THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
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SC Court of Appeals

APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

The Honorable Jean Hoefer Toal, Acting Circuit Court Judge

Appellate Case No. 2019-001632

In the matter of:
Lemuel Whitaker Boykin, II, deceased.

Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B,.....Appellant-Respondent

v.

Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin,

Of whom Mary Deas Wortley and Alice B. Belger are .....Respondent-Appellants

And

Lemuel Whitaker Boykin, III, and May Cantey Boykin are.....Respondents.

RECORD ON APPEAL – VOLUME I

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2017-CP-28-831

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE PROBATE COURT

MOTION FOR REMOVAL

IN THE MATTER OF

LEMUEL WHITAKER BOYKIN, II,
(Decedent)

CASE NUMBER: 2017ES2800333

A formal proceeding concerning the above matter was commenced on AUGUST 23, 20 17.
The undersigned hereby moves for removal of this action to Curcuit Court and asserts that this action is removable because it involves the following:

2017 SEP 19 PM 2:27
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

- ☐ Probate Will
- ☐ Appointment of Personal Representative .
- ☐ Construction of Will
- ☐ Title of property in which the estate of a decedent asserts an interest
- ☐ Internal or external matter involving a trust (excluding "special needs trusts")
- ☒ Action in which there is a right to trial by jury and in which the amount in controversy is at least $5,000
- ☐ Action concerning gifts under the SC Uniform Gifts to Minors Act

This Motion is made from no later than ten(10) days from SEPTEMBER 1, 20 17 the date on which all responsive pleadings were filed. By copy of this Motion, the undersigned is giving to interested persons as required by law.

FILED
2017 SEP -1 PM 12:18
DEBRA B. BRANHAM
JUDGE OF PROBATE
KERSHAW COUNTY, S.C.

Signature: Debra B. Branham
Print Name: Debra B. Branham, Probate Judge
Address: 1121 Broad Street, Room 225
Camden, SC 29020
Telephone (Work): 803-425-1503
(Home):
(Cell):
Email:

ORDER FOR REMOVAL

☒ It is hereby ORDERED on the Court's own Motion that this action be removed to the Circuit Court.
- ☐ Jurisdiction is retained as to all other matters involving this case.
- ☐ The related matters of _____ are also removed to serve the best interest of the estate and/or the interest of judicial economy.

☐ The Motion for Removal is hereby GRANTED. The action shall be removed by Circuit Court.
- ☐ Jurisdiction is retained as to all other matters involving this case.
- ☐ The related matters of _____ are also removed to serve the best interest of the estate and.or the interest of judicial economy.

☐ It is hereby ORDERED that the Motion for Removal is DENIED because _____

Executed this 1st day of September, 2017

CERTIFIED COPY:
PROBATE JUDGE
KERSHAW COUNTY, S. C.

Debra B. Branham
DEBRA B. BRANHAM, PROBATE JUDGE

FORM #109ES (1/2014)
62-1-302

STATE OF SOUTH CAROLINA COUNTY OF KERSHAW IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	)	IN THE COURT OF COMMON PLEAS CASE NO: 2017-CP-28-831
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Petitioner, v. Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin Respondents.	)	**ORDER GRANTING MOTION TO DESIGNATE CASE AS COMPLEX**

FILED FOR RECORD
2018 JAN -8 PM 4:46
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

This matter came before the Court on the Motion of Petitioner Rigdon H. Boykin ("Petitioner") for an order designating the instant action as a "complex case" and assigning the case to the single Judge to hear and decide all matters in this case.

Based on the pleadings and arguments of counsel at the hearing held on December 27, 2017, and for good cause shown, it appears that this case involves complex issues and will take approximately one to two weeks to try. This case is appropriate to be designated complex, as the issues in the case appear to be complicated and of significant monetary value; there will be many witnesses; a number of experts are expected to testify; there are already a number of pending motions; and the case will benefit from having a

single judge assigned to the case for purposes of supervising discovery, managing pretrial proceedings, and conducting the trial of the case.

THEREFORE IT IS ORDERED that this case is hereby designated as complex pursuant to the Administrative Order of the Supreme Court dated June 26, 2006, and it is assigned to The Honorable Jean H. Toal for the management of discovery, handling of pretrial matters, and the trial of the above case. This assignment will remain in effect until this case is tried or further Order of the Court.

AND IT IS SO ORDERED.

The Honorable L. Casey Manning
Chief Administrative Judge – Fifth Judicial Circuit

December 29, 2017

ELECTRONICALLY FILED - 2018 Feb 16 2:33 PM - KERSHAW - COMMON PLEAS - CASE#2017CP280831

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
	)	
COUNTY OF KERSHAW	)	CASE NO: 2017-CP-28-831
	)	
IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	)	
	)	
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B,	)	**ORDER**
	)	
Petitioner,	)	
	)	
v.	)	
	)	
Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin	)	
	)	
Respondents.	)	
	)	

MOTION FOR ATTORNEY'S FEES

- The applicable statutes and the testamentary document authorize lawyers to be hired by the Co-Trustees and to be compensated from trust principal or income or both.
  - **S.C. Code Ann. § 62-7-709** ("Reimbursement of expenses")
  - **S.C. Code Ann. § 62-7-816** ("Specific powers of trustee")
  - **S.C. Code Ann. § 62-7-1004** ("Attorney's fees and costs")
  - **[Item XIV, Paragraph J** of the L.W. Boykin, II Last Will and Testament] – Co-Trustees are authorized to employ and compensate, out of the principal or income of the Residuary Trust, agents, accountants, brokers, attorneys, tax specialists, and their assistants, advisors deemed needful for the proper management, handling and

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administration of the Residuary Trust, provided such professional representatives are selected and retained with reasonable care.

