attorney, it is my interpretation exclusive agency for the sale of the property is established (versus exclusive right to sell agency). under SC law I would be the listing agent for the property, and you as the representative of Paul's estate would have the right to sell the property yourself.

Prior to your arrival in Charleston, would you clarify what expectations that you have of me in fulfilling my obligations to the estate? The following are some of the methods I use in handling high-end listings: Quarterly Coastal Estates ad, Folly Beach open house for agents, Monthly Real estate book, newspaper photo advertisement in 16-day increments, Monthly Homes and Land magazine, sign inscription on the property with color flyers mounted in a box, a virtual tour connected to my website as well as MLS (launched to approximately 3500 MLS members) in addition to my extensive client base which is composed of a large number of investors.

I look forward to hearing from you at your earliest convenience, take care and have a great evening.

Bobby

**BOBBY SHEALY
REALTOR-OWNER
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Shelton Estate 00037

<http://mailcenter.comcast.net/wmc/v/wm/4428090700009A980000339922007510909C9C...> 3/27/2006

00563

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Scarborough, Master-in-Equity

Case No. 06-CP-10-991

Robert B. Shealy, Jr., ...Appellant,

v.

The Paul E. Shelton Revocable Trust, ...Respondent.

FINAL BRIEF OF APPELLANT

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Attorneys for Appellant

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TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	iv
Statement of the Case.....	1
Arguments:	
I. The lower court erred in holding that the Right of First Refusal was waived because the Right of First Refusal did not expire under its plain language	4
II. The lower court erred in holding that the Appellant is the Improper Party-Plaintiff where there is a genuine issue of material fact whether Appellant, not his former broker, is the party to the Right of First Refusal	7
III. The lower court erred in holding that there is no genuine issue of material fact whether there was a meeting of the minds between Appellant and Respondent Trust because Appellant has a prior course of dealing to support the terms of their contract and because a written listing agreement is unnecessary	7
IV. The lower court erred in holding there was no genuine issue of material fact regarding whether Respondent Trust breached the agreement where Respondent Trust engaged in conduct that constituted a repudiation of the agreement	9
V. The lower court erred in holding there was no genuine issue of material fact whether Appellant is entitled to a declaratory judgment where rights under a contract are at issue and where a justiciable controversy exists	11
Conclusion	12

TABLE OF AUTHORITIES

CASES

<u>Anderson v. Liberty Lobby, Inc.</u> , 477 U.S. 343, 106 S.Ct. 2505 (1986).....	4
<u>Bishop v. Tolbert</u> , 249 S.C. 289, 153 S.E.2d 912 (1967)	6
<u>Carolina Aviation, Inc. v. Glens Falls Ins. Co.</u> , 214 S.C. 222 (1949)	8, 9
<u>Columbia East Assoc. v. Bi-Lo, Inc.</u> , 299 S.C. 515, 519 (1989).....	8
<u>Hibbett v. Charleston Heights Co.</u> , 163 S.C. 327, 338, 161 S.E.2d 499, 503 (1931).....	6
<u>Hilton Head Island Realty Co. v. Skull Creek Club</u> , 287 S.C. 530, 539, 339 S.E.2d 890, 895 (Ct. App. 1986)	9
<u>Hobgood v. Pennington</u> , 300 S.C. 309, 387 S.E.2d 690 (Ct. App. 1989).....	6
<u>Hunt v. Cromartie</u> , 526 U.S. 541, 552, 119 S.Ct. 1545, 1552, 143 L.Ed.2d 731 (1999)	4
<u>Hutto v. Wiggins</u> , 175 S.C. 202, 178 S.E. 869 (1935).....	6
<u>Keith v. River Consulting, Inc et al.</u> , 365 S.C. 500, 506 (Ct. App. 2005).....	8
<u>Lowcountry Open Land Trust v. Charleston Southern University</u> , 376 S.E.2d 399, 411, 656 S.E.2d 775, 781 (Ct. App. 2007).....	5
<u>MailSource, LLC v. M.A. Bailey & Assocs.</u> , 356 S.C. 363, 369, 588 S.E.2d 635, 638-39 (Ct. App. 2003)	4 - 5
<u>Moser v. Gosnell</u> , 334 S.C. 425, 430, 513 S.E.2d 123, 125 (Ct.App.1999)	5
<u>Osborne v. Adams</u> , 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001)	4
<u>Peoples Federal Sav. and Loan Ass'n v. Myrtle Beach Retirement Group, Inc.</u> , 300 S.C. 277, 387 S.E.2d 672 (1989)	7
<u>Popocar Enterprises v. McGowan</u> , 300 S.C. 178; 386 S.E.2d 795 (Ct. App. 1989).....	6
<u>RentCo. v. Tamway Corp.</u> 283 S.C. 265, 268 (Ct. App. 1984)	8
<u>Speed v. Speed</u> , 213 S.C. 401, 49 S.E.2d 588 (1948).....	6
<u>Torrington Co. v. Aetna Cas. & Sur. Co.</u> , 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975)	4

<u>Williams v. McManus</u> , 73 S.E. 1038, 1048 (1912)	6
--	---

STATUTES

S.C. Code Ann. § 15-53-40.....	11
--------------------------------	----

COURT RULES

Rule 56(c), SCRCF	4
-------------------------	---

OTHER AUTHORITIES

Ralph King Anderson, Jr., <i>South Carolina Requests to Charge – Civil</i> , 2002.....	10
5-24 Corbin on Contracts § 24.17 (2008)	8

STATEMENT OF ISSUES ON APPEAL

- I. Did the lower court err in holding that the Right of First Refusal was waived because the Right of First Refusal did not expire under its plain language?
- II. Did the lower court err in holding that the Appellant is the Improper Party-Plaintiff where there is a genuine issue of material fact whether Appellant, not his former broker, is the party to the Right of First Refusal?
- III. Did the lower court err in holding that there is no genuine issue of material fact whether there was a meeting of the minds between Appellant and Respondent Trust because Appellant has a prior course of dealing to support the terms of their contract and because a written listing agreement is unnecessary?
- IV. Did the lower court err in holding there was no genuine issue of material fact regarding whether Respondent Trust breached the agreement where Respondent Trust engaged in conduct that constituted a repudiation of the agreement?
- V. Did the lower court err in holding there was no genuine issue of material fact whether an whether Appellant is entitled to a declaratory judgment where rights under a contract are at issue and where a justiciable controversy exists?

STATEMENT OF THE CASE

Robert B. Shealy, Jr. ("Appellant" or "Bobby Shealy") filed a Statement of Creditor's Claim against the Estate of Paul E. Shelton ("Estate") on July 15, 2005. [R. p. 44] The Estate disallowed the claim on July 29, 2005. [R. p. 45] Appellant filed a Petition for Allowance of Claim on August 19, 2005. [R. p. 46]

On January 17, 2006, Appellant filed a Petition for Declaratory Judgment and Specific Performance in the Charleston County Probate Court. [R. p. 48] On February 10, 2006, the Estate filed a motion to Remove the Petition for Declaratory Judgment and Specific Performance to the Circuit Court. [R. p. 58] Immediately thereafter, Appellant filed a motion to remove the entire action to the Probate Court. [R. p. 59] On February 16, 2006, the Estate filed its Answer to Appellant's Petition for Declaratory Judgment and Specific Performance. [R. p. 61] On February 21, 2006, the Probate Court removed all of Appellant's claims to the Circuit Court. [R. p. 1] By consent order, this case was referred to the Master-in-Equity for Charleston County. [R. p. 2]

On June 30, 2008, Appellant filed an Amended Complaint to add claims against the Estate for breach of contract and breach of contract with fraudulent intent. [R. p. 67] On July 30, 2008, the Estate filed a motion for summary judgment, claiming, among other things, that the Estate was not the proper party. [R. p. 80] On August 19, 2008, Appellant filed a motion to substitute the Paul E. Shelton Revocable Trust ("Respondent Trust") as the defendant. [R. p. 97] On August 19, 2008, the Honorable Mikell Scarborough granted the Estate's motion for summary judgment on the basis that the Estate was the improper party and that the statute of limitations had expired against Respondent Trust, effectively denying Appellant's motion to substitute parties. [R. p. 3] The written order was not filed until September 17, 2008, but

Appellant filed a motion to alter or amend the judgment on September 8, 2008. [R. p. 125] The lower court heard Appellant's motion to alter or amend the judgment on October 30, 2008, and the lower court vacated its order dated September 17, 2008, granted Appellant's motion to alter or amend the judgment, denied the Estate's motion for summary judgment, and granted Appellant's motion to substitute parties. [R. p. 9]

Appellant filed his Amended Complaint on November 18, 2008, which substituted Respondent Trust as the party-defendant but asserted the same causes of action: breach of contract, breach of contract with fraudulent intent, declaratory judgment, and specific performance. [R. p. 132] On November 24, 2008, Respondent Trust filed its Answer and Counterclaim, asserting various defenses and counterclaims for frivolous proceedings and abuse of process. [R. p. 146] On December 29, 2008, Appellant filed his Reply. [R. p. 153]

On January 15, 2009, Respondent Trust filed a motion for summary judgment. [R. p. 157] The lower court granted Respondent Trust's motion. [R. p. 17] Appellant filed a motion to alter or amend the judgment. [R. p. 214] The lower court denied Appellant's motion. [R. p. 29] This appeal followed.

FACTS

On January 23, 2002, Paul Shelton ("Decedent") created Respondent Trust, where Decedent served as the trustee and settlor. [R. p. 448] Also on January 23, 2002, Decedent conveyed property located at 1220 East Ashley Avenue, Folly Beach, South Carolina ("1220") to Respondent Trust. [R. p. 522] On February 17, 2003, Appellant, a licensed realtor, entered into a real estate listing agreement with Decedent, where Appellant agreed to list 1220 for sale. [R. p. 417, lines 16 – 18; p. 528] Appellant secured a purchaser for 1220, Dr. Edward Gilbreth ("Gilbreth"), and on June 10, 2003, Decedent, on behalf of Respondent Trust, entered into a

contract to convey 1220 to Gilbreth for \$415,000.00. [R. p. 418, lines 9 – 18; p. 530] As part and parcel of this transaction, Decedent agreed to grant Gilbreth a right of first refusal regarding any purchase of another property owned by Decedent, namely 1219 East Ashley Avenue, Folly Beach, South Carolina (“1219”). [R. p. 419, lines 1 – 6; p. 421, lines 13 – 17; p. 422, line 13 – p. 423, line 3; p. 441, lines 17 – 22; p. 534, ¶ 28] On August 29, 2003, Decedent conveyed 1219 to Respondent Trust. [R. p. 541] On September 20, 2003, Respondent Trust conveyed 1220 to Gilbreth and Gilbreth’s wife. [R. p. 546] That same day, Decedent, Gilbreth, Appellant, and Gilbreth’s realtor memorialized the right of first of refusal by entering into an agreement to be recorded entitled Right of First Refusal. [R. p. 445, line 22 – p. 446, line 8; p. 553] The Right of First Refusal provided that Appellant would be “deemed the listing agent” for any sale of the property. [R. p. 555, ¶ (c)]

Decedent then passed away in August 2004. [R. p. 399, line 7] Soon thereafter, Appellant began communicating with the personal representative of Decedent’s estate, Shirley Huggins (“Huggins”)¹, regarding 1219. [R. p. 432, lines 2 – 22; p. 434, lines 1 – 5; p. 435, lines 13 – 24; p. 443, lines 10 – 19; p. 375, line 20 – p. 376, line 2; p. 379, lines 17 – 25; p. 383, lines 1 – 25; p. 384, line 20 – p. 386, line 23; p. 397, line 18 – p. 398, line 2; p. 406, lines 1 – 12] Huggins is a licensed real estate agent. [R. p. 370, lines 1 – 6] During the time that Appellant was attempting to market the property, he received an email from Huggins stating that she would be actively marketing the property herself. [R. p. 427, line 9 – p. 428, line 19; p. 561] In June or July, 2005, Huggins instructed Decedent’s estate’s attorney, Thomas Cothran, Esquire, to write Appellant a letter stating that Appellant would not be entitled to act as the listing agent for 1219 as provided for in the Right of First Refusal. [R. p. 559] Huggins also informed Appellant

¹ Huggins is also the trustee of Respondent Trust.

that he would be paid a 1% commission if he received a contract from Gilbreth, but she did not offer any commission for any other sale of 1219. [R. p. 407, line 25 – p. 408, line 17; p. 440, lines 20 – 23]

ARGUMENTS

STANDARD OF REVIEW

Summary judgment is appropriate “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRPC. “[T]he evidence and all reasonable inferences therefore must be viewed in the light most favorable to the non-moving party.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001). The court must never weigh the evidence or find the facts. Instead, it is the court’s narrow role under Rule 56, SCRPC to assess the threshold issue of whether a genuine issue exists as to material facts requiring a trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 343, 106 S.Ct. 2505 (1986). When drawing reasonable inferences from the evidence, the court should not determine which inferences are more likely or more probable than other inferences in the moving party’s favor. Rather, as long as more than one reasonable inference can be drawn, and that inference creates a genuine issue of material fact, the trier of fact must decide which inference to believe. Id.; Hunt v. Cromartie, 526 U.S. 541, 552, 119 S.Ct. 1545, 1552, 143 L.Ed.2d 731 (1999).

I. The lower court erred in holding that the Right of First Refusal was waived because the Right of First Refusal did not expire under its plain language.

Parties have the right to make their own contracts. Torrington Co. v. Aetna Cas. & Sur. Co., 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975); MailSource, LLC v. M.A. Bailey &

Assocs., 356 S.C. 363, 369, 588 S.E.2d 635, 638-39 (Ct. App. 2003). When the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect, and the court must construe it according to its plain, ordinary, and popular meaning. Moser v. Gosnell, 334 S.C. 425, 430, 513 S.E.2d 123, 125 (Ct.App.1999). "Succinctly stated, a court has no authority to rewrite a contract and impose unwanted obligations and terms under the guise of specific performance or judicial construction." Lowcountry Open Land Trust v. Charleston Southern University, 376 S.E.2d 399, 411, 656 S.E.2d 775, 781 (Ct. App. 2007) (emphasis added).

Here, the Right of First Refusal contains, among other things, the following provisions:

1. "[Appellant] was given the right to be the real estate agent of record in any such right of first refusal sale" [R. p. 553]
2. "The death of Paul E. Shelton shall not void the rights of . . . [Appellant] under this agreement. [R. p. 554, ¶ (5)(b)(i)]
3. "The term **real estate agent of record** shall mean [Appellant] and **Eva Ravenel** and [Appellant] shall be deemed the listing agent and **Eva Ravenel** shall be deemed the selling agent as to a sale of the Property from **Paul E. Shelton** to **Edward Gilbreath**." [R. p. 555, ¶ (c)] (emphases in original).
4. "[Appellant] shall be deemed the listing agent as to **any** other sale of the property." [R. p. 555, ¶ (c)] (first emphasis in original, second emphasis added).

The plain, ordinary, and popular meaning of the word "any" does not show any intent to set a definite time limit. However, the time limit is calculable because Paragraph (ii) on Page 3 sets forth conditions precedent for the termination of the agreement. Specifically, it reads: "[t]he death of **Edward Gilbreth**, **Eva Ravenel**, and **Bobby Shealy** shall void the rights under this

agreement of any such deceased person unless **Edward Gilbreth** has delivered this exercise of the right of first refusal to **Paul E. Shelton** prior to the death of such person.”

The lower court erred in construing the “time is of the essence” provision of the contract to mean “a relatively short period of time.” [R. p. 357, lines 8 – 11] “Where ‘time is made the essence of the contract,’ the parties are bound by the time limited in the contract, and the vendee forfeits his rights by a failure to comply within the specified time.” Williams v. McManus, 73 S.E. 1038, 1048 (1912); See also Bishop v. Tolbert, 249 S.C. 289, 153 S.E.2d 912 (1967); Speed v. Speed, 213 S.C. 401, 49 S.E.2d 588 (1948); Hutto v. Wiggins, 175 S.C. 202, 178 S.E. 869 (1935); Hobgood v. Pennington, 300 S.C. 309, 387 S.E.2d 690 (Ct. App. 1989). A “time is of the essence” provision does set forth any specific time limit to a contract as held by the lower court, but only requires strict compliance of time limits already established. Here, the Right of First Refusal contemplated that the agreement could at least last longer than the life of Decedent, regardless of how long that may have been. To add a specific time limit to this agreement would speculate as to the parties’ intent and would rewrite the contract to impose unwanted terms. Appellant was entitled to act as the listing agent and to receive a commission in “any” sale per the terms of the contract. Additionally, Decedent’s attorney drafted the Right of First Refusal, and any ambiguities should be construed against Respondent Trust. Popocar Enterprises v. McGowan, 300 S.C. 178; 386 S.E.2d 795 (Ct. App. 1989). [R. p. 445, line 22 – p. 446, line 5] Accordingly, this Court should reverse the lower court and remand Appellant’s causes of action for breach of contract and declaratory judgment.

II. The lower court erred in holding that the Appellant is the Improper Party-Plaintiff where there is a genuine issue of material fact whether Appellant, not his former broker, is the party to the Right of First Refusal.

The lower court erred in holding that Appellant's former broker, Agent Owned Realty Co., is the real party in interest with the capacity to sue. Such holding results only from a bald assertion by Respondent Trust.