- **[Item XIV, Paragraph N]** – Co-Trustees have "the authority to do all things and the right to exercise all powers reasonably necessary or incidental to the proper management" of the Residuary Trust.

- The attorney's and consultant's fees incurred by Petitioner have been occasioned by his attempt to manage and operate the Trust, and therefore those are valid fees chargeable to the Trust.

- While the Court finds that the fees of Petitioner's counsel should be paid by the Trust, the Court makes no determination at this time regarding the amount or reasonableness of such fees.

- Responsive pleadings have yet to be filed by the Co-Trustee Respondents, and the Court shall defer making a ruling as to the reasonableness of any fees incurred until Respondents' pleadings are filed, so that the Court may consider any allegations that the fees incurred to date have been improper.

- However, nothing in the record indicates that Petitioner has done anything to benefit himself, or that the efforts resulting in attorney's and consultant's fees have been for any purpose other than to benefit the Trust.

- The Court furthermore understands that the pleadings allege that certain technical information or materials relating to the Trust have not been made available to Petitioner, and hereby orders that Petitioner is entitled to any and all materials related to the Trust. It is fundamental that these materials shall be freely exchanged by and amongst the Co-Trustees in order to assist with carrying out their duties.

- Therefore, the Court **GRANTS** Petitioner's Motion for Attorney's Fees, in an amount to be determined at a later time.

MOTION FOR APPOINTMENT OF TRUST COUNSEL

- The Court allows the appointment of independent counsel whose role will be to impartially advise all three Co-Trustees of their responsibilities and duties, represent the Trust as an entity in any matters requiring legal representation and assist in administering the Trust.

- The fees of this independent counsel should be paid by the Trust.

- Within 15 days of the date hereof, the parties shall attempt to agree on the selection of independent counsel. In the event the parties cannot reach an agreement within the 15 day

ELECTRONICALLY FILED - 2018 Feb 16 2:33 PM - KERSHAW - COMMON PLEAS - CASE#2017CP280831

time frame, the parties shall each submit one (1) candidate to the Court within 10 days. The Court will then appoint independent counsel taking into consideration, but not being bound by, the recommendations of counsel.

MOTION TO STRIKE

- Rule 12(f) of the South Carolina Rules of Civil Procedure sets forth the standard for a Motion to Strike.

- Rule 12(f) provides:

  > Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

- "Disinterested Trustee" is a statutory term of art, much like "Personal Representative." It is neither redundant, immaterial, impertinent, nor scandalous. And in this case, Petitioner is the "sole" disinterested trustee.

- The corollary of "disinterested" is "non-beneficiary."

- S.C. Code 62-7-904B(6) provides that an "interested trustee" means any of the following:

  > (a) an individual trustee who is a qualified beneficiary;
  > (b) a trustee who may be removed and replaced by an interested distributee;
  > (c) an individual trustee whose legal obligation to support a beneficiary may be satisfied by distributions of income and principal of the trust.

- Petitioner is not an "interested trustee" under any of the definitions above.

- For the reasons stated above, the Co-Trustee Respondents' Motion to Strike is **DENIED.**

AND IT IS SO ORDERED.

The Honorable Jean H. Toal
Acting Circuit Court Judge

Columbia, SC
February _____, 2018

Charleston, South Carolina

ELECTRONICALLY FILED - 2018 Feb 16 2:33 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

ELECTRONICALLY FILED - 2018 Feb 16 2:33 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

Kershaw Common Pleas

Case Caption: Rigdon Boykin Co-Trustee , plaintiff, et al VS Mary Deas Wortley , defendant, et al

Case Number: 2017CP2800831

Type: Order/Other

IT IS SO ORDERED.

s/ Jean H. Toal #2758

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased **Rigdon H. Boykin**, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B; Petitioner, v. **Mary Deas Wortley**, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; et al.; Respondents.	Case No. 2017-CP-28-00831 **FINAL ORDER AND JUDGMENT**

This case was referred to me by Order of Circuit Judge L. Casey Manning signed on December 29, 2017 and filed on January 8, 2018. A Consent Scheduling Order was signed by me on May 2, 2018 and filed on the same day.

This case arises out of a dispute among the co-trustees of the Lemuel Whitaker Boykin, II Residuary Trusts A and B (the "Residuary Trust" or the "Trust"), a family trust created by the will ("Will") of Lemuel Whitaker Boykin, II (the "Testator") concerning the governance of the Trust and its assets. Trustee Rigdon H. Boykin ("Petitioner") alleges that his Co-trustees, Mary Deas Wortley and Alice Boykin Belger (collectively, "Respondents") have failed to prudently manage the Residuary Trust in numerous respects. Specifically, Petitioner complains that the Trustees must re-allocate the Trust's assets and do so as quickly as possible by selling 85% of the Trust's

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real property holdings within two to four years, including certain properties that the Testator specified in the Will should be preserved, if at all possible; that Respondents have improperly refused to do so; that Respondents failed to approve an option agreement for the sale of the very properties most treasured by the Testator; that Respondents failed to hold in person trustee meetings for a three month period during the summer of 2017; and that Respondents are not fit or competent to serve as trustees.