The real party in interest may institute an action on a contract. Hibbett v. Charleston Heights Co., 163 S.C. 327, 338, 161 S.E.2d 499, 503 (1931). Appellant is the named party to the Right of First Refusal document, which gives rise to Appellant's claim. There is no evidence that Appellant's former broker, Agent Owned Realty Co., claims or owns any interest in the Right of First Refusal. Indeed, Huggins testified that she had no knowledge of Appellant's arrangements with his former broker. [R. p. 405, lines 8 – 25] To the extent that paragraph 28 of the Contract, dated July 10, 2003 [R. p. 534] is ambiguous in that it provides rights to "Bobby Shealy/Agent Owned Realty as agent," such ambiguity was clarified by the parties when they memorialized their agreement in the Right of First Refusal, which expressed that only Appellant was entitled to these rights. Therefore, this Court should reverse the lower court and remand Appellant's causes of action for breach of contract and declaratory judgment.

III. The lower court erred in holding that there is no genuine issue of material fact whether there was a meeting of the minds between Appellant and Respondent Trust because Appellant has a prior course of dealing to support the terms of their contract and because a written listing agreement is unnecessary.

It is the duty of the Court to determine the intentions of the parties at the time the contract was made. Peoples Federal Sav. and Loan Ass'n v. Myrtle Beach Retirement Group, Inc., 300 S.C. 277, 387 S.E.2d 672 (1989). In this case, it is apparent from the evidence and conceded by Huggins in her deposition that Decedent intended for Appellant to act as the listing agent for the property:

Ralph King Anderson, Jr., *South Carolina Requests to Charge – Civil*, 2002, § 19-18 (citing 17A Am. Jur. 2d *Contracts* § 719 (1991)). Repudiation is not identical to a breach, but it allows the non-breaching party to treat the contract as broken.

An absolute repudiation of a contract by one of the parties to the contract constitutes a breach of the agreement for which the repudiating party is liable in damages. The refusal of a party to recognize the existence of a contract, or the doing of something inconsistent with its existence, may be treated as a breach thereof where such refusal or inconsistent act occurs after the time for performance of the contract. Repudiation includes a refusal or declination to perform in accordance with the contract

Repudiation of a contract before the time for performance, which amounts to a refusal to perform it at any time, gives the adverse party the option to treat the entire contract as broken and to sue immediately for damages as for a total breach There is no necessity in such case for a tender of performance, or compliance with conditions precedent, or waiting for the time of performance to arrive No notice need be given that the repudiation is treated as a breach. . . .

Id. (citing 17A Am. Jur. 2d *Contracts* §§ 737-38; 740 (1991)).

The lower court held that because the Right of First Refusal was not a valid, enforceable contract, there is no contract to repudiate. For the reasons set forth above, the Right of First Refusal is a valid and binding contract. Additionally, Huggins' conduct created a genuine issue of material fact whether Respondent Trust repudiated the Right of First Refusal.

First, Huggins' email, dated June 8, 2005, indicates that Appellant would be excluded from any deals regarding 1219 because it does not stand to reason why Huggins would cause prospective buyers to wait a month to see 1219 when Appellant was available to show the property to prospective buyers immediately. [R. p. 561] Second, the letter from Mr. Cothran was a clear indication that Huggins did not intend to honor the Right of First Refusal. If Huggins had merely wanted for Appellant to postpone marketing the property at this time but still

intended to use him as the listing agent if the property were marketed in the future, then the letter should have so stated. The otherwise unnecessary language challenging Appellant's "role" and challenging the meaning of the word "deem" made it clear that Appellant would be excluded from any sale of 1219. Third, Huggins testified that she informed Appellant at some point that he would be paid a 1% commission if he received a contract from Gilbreath, and she made no offer regarding any other sale of the property. [R. p. 407, line 25 – p. 408, line 17]. Such amount, being substantially less than what Appellant earned from his previous dealing with Decedent, further supported that Respondent Trust was not going to act in accordance with Appellant's agreement with Decedent. Fourth, in her Answer, dated February 6, 2006, Huggins denied paragraph 14 of Appellant's Petition for Declaratory Judgment or Specific Performance, which alleges that Appellant "is entitled to act as listing agent upon any sale of the Property, or at the very least, is entitled to a reasonable commission for the property." [R. p. 48; p. 61] Any or all of the above words, actions, and/or documents are sufficient to raise a genuine issue of material fact whether Respondent Trust, through Huggins, repudiated the Right of First Refusal. Therefore, Appellant was entitled to treat the entire contract as broken and sue immediately for damages. Accordingly, this Court should reverse the lower court and remand Appellant's causes of action for breach of contract and declaratory judgment.

V. The lower court erred in holding there was no genuine issue of material fact whether Appellant is entitled to a declaratory judgment where rights under a contract are at issue and where a justiciable controversy exists.

"A contract may be construed either before or after there has been a breach thereof."

S.C. Code Ann. § 15-53-40. Therefore, the lower court erred in refusing to construe the contract and granting summary judgment against this cause of action. Further, to the extent it is necessary for Appellant to show a justiciable controversy, one clearly exists in that Appellant is

claiming certain rights in his Amended Complaint, and Respondent Trust denies the existence of these rights.

To the extent the lower court's holding construes the contract as unenforceable, the lower court erred for the reasons set forth in the sections above. Accordingly, this Court should reverse the lower court and hold that the Right of First Refusal entitles Appellant to a 4.5% commission upon any sale of the property until the death of Appellant, Gilbreth, and Eva Ravenel, subject to splitting the commission with Eva Ravenel upon a sale to Gilbreth.

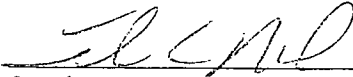
CONCLUSION

Viewing the evidence in the light most favorable to Appellant, the Right of First Refusal is an enforceable contract that entitles Appellant to act as the listing agent for 1219, or at the least, to be entitled to a 4.5% commission upon any sale based upon the parties' prior dealings. Appellant is a proper party to this action because he is a party to the Right of First Refusal. Appellant is entitled to a declaratory judgment regarding his rights under the Right of First Refusal. Finally, Appellant is entitled to sue for damages because Huggins, as trustee of Respondent Trust, repudiated the agreement. Accordingly, this Court should reverse the lower court's granting of summary judgment against Appellant's claims for breach of contract and declaratory judgment.

Attorney Signature on Following Page.

Respectfully submitted,

FUTERAL & NELSON, LLC



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Dated: 6/1/10

Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Ross Scarborough, Master-In-Equity

Case No. 06-CP-10-991

Robert B. Shealy, Jr.,

Appellant

v.

The Paul E. Shelton Revocable Trust, S.

Respondent

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Table of Authorities	ii, iii, iv
Statement of Issues on Appeal	1
Statement of the Case	1
Facts	3
Arguments	
1. DID THE MASTER'S UNNECESSARY FINDING THAT THE RIGHT OF FIRST REFUSAL WAS UNENFORCEABLE "IN ITS ENTIRETY" CONSTITUTE REVERSIBLE ERROR?	7
2. ABSENT AN ASSIGNMENT OR STATUS AS A SUCCESSOR IN INTEREST, A REAL ESTATE LICENSEE MAY NOT MAINTAIN AN ACTION ON A LISTING CONTRACT OWNED BY HIS BROKER	8
3. DID THE MASTER ERR IN GRANTING SUMMARY JUDGMENT ON THE LISTING CONTRACT ON THE GROUNDS THAT THERE WAS NO MEETING OF THE MINDS BETWEEN THE PARTIES AS TO THE NATURE OF THE LISTING, THE DURATION OF THE LISTING PERIOD, THE LISTING PRICE OF THE PROPERTY OR THE COMPENSATION TO BE PAID TO THE BROKER WHEN THE CONTRACT IS SILENT ON EACH OF THESE TERMS?	12
4. IF THERE WAS A CONTRACT TO REPUDIATE, WAS THERE SUFFICIENT EVIDENCE OF A MATERIAL FACT TENDING TO SHOW THAT RESPONDENT UNEQUIVOCALLY AND ABSOLUTELY REPUDIATED OR ANICIPATORILY BREACHED THE RIGHT OF FIRST REFUSAL AS TO APPELLANT?	18
5. IS IT REVERSIBLE ERROR FOR THE MASTER TO DENY A CAUSE OF ACTION FOR DECLARATORY JUDGMENT ON THE BASIS OF NO JUSTICIABLE CONTROVERSY, WHEN HIS ORDER GRANTING SUMMARY JUDGMENT IN FACT DECLARES THE RIGHTS OF THE PARTIES TO THE CONTRACT?	23

TABLE OF AUTHORITIES

CASES

<i>Baughman v. American Tel. & Tel. Co.</i> , 306 S.C. 101, 410 S.E.2d 537 (1991)	10, 14
<i>Bell v. Bennett</i> , 307 S.C. 286, 294, 414 S.E.2d 786 (Ct.App.1992)	7
<i>Carolina Aviation, Inc. v. Glens Falls Ins. Co.</i> , 214 S.C. 222, 51 S.E.2d 757 (1949)	15
<i>Cass Co. v. Nannarelo</i> , 274 S.C. 326, 262 S.E.2d 924 (1980)	23
<i>Columbia East Associates v. Bi-Lo, Inc.</i> , 299 S.C. 515, 519, 386 S.E.2d 259 (1989)	14
<i>Dorman Realty and Insurance Company, Inc. v. W. Stalvey</i> , 264 S.C 94, 212 S.E.2d 591 (1975)	21, 22
<i>Ehlke v. Nemec Constr. Co.</i> , 298 S.C. 477, 481, 381 S.E.2d 508, 510 (Ct.App. 1989)	23
<i>Ellis v. Davidson</i> , 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct.App. 2004)	18
<i>Futch v. McAllister Towing of Georgetown, Inc.</i> , 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999)	24
<i>Hall v. Fedor</i> , 349 S.C. 169, 561 S.E.2d 654 (Ct.App. 2002)	10, 14
<i>Hardaway Concrete Co., Inc. v. Hall Contracting Corp.</i> 374 S.C. 216, 647 S.E.2d 488 (Ct. App. 2007)	12
<i>Hilton Head Island Realty, Inc. v. Skull Creek Club</i> , 287 S.C. 530, 539, 339 S.E. 2d 890, 895 (Ct.App. 1986)	16
<i>Jeffrey Realty, Inc. v. Ventice</i> , 2006 WL 3498207 (N.J. Super. A.D.)	14
<i>MailSource, LLC v. M. A. Bailey & Assocs.</i> , 356 S.C. 363, 369, 588 S.E.2d 635, 638-39 (Ct.App. 2003)	8

<i>MDC. Inv. Property, LLC v. Marando</i> , 44 F. Supp.2d 693 (D.N.J. 1999)	14
<i>Miller v. Fairfield Communities, Inc.</i> , 299 S.C. 23, 382 S.E.2d 16 (Ct.App. 1989)	11
ii	
<i>Moser v. Gosnell</i> , 334 S.C. 425, 430, 513 S.E.2d 123, 125 (Ct.App. 1999)	8
<i>Player v. Chandler</i> , 299 S.C. 101, 105, 382 S.E.2d 891 (1989)	12, 13
<i>Sauner v. Pub. Serv. Auth. of S.C.</i> , 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003)	12
<i>Torrington Co. v. Aetna Cas. & Sur. Co.</i> , 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975)	8
<i>United Farm Agency v. Malanuk</i> , 284 S.C. 382, 325 S.E.2d 544 (1985)	16
<i>Weaver v. Recreation Dist.</i> , 328 S.C. 83, 88, 492 S.E.2d 79, 82 (1997)	23
<i>Weichert Co. Realtors v. Ryan</i> , 128 N.J. 427, 441 (1992)	14
<i>Whittington v. National Insurance Company</i> , 263 S.C. 141, 208 S.E.2d 529 (1974)	9

STATUTES

S.C. Code Ann. § 40-57-137 (Supp. 2005)	16
S.C. Code Ann. § 40-57-170(7)	11

OTHER AUTHORITIES

Rule 802, SCRE	10
Rule 56(3) SCRCPP	10
Rule 56(e), SCRCPP	10, 14
Annot. 88 A.L.R.2d 936 (1963)	21
12 AmJur. 2 nd Broker's § 158 at 896 (1964)	17
12 CJS § 118 at 334-38 (1980)	17

12 CJS § 119 at 339 (1980)	17
Regulation 105-18, South Carolina Real Estate Commission	16
RESTATEMENT OF CONTRACTS §32 (1932)	14
RALPH KING ANDERSON, JR., SOUTH CAROLINA REQUEST TO CHARGE-CIVIL § 19-18 (2002)	20

STATEMENT OF ISSUES ON APPEAL

1. DID THE MASTER'S UNNECESSARY FINDING THAT THE RIGHT OF FIRST REFUSAL WAS UNENFORCEABLE "IN ITS ENTIRETY" CONSTITUTE REVERSIBLE ERROR?
2. ABSENT AN ASSIGNMENT OR STATUS AS A SUCCESSOR IN INTEREST, A REAL ESTATE LICENSEE MAY NOT MAINTAIN AN ACTION ON A LISTING CONTRACT OWNED BY HIS BROKER.
3. DID THE MASTER ERR IN GRANTING SUMMARY JUDGMENT ON THE LISTING CONTRACT ON THE GROUNDS THAT THERE WAS NO MEETING OF THE MINDS BETWEEN THE PARTIES AS TO THE NATURE OF THE LISTING, THE DURATION OF THE LISTING PERIOD, THE LISTING PRICE OF THE PROPERTY OR THE COMPENSATION TO BE PAID TO THE BROKER WHEN THE CONTRACT IS SILENT ON EACH OF THESE TERMS?
4. IF THERE WAS A CONTRACT TO REPUDIATE, WAS THERE SUFFICIENT EVIDENCE OF A MATERIAL FACT TENDING TO SHOW THAT RESPONDENT UNEQUIVOCALLY AND ABSOLUTELY REPUDIATED OR ANICIPATORILY BREACHED THE RIGHT OF FIRST REFUSAL AS TO APPELLANT?
5. IS IT REVERSIBLE ERROR FOR THE MASTER TO DENY A CAUSE OF ACTION FOR DECLARATORY JUDGMENT ON THE BASIS OF NO JUSTICIABLE CONTROVERSY, WHEN HIS ORDER GRANTING SUMMARY JUDGMENT IN FACT DECLARES THE RIGHTS OF THE PARTIES TO THE CONTRACT?

STATEMENT OF THE CASE

Robert B. Shealy, Jr. (appellant) filed a Statement of Creditor's Claim against the Estate of Paul E. Shelton (Estate) on July 15, 2005. (R. p. 00044). The Estate disallowed the claim on July 29, 2005. (R. p. 00045). Appellant filed a Petition for Allowance of Claim on August 19, 2005. (R. p. 00046).

On January 17, 2006, appellant filed a Petition for Declaratory Judgment and Specific Performance in the Charleston County Probate Court. (R. pp. 00048-00057). On February 10, 2006, the Estate filed a Motion to Remove the Petition for Declaratory Judgment and Specific Performance to the Circuit Court. (R. p. 00058). Immediately thereafter, appellant filed a motion to remove the entire action to the Circuit Court. (R. pp. 00059-00060). On February 16, 2006, the Estate filed its Answer to appellant's Petition for Declaratory Judgment and Specific Performance. (R. pp. 00061-00063). On February 21, 2006, the Probate Court removed all of appellant's claims to the Circuit Court. (R. p. 00001).

On March 20, 2006, appellant filed a *Lis pendens* alleging his action affects the title to the property. (R. pp. 00064-00066).

By Consent Order, this case was referred to the Master-In-Equity for Charleston County. (R. p. 00002).

On June 30, 2008, appellant filed an amended complaint to add claims against the Estate for breach of contract and breach of contract with fraudulent intent. (R. pp. 00068-00072). On July 14, 2008, the Estate filed its answer asserting seven affirmative defenses and counterclaims for frivolous proceedings and abuse of process. (R. pp. 00073-00079). On July 30, 2008, the Estate filed a motion for summary judgment, claiming, among other things, that the Estate was not the proper party defendant. (R. pp. 00080-00096). On August 19, 2008, appellant filed a motion to substitute the Paul E. Shelton Revocable Trust (respondent Trust) as the defendant. (R. pp. 00097-00124). On August 19, 2008, the Honorable Mikell Scarborough granted the Estate's motion for summary judgment on the basis that the Estate was the improper party and that the statute of limitations had expired

against the respondent Trust, effectively denying appellant's motion to substitute parties.

(R. pp. 00003-00008). The written order was not filed until September 17, 2008, but appellant filed a motion to alter or amend the judgment on September 8, 2008. (R. pp. 00125-00131). The Master heard appellant's motion to alter or amend the judgment on October 30, 2008, and the Master vacated its order filed September 17, 2008, granted appellant's motion to alter or amend the judgment, denied the Estate's motion for summary judgment, and granted appellant's motion to substitute the parties. (R. pp. 00009-00016).

Appellant filed his amended complaint on November 18, 2008, which substituted respondent Trust as the party-defendant but asserted the same causes of action: breach of contract, breach of contract with fraudulent intent, declaratory judgment, and specific performance. (R. pp. 00133-00145). On November 24, 2008, respondent Trust filed its answer and counterclaim, asserting various defenses and counterclaims for frivolous proceedings and abuse of process. (R. pp. 00146-00152). On December 29, 2008, appellant filed his Reply. (R. pp. 00153-00156).