Petitioner requests that the Court order that he is entitled to exercise preeminent authority over his Co-Trustees, and that the Court modify the terms of the Residuary Trust to require the Co-Trustees to follow the South Carolina Prudent Investor Act (the "SCPIA"), which Petitioner claims requires speedy sale of the majority of the real property held by the Trust. Petitioner also requests that the Court remove Respondents as Trustees. Respondents Lemuel Whitaker Boykin, III and May Cantey Boykin ("Cross-Claimants"), who two of Testator's four children and are income beneficiaries of the Residuary Trust, originally joined in Petitioner's request that Respondents be removed as Trustees.

Respondents, who are the remaining children of Testator, argue that, as Trustees, they should follow the clear and unambiguous terms of the Will by preserving those properties identified as legacy property by the Testator and diversifying Trust assets in a less hasty, more prudent manner. Respondents have resisted Petitioner's attempts to reallocate the bulk of the Trust's assets from real estate to securities

The Court is primarily called upon to determine who should manage the Trust in order to fulfill its purpose as set forth by the Testator. South Carolina law has long considered the right of a testator to dispose of property as he or she sees fit to be a sacred right. *Cagle v. Schaefer*, 115 S.C. 35, 35, 104 S.E. 321, 324 (1920). Provided a testator's disposition of property is allowed by

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law, it is the duty of the court to respect and safeguard the testator's intent. *See id.* The Court concludes that the purposes of the Trust and the intent of the Testator are best served if Respondents continue to serve as Trustees. As explained below, the Court grants final judgment in favor of Respondents, and further orders that Petitioner be removed as a Trustee of the Residuary Trust.

PROCEDURAL HISTORY

Petitioner initially filed an action in the Probate Court for Kershaw County on August 23, 2017. Petitioner sought recovery of attorney's fees, trustee's fees, and a declaration that he should be entitled to exercise preeminent authority. The Honorable Debra Branham, Judge of the Probate Court for Kershaw County, removed the matter to Circuit Court on September 1, 2017. The Chief Administrative Judge for the Fifth Judicial Circuit designated the case as complex and assigned it to the undersigned on December 29, 2017.

The parties first appeared before this Court on January 24, 2018, for a hearing on Petitioner's Motion for Attorney's Fees and Appointment of Trust Counsel, and Respondents Wortley's and Belger's Motion to Strike. After reviewing the parties' briefs and hearing oral argument from counsel, on February 16, 2018, the Court entered an Order denying Respondents Wortley's and Belger's Motion to Strike and granting Petitioner's Motion for Attorney's Fees[1] and Appointment of Trust Counsel. Subsequently, Tina M. Cundari, Esquire, was appointed as independent Trust Counsel to act as neutral counsel to the Trusts created under the estate plan of

[1] In its February 16, 2018 Order, the Court held: "The attorney's and consultant's fees incurred by Petitioner have been occasioned by his attempt to manage and operate the Trust, and therefore those are valid fees chargeable to the Trust. While the Court finds that the fees of Petitioner's counsel should be paid by the Trust, the Court makes no determination at this time regarding the amount or reasonableness of such fees."

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Mr. L.W. Boykin, II. Ms. Cundari was eventually succeeded by Benjamin R. Gooding, Esquire, who took over as the court-appointed trust counsel when Ms. Cundari became unable to continue to serve as trust counsel due to her appointment as an Assistant U.S. Attorney for the District of South Carolina.

On May 7, 2018, almost eight months after Petitioner initially filed suit, Petitioner amended his pleadings to assert claims for modification of the trust and removal of Respondents as Trustees. Cross-Claimants initially asserted claims for removal and breach of fiduciary duty against Respondents, including claims for actual and punitive damages.

On June 6, 2018, in anticipation of the trial of this matter, the Court requested that the parties submit additional materials for the Court's consideration, and specifically requested the following:

(1) A list of all trust assets, along with the value of the assets from the most recent appraisal;
(2) A proposed trust management plan from each side showing the plan going forward for the trust; and
(3) A spreadsheet/schedule with the projected income and expenses under the proposed trust management plan.

The parties have submitted the foregoing materials, and the Court has reviewed them in detail.

Prior to trial, the Court personally visited certain tracts of property owned by the Trust, including the Boykin Millpond, the pond dam, and the Trust-owned buildings in the town of Boykin, South Carolina.