On January 15, 2009, respondent Trust filed a motion for summary judgment. (R. pp. 00157-00213). Appellant did not file a responsive pleading or memorandum of law.

The Master granted respondent Trust's motion. (R. pp. 00017-00028). Appellant filed a motion to alter or amend the judgment. (R. pp. 00214-00227). The Master denied appellant's motion. (R. pp. 00029-00043). This appeal followed.

FACTS

On February 14, 2002, Paul E. Shelton (Shelton), as part of his estate plan, conveyed a house and lot he owned located at 1219 East Ashley Avenue, Folly Beach, South Carolina

(the Property) to The Paul E. Shelton Revocable Trust. (R. pp. 00522-00527). The revocable trust became irrevocable on Shelton's death. Paul E. Shelton was the Trustee of this Trust. Shirley A. Huggins (Huggins) was appointed the successor Trustee of the Trust upon the death or disability of Shelton.

Shelton also owned a house and lot at 1220 East Ashley Avenue, adjacent to the Property, which had been conveyed to the Paul E. Shelton Charitable Remainder Trust. This house and lot were sold to Edward Gilbreath (Gilbreath) on September 20, 2003 pursuant to an Agreement to Buy and Sell that also provided for the right of first refusal as to the Property at 1219 East Ashley Avenue. At the time of the transaction with Gilbreath, appellant was a licensed real estate agent working for Agent Owned Realty Co. (Agent Owned) as reflected by appellant's handwritten language inserted after para. 28 of the Agreement stating he would be the agent as to the right of first refusal. (R. p. 00534, para. 28). Appellant acted as a seller's agent in behalf of Shelton and the Trust and Eva Ravenel of Ravenel Realty acted as buyer's agent for Gilbreath. (R. p. 00418, lines 16-25). On September 24, 2003, the same date as the closing on 1220 East Ashley Avenue, Shelton, Eva Ravenel and appellant executed a document entitled Right of First Refusal pertaining to 1219 East Ashley Avenue. (R. p. 00419, lines 1-6).

The Right of First Refusal provides in pertinent part that Gilbreath shall have the right of first refusal to purchase the Property at 1219 East Ashley Avenue "should Shelton elect to sell the Property". The document further provides that in the event of a sale to Gilbreath, appellant "shall be deemed the listing agent and Eva Ravenel shall be deemed the selling agent". The last sentence of the document provides: "Bobby Shealy shall be deemed

the listing agent as to any other sale of the Property.” (R. p. 00555).

Shelton died on August 24, 2004. Huggins became the Trustee of the Paul E. Shelton Revocable Trust and was appointed Personal Representative of Shelton’s estate. After her appointment, Huggins was contacted by appellant in regard to showing the Property to Edward Gilbreath. (R. p. 00373, line 23-R. p. 00374, line 7 and R. p. 388, line 10-R. p. 00389, line 5). Huggins established an asking price of \$2.2 million for a possible sale to Gilbreath, but the Property was never officially for sale. (R. p. 00386, lines 13-20). Huggins permitted plaintiff and Eva Ravenel to show the Property to Gilbreath. After looking at the Property, Gilbreath declined to purchase at that price. Appellant communicated this declination to Huggins. (R. p. 00562). Appellant then insisted on listing the Property for sale, making repeated overtures to Ms. Huggins to that effect, as may be seen by his various e-mails to Ms. Huggins inquiring about her generally listing the Property with him. (R. p. 00563). During that time, the Property was being renovated and Huggins testified that she was not trying to sell the Property and so advised plaintiff. (R. p. 00390, lines 6-20). She also advised him she had several inquiries and might elect to show the Property herself. (R. p. 00561). Huggins eventually elected not to sell the Property but to hold it as rental property for the Trust. (R. p. 00374, lines 24-R. p. 00375, line 9). Appellant was aware that Huggins was contemplating renting the property. (R. p. 00560).

Persistent, appellant sent Huggins an e-mail in which he purports to interpret the Right of First Refusal. (R. p. 00563). Huggins contacted Thomas P. Cothran, Esquire, the lawyer for the Estate and Paul Shelton’s trusts, asking him to respond to plaintiff’s June 23, 2005 e-mail. (R. p. 00389, line 16-R. p. 00390, line 20). Mr. Cothran responded to appellant

by letter dated July 5, 2005, discussing the meaning of “deemed as listing agent”, stating it was to be dealt with in the future. He also advised appellant not to take any further action regarding the property until he received explicit instructions from Huggins. (R. p. 00559).

Appellant, after receiving this letter, hired counsel and filed a creditor’s claim against the Paul E. Shelton Estate claiming entitlement to \$132,000, calculated as 6% of the \$2,200,000.00 price offered to Gilbreath. (R. p. 00434, lines 19-23). During his deposition taken on August 10, 2006, appellant testified that real estate commissions are negotiable yet he sued for a 6% commission because that was the “standard in the industry”. (R. p.00423, line 4-R. p. 00424, line 7). In his deposition, appellant admitted that he never marketed the Property and that he had no authority to do so. (R. p. 00434, lines 10-13); that he did not have a listing agreement; (R. p. 00434, lines 14-16); that he had no document that entitled him to a 6% commission (R. p. 00436, lines 7-11); that the Estate did not owe him \$132,000 on the date he filed the claim, (July 15, 2005) that he filed the claim to protect his interest in the Right of First Refusal; (R. p. 00435, lines 6-12); and, that he filed the *Lis pendens* against the Property (R. p. 00441, line 23-R. p. 00442, line 19) to prevent its sale so as to protect his commission.

After appellant sued the Estate of Paul E. Shelton and discovery was completed, the Estate filed a motion for summary judgment supported by memoranda and exhibits. (R. pp. 00080-00097). Appellant filed a counter-affidavit claiming for the first time that he was entitled to a 4.5% commission instead of a 6% commission. (R. pp. 00105-00124).

ARGUMENTS

Appellant has not argued in his Initial Brief the Master's grant of summary judgment dismissing his claims for breach of contract accompanied by a fraudulent act (Second Cause of Action) and specific performance (Fourth Cause of Action). *Bell v. Bennett*, 307 S.C. 286, 294, 414 S.E.2d 786 (Ct.App.1992).

1. DID THE MASTER'S UNNECESSARY FINDING THAT THE RIGHT OF FIRST REFUSAL WAS UNENFORCEABLE "IN ITS ENTIRETY" CONSTITUTE REVERSIBLE ERROR?

Appellant, in his first assignment of error, states that the court erred in finding that the Right of First Refusal was "waived" because the Right of First Refusal "did not expire under its plain language". At no time in the Order appealed from did the Master hold that the Right of First Refusal was waived. The legal concept of waiver is not implicated in this case.

The Master also did not find that the Right of First Refusal expired by its own terms. In its Order, the court found that the Right of First Refusal was unenforceable in its entirety on the ground that the document provides that "time is of the essence". (R. p. 00027). For the limited purposes of this argument, respondent concedes that Edward Gilbreath has a valid and enforceable contract with the Trust granting him the Right of First Refusal in the event that the Trust elects to sell the property. (R. p. 00553). It should be noted that Edward Gilbreath was not a party to this action and the validity of his Right of First Refusal was not an issue in this case. Respondent's concession is limited, however, to Edward Gilbreath's rights under the contract. It does not save appellant's claim to a commission. A reversal on this ground alone would not accord appellant any relief.

Appellant correctly cites in his Initial Brief, pages 5 and 6, the law of South Carolina concerning the formation and enforcement of contracts. *Torrington Co. v. Aetna Cas. & Sur. Co.*, 264 S.C. 636, 643, 216 S.E.2d 547, 550 (1975); *MailSource, LLC v. M. A. Bailey & Assocs.*, 356 S.C. 363, 369, 588 S.E.2d 635, 638-39 (Ct.App. 2003); and *Moser v. Gosnell*, 334 S.C. 425, 430, 513 S.E.2d 123, 125 (Ct.App. 1999). These are among the very cases upon which respondent relies in its argument that the court may not rewrite a contract or impose unwanted and unexpressed terms by judicial construction.

Respondent also agrees with appellant that the Right of First Refusal is an unambiguous contract. Silence as to essential terms does not create an ambiguity. See respondent's Final Brief, *infra.*, pages 12-19, relating to the failure of the parties to reach a meeting of the minds on the terms of any listing agency, whether deemed or otherwise.

Respondent also concurs with the appellant's argument that the provision "time is of the essence" does not set forth any specific time limit for the Right of First Refusal, and for the court to add a specific time limit to that contract would "speculate as to the parties' intent and would rewrite the contract to impose unwanted terms". (appellant's Initial brief, page 7). Since appellant concedes that the Right of First Refusal was not ambiguous, his argument that any ambiguity should be construed against the respondent Trust on the grounds that it was drafted by decedent's attorney is inapposite.

2. ABSENT AN ASSIGNMENT OR STATUS AS A SUCCESSOR IN INTEREST, A REAL ESTATE LICENSEE MAY NOT MAINTAIN AN ACTION ON A LISTING CONTRACT OWNED BY HIS BROKER.

The court found in its Order that appellant's real estate license, when the Right of First Refusal was executed, was lodged with Agent Owned Realty; that plaintiff brought this

action in his individual capacity; that he did not allege that he was the successor in interest to Agent Owned; or, that he had obtained an assignment from Agent Owned. At the time of the filing of this action, plaintiff was an agent for Castle Rock Real Estate Company, LLC. (R. p. 00021). The Master, (citing *Whittington v. National Insurance Company*, 263 S.C. 141, 208 S.E.2d 529 [1974]) found that the appellant had no capacity to maintain the action since he did not allege or prove that he was a successor in interest to Agent Owned or the assignee of Agent Owned, despite being repeatedly put on notice by the defendant Estate in the initial action and again by the respondent Trust in the second action, that the defendants challenged plaintiff's capacity to sue for the recovery of a real estate commission. None of the facts supporting the court's holding are in dispute.

Appellant countered respondent's summary judgment argument and the Master's finding by claiming that there was no evidence that his former broker, Agent Owned Realty Company, claims or owns any interest in the Right of First Refusal (Appellant's Initial Brief, page 8). Appellant misconstrues his obligation to properly plead his capacity to bring an action, and when that capacity is challenged, to properly prove such capacity. Appellant states a double negative in contending that there is no proof that he did not have the capacity to sue or that Agent Owned Realty claimed any interest in the Right of First Refusal. Appellant attempted to respond to respondent's capacity challenge in his affidavit opposing the respondent's Motion for Summary Judgment (R. pp. 00107-00108), with the following unsupported statement:

Although I worked for Agent Owned Realty at the time of the sale of 1220 East Ashley to Dr. Gilbreath, I no longer work there. Agent Owned nor its broker have made any claim for my rights under the Right of First Refusal.

In fact, broker has specifically told me that he is not interested in receiving any commission if I receive a commission from the sale of 1219 East Ashley.

Agent Owned made no claim that it was not joined as a party-plaintiff despite respondent's second defense that appellant failed to join indispensable parties. (R. p. 00149). Appellant's recitation of Agent Own's position on this issue in his affidavit is unbridled hearsay and not admissible under Rule 802, SCRE. The Master found that the evidence which plaintiff sought to introduce through his affidavit was not admissible because it violated Rule 56(3), SCRCF by attempting to introduce hearsay evidence that would not be admissible at trial. (R. p. 00025).

Respondent challenged appellant's capacity to bring this action in the initial suit filed in the Probate Court by appellant against the Estate of Paul E. Shelton. (R. p. 00062). This issue was briefed and argued in connection with the Estate's motion for summary judgment. After the Master vacated his first summary judgment Order and permitted appellant to amend his complaint to sue the Paul E. Shelton Trust, a second Motion for Summary Judgment was filed. (R. p. 00157-00213). Again, respondent challenged defendant's capacity to bring the action. (R. p. 00149 and R. p. 00164). Appellant did not respond to respondent's summary judgment motion and memorandum, electing to rely on his previous filings and argument. (R. pp. 00328-00329). Rule 56(e), SCRCF, requires that when a motion for summary judgment is made and supported pursuant to the Rule:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters set forth therein. *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct.App. 2002) at page 175, citing *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

Appellant in failing to file a responsive memorandum or exhibits, thus failed to set forth specific facts admissible in evidence to refute respondent's position as to appellant's lack of capacity to sue.

Miller v. Fairfield Communities, Inc., 299 S.C. 23, 382 S.E.2d 16 (Ct.App. 1989) involved Mrs. Miller, a real estate salesman, who claimed she had obtained listing agreements from sellers and her broker, by requiring her to resign, would violate the Code. This Court rejected Mrs. Miller's claim that requiring her to resign would cause her to violate S.C. Code Ann. § 40-57-170(7), holding: "The listing agreements are between the Lyons Company (her broker) and the sellers, not between Mrs. Miller and the sellers." *Id.*, p.27 (parenthetical material added). In footnote 2 to this statement, this court noted that § 40-57-170(7) prohibits a real estate salesman from representing a real estate broker other than his employer without the express knowledge and consent of the employer. Huggins recognized this principle of real estate law in her deposition (R. p. 00405, lines 13-16).

In the instant case, even if it is assumed that appellant had obtained the consent of Agent Owned to enter into the Right of First Refusal, he did not demonstrate that he had any right to bring an action for commission which otherwise belonged to his broker. If we assume that appellant entered into the Right of First Refusal without the express knowledge and consent of Agent Owned, then the purported listing contract itself would be in violation of the statute.

Respondent contends that the Master did not err in its order finding that appellant did not have an assignment from Agent Owned, was not a successor in interest to Agent Owned,

and had no capacity to bring the subject action for a broker's commission. The failure to plead and prove capacity to sue was fatal to his claim.

3. DID THE MASTER ERR IN GRANTING SUMMARY JUDGMENT ON THE LISTING CONTRACT ON THE GROUNDS THAT THERE WAS NO MEETING OF THE MINDS BETWEEN THE PARTIES AS TO THE NATURE OF THE LISTING, THE DURATION OF THE LISTING PERIOD, THE LISTING PRICE OF THE PROPERTY OR THE COMPENSATION TO BE PAID TO THE BROKER WHEN THE CONTRACT IS SILENT ON EACH OF THESE TERMS?

The threshold issue in this entire litigation is whether or not the Right of First Refusal constitutes a valid and enforceable contract for a broker's commission.

The respondent contends that the Right of First Refusal, while enforceable as to Edward Gilbreath, is not enforceable by appellant because there was no meeting of the minds as to the essential and material terms necessary for the formation of a listing contract.¹

The elements required for formation of a contract are an offer, acceptance and valuable consideration. *Sauner v. Pub. Serv. Auth. of S.C.*, 354 S.C. 397, 406, 581 S.E.2d 161, 166 (2003). In order for a contract to arise, there must be a meeting of the minds of the parties involved with regard to all essential and material terms of the agreement. (Emphasis added). *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891 (1989). Most recently cited with approval in *Hardaway Concrete Co., Inc. v. Hall Contracting Corp.* 374 S.C. 216, 647 S.E.2d 488 (Ct. App. 2007).

In any contract pertaining to the listing of real estate, the essential and material terms to be agreed upon are the listing or sale price, the duration of the listing, and the commission to be paid to the broker. None of these terms are mentioned or agreed to in the Right of First Refusal. The appellant argues that the Right of First Refusal does not lack any material

¹ Respondent, solely for purposes of its position assumes that the stated consideration was paid by Gilbreath, Robert Shealy and Eva Ravenel (Right of First Refusal, page 1).

terms because those material terms can be supplied by the parties' prior course of dealing which was a singular real estate transaction in September 2003. (Appellant's Initial Brief, page 8).

Appellant has attempted, through his lawsuit against the Estate and then against the Trust, to force the owner of the property to list and sell the property on terms never articulated and never agreed to. Appellant admitted that he had no listing agreement and admitted that he had no agreement calling for the payment of a 6% commission. (R. p. 00435 line 25-R. p. 00436, line 20). He further admitted that real estate commissions are negotiable. (R. p. 00423, line 25-R. p. 00424, line 10). After initially claiming a six percent (6%) commission on July 15, 2005, appellant changed his position three years into the litigation claiming entitlement to a 4.5% commission based solely on the sale of 1220 Ashley Avenue by Paul Shelton to Edward Gilbreath prior to Shelton's death. The 4.5% commission was first raised when appellant filed his affidavit on August 19, 2008. (R. p. 00105). Appellant's inconsistent position as to how much his commission should be reflects that there was never a meeting of the minds between Paul E. Shelton and appellant as to the amount of the commission. In *Player v. Chandler*, 299 S.C. 101, 105, 382 S.E.2d 891, 893, 894 (1989), the South Carolina Supreme Court stated:

The "meeting of the minds" required to make a contract is not based on secret purpose or intention on the part of one of the parties, stored away in his mind and not brought to the attention of the other party, but must be based on purpose and intention which has been made known or which, from all the circumstances, should be known.