Trial occurred in phases. The first phase took place on July 9 and 10, 2018. The second phase took place on September 27 and 28, 2018. At trial, the Court heard testimony from Petitioner, Cross-Claimants, Respondents, as well as numerous other witnesses, including: James C. Hardin, III, a probate attorney engaged by Petitioner and then by his litigation counsel; John Helms, a real estate appraiser and registered forester commissioned by Respondents to create a

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proposed investment and management plan for the Trust (the "Wortley-Belger Investment Plan"); Cheryl Holland, a Certified Financial Planner and investment advisor who provided expert testimony concerning the Respondents' proposed investment plan and Petitioner's proposed investment plan; George S. Bailey, an attorney who acted as counsel for the Trust from Mr. Boykin's death to August 2016; Karen H. Thomas, Mr. Bailey's law partner, who is now serving as counsel to Respondents, in their capacity as co-personal representatives of the Estate of Alice S. Boykin, for estate and income tax purposes only; Wayne Belger, who testified concerning the management of the Boykin Millpond dam and the pond; and Mary Deas Boykin Heimbach, a remainder beneficiary who testified on behalf of all remainder beneficiaries, the four grandchildren of Testator. In addition to the testimony proffered at trial, the Court reviewed the depositions of Jane Peacock, the Trust's accountant; Jimmy LaFrage, who was retained by the Trust to perform valuations on the Trust's timber holdings; Ansel Bunch, a broker for the Trust's investment accounts; and Dave Thomas, a representative of an entity that sought to purchase the Boykin Millpond. The Court also reviewed the depositions of Petitioner and Respondents. Finally, after the conclusion of trial, the Court allowed Petitioner to take and submit the deposition of William Harrison, and for Respondents to submit additional affidavits and reports from Helms.

Numerous exhibits were admitted. These exhibits included the minutes and transcripts of many Trustee meetings, the investment plans from both Petitioner and Respondents, real estate appraisals, and photographs of portions of the real property owned by the Trust.

At the end of phase one of the trial, Cross-Claimants dropped their claims at law and for monetary damages (other than attorney's fees) and elected to proceed on a single claim under the South Carolina Trust Code for removal of Respondents as Trustees.

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At the end of phase two of the trial, the Court requested that all represented parties specifically enumerate the relief they sought from the Court. At that time, Petitioner asked the Court to: (i) remove all Trustees; (ii) appoint non-family members to manage the Trust; (iii) modify the Trust to eliminate the unanimous voting requirement for certain decisions relating to the disposition of real property held by the Trust; and (iv) split the Trust into two trusts, one to continue to hold the family legacy property discussed in the Will (and would provide income, if any, to Respondents during their lifetimes), and the other to take control property which could then be sold and invested in the stock market (and would provide income to Cross-Claimants during their lifetimes).

Cross-Claimants asked the Court to: (i) remove all three Trustees; (ii) appoint competent non-family members to manage the Trust; and (iii) award Cross-Claimants certain attorney's fees.

Respondents asked the Court to deny all relief sought by Petitioner and Cross-Claimants and to remove Petitioner as a Trustee.

The Court held the record open to allow Petitioner to depose a rebuttal expert, Mr. William Harrison. That deposition was completed on November 30, 2018, and submitted to the Court on December 10, 2018. Respondents submitted a supplemental affidavit and supporting materials from Mr. Helms on November 28, 2018, and Mr. Helms' response to Mr. Harrison's deposition testimony on January 10, 2019.

FINDINGS OF FACT

The Testator, Lemuel Whitaker Boykin, II, died on December 19, 1989. At the date of his death, the Testator owned several thousand acres of real property in Kershaw and Sumter Counties. These properties included large tracts which were primarily used for timber farming, other tracts which were leased for hunting and fishing, and certain core properties the Testator considered to

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be family legacy properties, which included the Boykin Millpond, Millway Plantation, and other tracts. Mr. Boykin was actively involved with his property as a timber farmer. Throughout his life, Mr. Boykin frequently told many family members of his strong affection for his real property and his desire that it be preserved in his family.

Mr. Boykin executed his Will on June 2, 1989. The Will created two trusts: (1) a marital trust to provide income and support for his wife, Alice Shoolbred Boykin ("Mrs. Boykin"), during her lifetime (the "Marital Trust"); and (2) the Residuary Trust (the "Residuary Trust" or the "Trust"). In his Will, Mr. Boykin directed his trustees to place in the Residuary Trust the maximum amount of property that could pass to his heirs free of estate tax, and the remainder of his assets in the Marital Trust. At Mrs. Boykin's death, the assets of the Marital Trust would transfer to the Residuary Trust.

The Trust is designed to provide reasonable support and maintenance to Mr. Boykin's four children during their lifetimes, who are thus income beneficiaries, and "shall terminate upon the death of the last to survive," and then be divided "into separate shares so as to provide one share for each deceased child . . . who shall leave issue then living." (Will, Item VIII (3), p. 8.) Respondent Mary Deas Wortley has three children who are remainder beneficiaries under the Will, including Mary Deas ("Deasy") Boykin Heimbach, Theodore T. Wagner, and B. Boykin Wagner. Respondent Alice Belger, has one child, Allie Boykin Belger, who is also a remainder beneficiary under the Will. Neither Cross-Claimant has children. All of the remainder beneficiaries intervened in this action.