Appellant purports to supply the missing commission amount, however, he fails to supply any of the other essential missing terms. In his April 20, 2009 Order, pages 8 and 9,

(R. pp. 00021-00022) the Master found persuasive the opinion of the New Jersey appellate court in its opinion involving a dispute over a real estate commission:

...Based upon the parties' testimony, the trial court determined that an agreement between the parties was established. However, an essential element of that agreement was not. The judge quoting *Restatement, Contracts* (1932) §32, stated that, "an offer must be so definite in its terms...that the promises and performance to be rendered by each party are reasonably certain." The judge found that "here one of the key elements in this agreement, that is, the amount of the commission, this Court concludes was never agreed to by the parties".

"The amount of the compensation...is an essential element of any contract." *MDC. Inv. Property, LLC v. Marando*, 44 F. Supp.2d 693 (D.N.J. 1999). See also *Weichert Co. Realtors v. Ryan*, 128 N.J. 427, 441 (1992), (where the Supreme Court held that the "defendant's "implied promise to pay a commission is unenforceable because of the parties' failure to agree on the amount of the commission"). *Jeffrey Realty, Inc. v. Ventice*, 2006 WL 3498207 (N.J. Super. A.D.).

In his Initial Brief, appellant cites *Columbia East Associates v. Bi-Lo, Inc.*, 299 S.C. 515, 519, 386 S.E.2d 259 (1989) (Page 8, appellant's Initial Brief), for the proposition that when a contract is silent as to a particular issue, parole evidence is admissible to reveal the parties' true intent. Unfortunately for appellant, there is not any admissible parole evidence to supply any of these missing terms. Appellant's attempt to produce such evidence in his affidavit and deposition testimony was rejected by the court as violative of Rule 56(e), SCRCP as follows:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters set forth therein. *Hall v. Fedor*, 349 S.C. 169, 561 S.E.2d 654 (Ct.App. 2002) at page 175, citing *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

The Master concluded that appellant's attempt to introduce this evidence through his affidavit was not admissible as violating the dead man statute and the hearsay rule. (R. p. 00025).

Appellant's contention is that *Carolina Aviation, Inc. v. Glens Falls Ins. Co.*, 214 S.C. 222, 51 S.E.2d 757 (1949) (Page 9, appellant's Initial Brief) provides support for his position that he is entitled to a 4.5% commission based upon the previous dealing with the decedent. *Carolina Aviation* is distinguishable from the instant case. In *Carolina Aviation*, the plaintiff owned a plane insured by the defendant. Plaintiff traded his airplane in on a new airplane and called defendant's agent to advise him of the trade and asked for the company to insure his new airplane. Contemporaneously, plaintiff wrote a letter to the insurance broker indicating that he had traded in his insured plane and asked that the agent bind coverage on the new plane. The plaintiff produced evidence that oral contracts to bind insurance coverage were customary in the industry subject to the later issuance of the policy. In that case, there was a standard premium and the defendant's broker bound the coverage before the new airplane crashed and parts from it were stolen. The facts of *Carolina Aviation* are easily distinguished from the facts of this case. In the instant case, the amount of the commission is not standard but negotiable, which appellant admitted in his deposition. (R. p. 00423, line 25-R. p. 00424, line 6). It is totally unreasonable for appellant to expect that a commission of 6% or even 4.5% of the sale price would be paid on a sale of the Property to the same buyer when all he would be required to do was to present Edward Gilbreath with a contract in the amount of the *bona fide* offer of a third party prospective purchaser.

Appellant cites *Hilton Head Island Realty, Inc. v. Skull Creek Club*, 287 S.C. 530, 539, 339 S.E.2d 890, 895 (Ct.App. 1986), (Page 10, appellant's Initial Brief) in support of his position that a real estate contract need not be in writing to be enforceable despite Regulation 105-18 of the South Carolina Real Estate Commission, which provides:

All listing agreements shall be in writing, properly identifying the property and containing all the terms and the conditions under which the property is to be sold including: (1) price; (2) commission to be paid; (3) the signatures of all parties concerned; (4) a definite expiration date.

...

B. It shall contain no provision requiring a party signing the listing agreement to notify the broker of his intention to cancel the listing agreement after such definite expiration date.

C. An "exclusive agency" listing or "exclusive right to sell" listing shall clearly indicate in the listing agreement that it is such an agreement and a copy shall be given to the owner at the time of the signing.

This court held that Regulation 105-18 does not require a listing agreement to be in writing before a real estate broker can recover a commission on the sale of real property on the authority of *United Farm Agency v. Malanuk*, 284 S.C. 382, 325 S.E.2d 544 (1985). *Malanuk* is distinguishable in that the broker, with the implied knowledge and consent of the seller, was the procuring cause of seller's sale to buyer. It should be noted that *Skull Creek* was decided prior to the adoption of S.C. Code Ann. § 40-57-137 (Supp. 2005) which requires a seller's agent to comply with all provisions of Chapter 57 and with any regulations adopted by the department (Sub. C)(4).

The fatally distinguishing feature of *Skull Creek* in contrast to the instant case is that the broker was actively engaged in attempts to sell the Skull Creek property to various

designated prospective purchasers made known to the seller. Contemporaneous with providing Skull Creek with the names of these prospective purchasers, plaintiff's broker advised Skull Creek that they would expect a 10% commission on the sale of the property. Skull Creek agreed. After Skull Creek entered into a contract to, and in fact sold the property to one of Hilton Head Island Realty's identified prospective customers, Skull Creek refused to pay the commission and defended on the grounds that there was no listing agreement as required by Regulation 105-18. This court held that the evidence and the reasonable inferences drawn therefrom support the finding that an implied contract to pay a commission (10%) existed between the parties at the time Hilton Head Island Realty produced Hancock as the purchaser of Skull Creek's property.

To establish the right to recover commission from a principal for services rendered in procuring a purchaser of property, the broker must establish that a contract for the payment of a commission existed between himself and the principal at the time the services were performed. (Underscoring added)
12 CJS § 118 at 334-38 (1980).

The contract can be either express or implied. 12 AmJur. 2nd Broker's § 158 at 896 (1964); 12 CJS § 119 at 339 (1980). But before an implied contract can arise, the principal must either do or say something tending to prove that he accepted the broker as his agent in the matter and the principal must either know or have reason to believe that the services were rendered on his behalf and to his benefit by the broker with the expectation of receiving compensation from the principal. Here, there was no agreement between appellant and the Trustee and no services were rendered. (R. p. 00383, lines 19-25).

In *Skull Creek*, the broker contemporaneously performed the service based upon the clear understanding that it would receive a 10% commission if the property was sold to one

of the prospective purchasers produced to Skull Creek by the broker. It would have been inequitable to allow Skull Creek to take advantage of the efforts of the broker in finding and identifying a purchaser and then rely upon a real estate regulation to deny the broker's entitlement to a commission.

The Master correctly held that there was not a meeting of the minds concerning the essential and material elements of the contract and accordingly, there was no enforceable contract to breach. (R. p. 00023).

4. IF THERE WAS A CONTRACT TO REPUDIATE, WAS THERE SUFFICIENT EVIDENCE OF A MATERIAL FACT TENDING TO SHOW THAT RESPONDENT UNEQUIVOCALLY AND ABSOLUTELY REPUDIATED OR ANICIPATORILY BREACHED THE RIGHT OF FIRST REFUSAL AS TO APPELLANT?

Summary judgment should be granted when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct.App. 2004).

As respondent argues above, there was never a contract formed. Even if we were to assume *arguendo* that the Right of First Refusal constitutes a valid enforceable contract for the payment of a commission, appellant has failed to demonstrate the existence of any evidence to support his claim for repudiation or anticipatory breach. Appellant testified that he considered the Tom Cothran letter of July 5, 2005 as a repudiation of his alleged contract for a commission. Appellant admits upon receipt of the July 5, 2005 letter, he immediately filed his claim for a 6% commission of the 2.2 million dollar sale price established by respondent's Trustee for a possible sale to Dr. Gilbreath. (R. p. 00428, lines 13-22).

Appellant's position is untenable. The central inquiry here is whether the Paul Shelton Trust unequivocally indicated that it would breach the alleged contract when and if any pre-conditions were removed. The pre-conditions to be met would occur if there was: a) a sale of the property to Dr. Gilbreath based on his acceptance of a bona fide offer to purchase from some other prospective purchaser; or, b) Dr. Gilbreath's rejection of a purchase at the price offered by the bona fide prospective purchaser and an election by the Trustee to list the property for sale to others. Respondent did not state or otherwise indicate that if either of these pre-conditions were met, it would not honor the contract.

The test for evaluating the validity of appellant's position is the language contained within Tom Cothran's letter dated July 5, 2005 which speaks for itself. Appellant, in his Statement of Facts (page 4 of appellant's Initial Brief), states that Shirley Huggins instructed Tom Cothran to write a letter stating that appellant would not be entitled to act as the listing agent for 1219. In her deposition, Shirley Huggins testified as to the reasons for and the purpose of the July 5 letter. Shirley Huggins was not prepared to list the property for sale. (R. p. 00390, lines 6-25). She further testified that she would have listed the property with appellant if she had elected to list the Property (R. p. 00391, lines 13-24; R. p. 00400, lines 1-8 and R. p. 00404, lines 11-13). Appellant admits that the language of this letter was his exclusive basis for bringing his action. Upon receipt of that letter, appellant stated, "that I, according to their opinion, had no position in the selling of Paul's house and for me not to do anything towards putting the marketing program together. At that time I took that letter and the other documentation to Mr. Futeral and filed a claim against the Estate." (R. p. 00428, lines 13-22).

Appellant cites this court to RALPH KING ANDERSON, JR., SOUTH CAROLINA REQUEST TO CHARGE-CIVIL, § 19-18 (2002), which provides that to allow a party to treat the contract as broken, there is required an absolute repudiation of the contract or a refusal of the party to recognize the existence of a contract, or doing of something inconsistent with its existence. Respondent contends that the language of Cothran's letter is not a statement by the obligor to the obligee indicating that the obligor will commit a breach or that there was any voluntary affirmative act which rendered the obligor unable or apparently unable to perform without a breach as contemplated by Judge Anderson's statement of the law. Mr. Cothran, in his July 5, 2005 letter, merely refers to the language in the Right of First Refusal: "Bobby Shealy shall be deemed the listing agent as to any other sale of the property." Since the Trust, as of July 5, 2005, had elected not to sell the property but rather to rent it, Mr. Cothran understandably advised appellant that his right to a commission under the quoted language would be dealt with at a future time, viz. when and if the Trust ever elected to sell the property. This statement is not an unequivocal or an absolute repudiation.

The e-mails referred to by appellant on page 11 of his Initial Brief do not indicate that appellant would be excluded from "any deals regarding 1219 because it does not stand to reason that the Trustee would cause prospective buyers to wait a month to see 1219 when appellant was available to show the property to prospective buyers immediately." These e-mails simply show that at the time they were written the Trustee and the appellant were discussing the possible sale of the property and that the Trustee had not yet decided to put the property on the market or whether she might sell the property herself.

The Trustee, as the owner of the Property, had the right to sell the property herself. In the seminal case of *Dorman Realty and Insurance Company, Inc. v. W. Stalvey*, 264 S.C 94, 212 S.E.2d 591 (1975), the court rejected the broker's claim for commission against the owner of the property who sold the property himself after the broker had found a buyer for the property. Dorman claimed that he had an exclusive sales contract with the owner such that a commission would be due even if the owner sold the property himself. The contract between Dorman and the owner was an oral contract providing for a 10% commission. The Supreme Court was called upon to resolve the nature of that oral contract which admittedly existed between the owner and Dorman. In doing so, the court held:

This court has never been called upon to discuss and distinguish "exclusive sales contracts" as contrasted with "exclusive agency contracts". The courts that have previously resolved such disputes have interpreted an exclusive sales contract to be an agreement that gives the realtor sole right to sell the property, and a commission must be paid even if the owner sells the land. Exclusive agency contracts have been determined to be agreements which merely prevent the owner from listing the property with other realtors. In exclusive agency contracts, the owner is not prevented from finding his own buyer, and if he does, he need not pay a commission. Annot. 88 A.L.R.2d, 936 (1963). Page 98 of *Dorman*.

The court went on to hold:

An owner's right to sell his own real estate is inherent and this right is retained even when a broker is employed, unless the contract provides in unequivocal terms or by necessary implication that the owner's right to sell has been relinquished. The right of an owner to sell his own property is an implicit condition of every contract of agency unless negated.... An agent may demand a commission growing out of a sale with the owner, only if he affirmatively proves that it was part of a contract that a commission would be paid even if the owner himself sold the property. *Id.* 98.

It is the contention of the respondent that the Trustee had the absolute right to market and sell the property without paying appellant a commission. There is no indication in the

language of the Right of First Refusal that gives appellant an “exclusive sales contract”, as contrasted with an “exclusive agency contract”. It is not difficult to understand why attorney Cothran wrote in his letter that the question of appellant’s being deemed the listing agent would be dealt with at a future time. The Right of First Refusal does not mention the nature of the listing agency. By posing this question in his letter, Mr. Cothran is simply stating that if there is no sale to Edward Gilbreath under the Right of First Refusal, when or if the Trust elects to sell the Property to others, the commission would be determined and appellant’s status as a deemed listing agent is an issue for another day.

Apparently, in order to fashion his repudiation argument, appellant now claims he owns an “exclusive sales contract” as contrasted to an “exclusive agency contract”. Cothran’s July 5, 2005 letter was preceded by an e-mail from Shirley Huggins stating that she was going to market the property herself. (R. p. 00561). Plaintiff, in a reply e-mail (R. p. 00563), claimed that he had an “... exclusive agency for the sale of the property ...” (versus exclusive right to sell agency) “... under SC law I would be the listing agent for the property, and you as the representative of Paul’s estate would have the right to sell the property yourself”. He recanted this position in his deposition when he testified that he sent his reply e-mail to “call her bluff”. (R. p. 00426, line 5-R. p. 00430, line14). He now claims to possess an exclusive right to sell which would prevent Ms. Huggins from selling the property herself without paying him a full commission. We can only speculate as to what bluff he was attempting to call and what his motivations for that were. Nevertheless, plaintiff’s claim to an exclusive right to sell agency is contrary to the holding in *Dorman*.

5. IS IT REVERSIBLE ERROR FOR THE MASTER TO DENY A CAUSE OF ACTION FOR DECLARATORY JUDGMENT ON THE BASIS OF NO JUSTICIABLE CONTROVERSY, WHEN HIS ORDER GRANTING SUMMARY JUDGMENT IN FACT DECLARES THE RIGHTS OF THE PARTIES TO THE CONTRACT?

Appellant argues the Master erred in refusing to construe the Right of First Refusal.

The Master's finding that there was no justiciable controversy was based in part on this finding that there was no meeting of the minds sufficient to form an enforceable contract for a commission. In reality, the Master did declare appellant's rights under the Right of First Refusal in holding that appellant had no contract entitling him to a commission. Appellant has not demonstrated any prejudice by the Master's ruling. Hypothetically, if the Master had recognized appellant's cause of action for declaratory judgment, the outcome would not have been different.

An appealed order comes to the appellate court with a presumption of correctness and the burden is on appellant to demonstrate reversible error. See *Weaver v. Recreation Dist.*, 328 S.C. 83, 88, 492 S.E.2d 79, 82 (1997); *Ehlke v. Nemec Constr. Co.*, 298 S.C. 477, 481, 381 S.E.2d 508, 510 (Ct.App. 1989).

CONCLUSION

"The general rule is that a broker earns his commission when he procures a purchaser who is accepted by the seller and with whom the seller, absent fraud or misrepresentation by the broker, enters into a valid and enforceable contract." *Cass Co. v. Nannarelo*, 274 S.C. 326, 262 S.E.2d 924 (1980).

Appellant did not have a valid and enforceable written contract with respondent for the listing and sale of the Property. Appellant performed no contemporaneous service to the Trust which would entitle him to recover a commission under an implied contract.

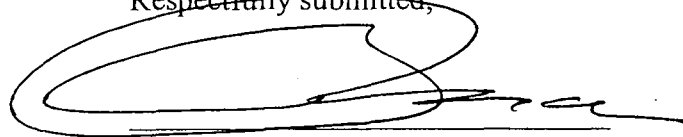
The Trust did not repudiate the Right of First Refusal because there was no enforceable contract to repudiate. There existed on July 5, 2005 a contract granting Edward Gilbreath a Right of First Refusal. There was never a meeting of the minds as to the listing price, the amount of the commission to be paid, the term of the alleged listing or the nature of the listing arrangement.

When appellant filed his action, he did not have the capacity to sue to recover a commission under the Right of First Refusal. The capacity to sue was vested in Agent Owned if a valid contract existed.

Under the authority of *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) respondent suggests that this court affirm the Master on the central issue of absence of an enforceable contract because there was no meeting of the minds as to essential terms. The remaining issues of lack of capacity to sue and the absence of a repudiation, while each are dispositive, need not be addressed.

For reasons set forth herein, the Master's Order should be affirmed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Fleet Freeman', is written over a horizontal line. The signature is stylized with a large loop at the beginning and a long horizontal stroke extending to the right.

Date: June 1, 2010

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell Ross Scarborough, Master-In-Equity

Case No. 06-CP-10-991

Robert B. Shealy, Jr., ... Appellant,

v.

The Paul E. Shelton Revocable Trust, ... Respondent.

CERTIFICATION OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b),
SCACR.



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