The Testator directed that the Trustees shall distribute the annual net income of the Trust to the income beneficiaries "in such shares and proportions as the Trustees in their sole discretion shall determine providing to each a reasonably equal division . . . as the need arises primarily for the

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medical care, comfortable maintenance, welfare and education of my said beneficiaries," and that the Trustees may consider "any other income or resources of my said beneficiaries known to the Trustees." (Will Items VIII.1-2, pp. 7-8.) A similar section of the Will provides the Trustees with discretion to make distributions from the principal of the Trust on essentially the same basis. (*Id.*)

The Trust is also designed to preserve and protect certain family legacy property. While the Will permits the sale or lease of any Trust property, if all Trustees agree, it specifically states that "[i]t is my desire, but I do not direct, that certain tracts or parcels of real property" consisting of Millway Plantation, the Laney Tract, Broadview Plantation, the Swamp Tract, the Cantey Tract, and the Gillis Tract (collectively, the "Legacy Tracts," also sometimes referred to as the "Treasured Tracts") "shall to the fullest extent possible be preserved for the benefit of or transferred to my children or their issue." (Will Item X, pp. 9-10.) The Testator further provided that these Legacy Tracts could only be sold or mortgaged "by unanimous consent of the Trustees after consultation with and approval of a majority of the four (4) named beneficiaries of this trust," and that if any of the Legacy Tracts were to be sold, they must be sold in the following order: (1) Swamp Tract; (2) Broadview plantation, Cantey Tract, Gillis Tract; and (3) Millway Plantation and Laney Tract. (*Id.*)

The Will contains several other provisions which also reflect the Testator's intent that the family legacy property be preserved to the extent possible. The Will specifically does not require diversification or maximum productivity of Trust assets. The Will vests in the Trustees the authority "[t]o retain any of the original property constituting the estate or trust, regardless of the character of such property or whether it is such as then would be authorized by law for investment . . . or whether it leaves a disproportionately large part of the estate or trust invested in one type of property." (Will Item XIV.B, p. 14.) The Will allows the Trustees discretion "to keep

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all or any portion of the estate or trust in cash and uninvested for such period or periods of time, as [they] may deem advisable, without liability for any loss in income by reason thereof." (*Id.* at Item XIV.C, pp. 14-15.) The Will also waives the under productive property rule of the Uniform Principal and Income Act. (*Id.*)

In the Will, the Testator appointed three trustees for the Residuary Trust: (1) the Petitioner, his cousin, (2) his eldest daughter, Respondent Wortley, and (3) his wife, Mrs. Boykin. (Will Item XII(b), p. 12.) Mr. Boykin gave his wife complete discretion to name her successor trustee, and to the other Trustees, he gave the authority to select one additional *family* member to serve "should any one of the other two Trustees fail to qualify or cease to serve for any reason." *Id.* (emphasis added).

Hurricane Hugo struck South Carolina on September 10, 1989, and damaged certain of the timber tracts owned by the Testator.

Mr. Boykin died about three months later on December 19, 1989, and was survived by Mrs. Boykin and the four children: Respondents and Cross-Claimants. Petitioner, Respondent Wortley, and Mrs. Boykin began their tenure as Trustees of the Residuary Trust, and Respondent Wortley and Mrs. Boykin began their tenure as Trustees of the Marital Trust.

George S. Bailey, an attorney who served as trust counsel for both the Residuary and Marital Trusts from Mr. Boykin's death in 1989 until Mrs. Boykin's death in 2016, advised the Trustees to split each of the Residuary Trust and Marital Trust into two trusts (A and B) to take full advantage of Mr. and Mrs. Boykin's respective generation skipping tax exemptions. The Trustees agreed and obtained orders from the Probate Court allowing this split.

Mr. Boykin's personal representatives, Mrs. Boykin and Respondent Wortley, had the discretion to transfer assets into the various Trusts created under the Will, as modified by the court

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order. Heeding Mr. Boykin's desire to preserve Millway Plantation for his grandchildren and to protect the transfer of this property from generation skipping taxes, the Co-personal representatives transferred part of Millway to Residuary Trust A, and the other part to Marital Trust A. The remaining assets were transferred to Marital Trust B. At Mrs. Boykin's death, the assets in Marital Trust A would transfer to Residuary Trust A, along with assets from Marital Trust B to the extent of Mrs. Boykin's generation skipping tax exemption. The remainder of the assets in Marital Trust B would transfer to Residuary Trust B.

During Mrs. Boykin's lifetime the estate and generation skipping laws continued to change. In 2012, the unified estate and gift tax credit and generation skipping tax exemption had increased to $5,120,000. But that law was expiring on December 31st, and in January 2013, the unified credit and generation skipping tax exemption would drop to $1,000,000. Congress had not enacted any new tax laws by early December of 2012 to address this significant decrease in the unified credit. This unified credit is able to be used during one's lifetime against gift taxes or at death against estate taxes. Mr. Bailey contacted Mrs. Boykin to relay this issue and discuss making a gift of up to $5,120,000 (to use the 2012 laws) in case the unified credit did drop to $1,000,000 in 2013. Since Mrs. Boykin did not have sufficient assets in her name to make this large of a gift, Mr. Bailey proposed a transfer of assets from Marital Trust B to Mrs. Boykin, which she would then transfer to Residuary Trust A. With the consent of Mrs. Boykin and Respondent Wortley, Mr. Bailey thus petitioned the Probate Court and explained the changing tax laws and the need for assets to be placed in Mrs. Boykin's name in order to make a large gift to Residuary Trust A. The court approved a modification of Marital Trust B to allow a distribution of assets to Mrs. Boykin as long as there was unanimous consent of the transfer by the four children named as beneficiaries of the Residuary Trust.

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Mr. Bailey prepared a list of the properties to be approved for distribution from Marital Trust B and contributed by Mrs. Boykin into Residuary Trust A. These included the Boykin Family Legacy Tracts and others, the combined values of which were approximately $4,200,000 (those same assets at Mrs. Boykin's death appraised at approximately $5,500,000). Petitioner contacted Mr. Bailey and told him that he represented May Cantey Boykin, and that he would not allow her to consent to the proposed transaction for anything more than a 20% ownership interest in the tracts being transferred. For this reason, Marital Trust B ended up owning 80% of certain tracts and Residuary Trust A ended up owning 20%. This divided ownership continues to provide complications for leasing, farming, contracts, etc.

The withdrawal and transfer of a 20% ownership interest in the identified tracts saved the estate of Mrs. Boykin approximately $206,000 in estate taxes, and should save a like amount of future generation skipping taxes, given the current tax rate and land values. However, had 100% ownership of the identified tracts been withdrawn and transferred, the estate tax savings to Mrs. Boykin's estate would have been approximately $520,000, and the future generation skipping taxes approximately $520,000, given the current tax rate and land values.

Because Residuary Trust A held only a portion of Millway Plantation (which served as Mrs. Boykin's personal residence) and Residuary Trust B was empty prior to Mrs. Boykin's death in August 2016, the trustees of the Residuary Trust did not conduct significant business between 1989 and 2016.

After Mr. Boykin's death on December 19, 1989, Mrs. Boykin took charge of the real property formerly owned by her husband and continued the family business. Multiple witnesses testified regarding her business acumen. Among other things, she engaged in the timber business by growing and selling timber from the real property, leased hunting and fishing rights, leased

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commercial properties, and improved on her husband's prior vision for the town of Boykin. Mrs. Boykin was instrumental in creating a restaurant known as the Millpond Steakhouse, a café, and other stores in the small town of Boykin. Mrs. Boykin founded the annual Boykin Christmas parade. Petitioner and all Respondents in this case have memories of visiting and enjoying the town of Boykin and the surrounding properties, including the millpond itself. At trial, both attorney George Bailey and Mary Deas Heimbach, Mrs. Boykin's granddaughter and a remainder beneficiary under the Will, testified that Mrs. Boykin essentially built downtown Boykin after Mr. Boykin's death. Both witnesses testified that Mrs. Boykin sought to preserve the Trust's real property assets in accordance with Mr. Boykin's desires as set forth in his Will.

Mr. Bailey also prepared several estate planning documents for Mrs. Boykin. He prepared an Irrevocable Life Insurance Trust ("ILIT") for the purpose of providing funds at her death to pay estate taxes (either through a loan or purchase of property) on her estate, including the assets in Marital Trust B (the "Estate"). Petitioner and Respondent Wortley were named as trustees of the ILIT. Mr. Bailey also prepared a Will and a Revocable Trust to address the distribution of Mrs. Boykin's own assets, the payment of estate taxes, and the allocation of her remaining generation skipping tax exemption. Her Will named Respondents Wortley and Belger as the Co-Personal Representatives of her Estate. Respondents Wortley and Belger were also named as Trustees of Mrs. Boykin's Revocable Trust. This document discussed the payment of estate taxes and the potential purchase of property of the Marital Trust with the insurance proceeds in the ILIT.

After Mrs. Boykin's death on August 8, 2016, the remaining assets of the Marital Trusts were transferred into the Residuary Trusts, and Respondent Belger succeeded Mrs. Boykin as one of the Co-Trustees of the Residuary Trust. Petitioner did not object to the appointment of Alice Belger as a Co-Trustee of the Residuary Trust at that time, and, although he claimed to have

concerns about Respondent Belger's fitness to serve, he testified that he "decided early on . . . to try and live with" Respondent Belger and "make it work." (Boykin Dep. 152:10-11.)

By August 2016, Mr. Bailey was nearing retirement and asked his law partner, Karen Thomas, to handle the administration of Mrs. Boykin's estate and to succeed him as counsel for the Trustees of the Residuary Trust. Ms. Thomas met with the Trustees for the first time on the day Mrs. Boykin died and was retained to represent all three Trustees shortly thereafter. At this first meeting, Petitioner stated that he was unwilling to follow Mr. Boykin's precatory language, and that he felt the Trustees should sell approximately 85% of the Trust's real property assets and invest the sales proceeds in the stock market. Mr. Bailey also testified that Petitioner had previously stated that he intended to sell all of the Trust's real property, once Mrs. Boykin died. Respondents maintained that they were required to follow Mr. Boykin's directions as set forth in the Will, as Mrs. Boykin did during her lifetime, and wished to adopt a more thoughtful and careful approach to selling real property. All Trustees, including Respondents, voted to and did in fact sell or place on the market certain of the Trust's real property assets, not any Legacy Tracts, since their first meeting in August 2016.

Ms. Thomas also prepared a legal opinion that she submitted to Petitioner informing him of Mrs. Boykin's intentions in creating the ILIT. The ILIT funds became a point of contention between Petitioner and Ms. Thomas, as Petitioner did not believe the funds could be used for any purpose other than to provide income for Mrs. Boykin's children. Petitioner consistently refused to consent to the ILIT loaning funds to the Residuary Trust when the estate taxes on Mrs. Boykin's estate came due in 2017.

The Trustees met with Ms. Thomas and conducted regular trustee meetings from the date of Mrs. Boykin's death until May 2017, sometimes meeting twice in one month. Ms. Thomas and

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Petitioner testified that there was a three to four month period between May and October 2017 where the Trustees did not meet in person to conduct trustee meetings. This gap in face to face Trustee meetings resulted from issues involving Ms. Thomas' schedule and inability to be present for Trustee meetings during this particular period. It also resulted from the summer vacation schedules of the Trustees.

Finally, relations among the Trustees had deteriorated by May of 2017. As Petitioner had told Mr. Bailey prior to Mrs. Boykin's death, Petitioner desired that the Trust should sell virtually all of the Trust's real property and invest the proceeds in the stock market, where he believed the Trust could earn a better return on investment and be in a better position to pay Trust expenses and make income distributions. Petitioner became increasingly frustrated and angry that his Co-Trustees believed that the Legacy Tracts should be preserved in accordance with the desires of the Testator as expressed in the terms of the Will.

By this time, Petitioner had also begun threatening his Co-Trustees with litigation, which resulted in each Trustee retaining separate litigation counsel. Coordinating the schedules of the various litigation counsel was also a factor in the inability to initially schedule face to face Trustee meetings from May to October 2017.

Despite these factors, the Trustees conducted over 24 face-to-face meetings between Mrs. Boykin's death and October of 2017. Even in the brief period where face-to-face meetings were interrupted, the Trustees continued to conduct trust business by phone and email.

The Trustees resumed holding in-person trustee meetings again in October 2017, and have met on a regular basis since that time. Since the appointment of trust counsel, Tina M. Cundari, Esq. and her successor, Benjamin R. Gooding, Esq. have chaired these trustee meetings.

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The estate taxes due on Mrs. Boykin's Estate were a central issue in the initial Trustee meetings. The initial estate tax payment would have been due in May 2017, nine months after Mrs. Boykin's death. Respondents were primarily concerned with getting the necessary appraisals for the estate tax return, and commissioned Jimmy LaFrage, a registered forester, to prepare date-of-death valuations on all Trust tracts. Mr. LaFrage would then give this information to John Helms at Milliken Forestry, who would perform the comprehensive date-of-death appraisals on the Estate's land and timber holdings. These tasks were necessary for the Trustees to complete the estate tax return and ascertain the true value of the Estate. However, during this time Petitioner requested that Mr. LaFrage work on other projects that Petitioner commissioned in order to get property values for potential purchasers. These requests from Petitioner caused a significant delay in completing date-of-death appraisals for estate tax purposes. The Trustees did not get date-of-death appraisals which were necessary to understanding of the value of the Estate and the Trust until November 7, 2017, one day before Respondents and Ms. Thomas filed the estate tax return.

Petitioner also commissioned other appraisers to value certain Trust property, including Millway Plantation, that he contended Respondents should purchase in order to preserve ownership within the family. Petitioner required the appraisers to employ a unique valuation method that caused the properties to have inaccurate, but higher, values. The existence of real estate appraisals with higher values placed the Estate in jeopardy of having to pay higher estate taxes, and thereby reducing the assets held by the Trust. Ms. Thomas advised Petitioner of her concerns that his attempts to value the land for immediate sale were counterproductive, but Petitioner continued his efforts.

Due to the numerous tax issues before the Trustees, Ms. Thomas and Mr. Bailey discussed two elections that the Estate could seek under the Internal Revenue Code that could provide

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significant savings and other benefits to the Estate: a § 6166 election and a § 2032A election. These elections apply specifically to estates, like the estate here, which have been involved in the business of growing timber.

The Section 6166 election allows a personal representative to defer payment of estate taxes if the interest in a closely held business exceeds 35 percent of the decedent's adjusted gross estate.

The Section 6166 election allows the Estate to pay the estate taxes due over a 15 year time period at comparatively low interest rates. Payments on the deferred taxes are due annually, with payment of interest only for the first five years and then accrued interest and one-tenth of the deferred taxes for each of the next ten years. There is no prepayment penalty under Section 6166, and the Estate could pay the taxes in full at any time. This election provided the Estate with greater flexibility and was unquestionably beneficial to both the Estate and the Trust.

Ms. Thomas advised Petitioner of these benefits, but Petitioner opposed Ms. Thomas' recommendation. When the Estate tax return was due in 2016, Respondents still did not have the date-of-death valuations that were necessary for the estate tax filing due to Petitioner's distracting demands on Mr. LaFrage. Respondents also did not have sufficient cash to pay the Estate taxes in full due to Petitioner's unwillingness to approve the loan of the ILIT funds to the Estate. Ms. Thomas therefore prepared a memorandum outlining the estate tax issues and noting that seeking a Section 6166 election was still a viable option. Respondents, after consulting separately with their independent counsel, agreed to send in a partial estate tax payment and to make the Section 6166 election to defer payment of the remaining taxes due. Petitioner was angered by Ms. Thomas' decision to advise Respondents to seek the Section 6166 election. He threatened to report Ms. Thomas' involvement in seeking the Section 6166 election to the IRS as fraud, an action which could have disastrous consequences for someone in Ms. Thomas' profession. It was at this time

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that Petitioner announced that Ms. Thomas was not his trust counsel. Ms. Thomas continued to serve as counsel to Respondents.

Petitioner opposed the Section 6166 election to gain leverage in his attempts to force his Co-Trustees to sell the Trust's real property. If payment of the estate tax could not be deferred, the tax would have to be paid in short order, which likely would have necessitated the sale of real property belonging to the Trust.

Upon direct questioning from the Court, Petitioner reluctantly admitted that his opposition to the Section 6166 election and his threats to Ms. Thomas were inappropriate.

Section 2032A allows real property that is used for farming or timber purposes to be valued for estate tax purposes on the basis of its current use as a farm or timber business, rather than based on the property's hypothetical "highest and best use." Ms. Thomas testified that if the requirements of Section 2032A are established for the qualifying property, the Estate could save up to approximately $400,000 in both estate and generation skipping taxes, for a total of approximately $800,000 in tax savings. Ms. Thomas testified that although Section 2032A's requirements are difficult to meet, she and Mr. Bailey felt that the Estate was the "perfect estate" to try and seek the election. While the Section 2032A election does not restrict the sale of any of the qualifying property, it does apply a recapture tax to any property sold within a prescribed timeframe that would be approximately equal to the initial tax savings.

Although Ms. Thomas testified at trial that in her professional opinion, there was no downside to seeking the Section 2032A election, Petitioner refused to consent to or to even allow the Trust to investigate whether it could qualify for the Section 2032A tax election. Petitioner informed Ms. Thomas that he had discussed both elections with Cross-Claimants, and that they refused to consent as well. Again, by refusing to consent to the Section 2032A election, Petitioner

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was obviously willing to forego potential estate and generation skipping tax savings to gain additional leverage in his attempts to force his Co-Trustees to immediately sell the Trust's real estate holdings.

Additionally, on or about May 3, 2017, Respondent Wortley initiated a wire of funds from a brokerage account in Marital Trust B to a checking account, which would allow Ms. Thomas to obtain a check to send to the Internal Revenue Service. On May 5, the day after he "fired" Ms. Thomas, Petitioner went to the bank that housed the accounts for Marital Trust B and informed the bank that the account titles were incorrect. This caused the bank to freeze the account from which the check to the Internal Revenue Service was drawn. Respondent Wortley and Jane Peacock, who serves as the Trust's accountant, were forced to spend significant time and effort to have the funds released from the account, so that the check to the Internal Revenue Service would not be refused for insufficient funds.

From this point on, Petitioner treated Respondents and Ms. Thomas with disrespect, and continually maintained that he was not going to follow the precatory terms of Mr. Boykin's Will, but instead planned to sell all of the Trust's real property holdings. Ms. Thomas testified that she had never seen a client treat her or his fellow Trustees with such disrespect in her approximately thirty years of practice. She also expressed her belief that removing Petitioner as Trustee was necessary to overcome the difficulties the Trustees have experienced in administering the Trust.

Petitioner took no steps to ascertain any of the remainder beneficiaries' wishes and desires with respect to the Trust. Deasy Heimbach testified that Petitioner had never contacted her or the other remainder beneficiaries regarding Trust administration even though the remainder beneficiaries frequently kept themselves abreast of decisions made by the Trustees. Ms. Heimbach testified that Petitioner only contacted the remainder beneficiaries to express his disappointment

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that they filed affidavits with the Court setting forth their desires with respect to Trust administration. Notably, these affidavits all stated the remainder beneficiaries desire that the Trustees follow all the terms of their grandfather's Will. Ms. Heimbach also testified that the remainder beneficiaries desire to have Petitioner removed as Trustee.

At phase one of the trial, Respondents and Petitioner also proffered expert witnesses in support of their respective investment plans. Respondents proffered two experts: (1) John Helms, an expert in the field of real estate and timber appraisals and valuations; and (2) Cheryl Holland, an expert in the fields of financial planning and investments and fiduciary standards for investing.

John Helms is a registered forester in North Carolina and South Carolina who is a principal of Milliken Forestry Company. Mr. Helms is also a state-certified general real estate appraiser in seven southeastern states and has a real estate salesperson's license in the state of South Carolina. Notably, Mr. Helms has been a member of the Society of American Foresters since 1979 and was a chairman of the South Carolina division in 2000. At trial, Mr. Helms offered a conservative estimate that he has completed roughly 500 real estate appraisal assignments over the past fourteen years, and that roughly two-thirds of those appraisals have involved properties comprising more than 2,000 acres of land.

Mr. Helms also testified that in addition to conducting appraisals on properties, he conducts timber growth yield modeling for some of his clients. These models project timber volumes, values, and related variables to help advise clients in the management of their large timberland properties.

Mr. Helms developed a model to project the after-tax cashflows from an orderly sale of approximately 60% of the Trust's real property, excluding the Legacy Tracts, over 15 years. He considered the value of the land, timber harvesting timelines, and the conditions of the various

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properties in estimating which properties might be sold, when, and for how much. Respondents and the remainder beneficiaries have endorsed Mr. Helms' plan, as it would permit diversification and allow the Trust to retain ownership of the key family legacy properties. Mr. Helms' bound plan contained a computation error within his Excel spreadsheet, but given the conservative ranges employed by the plan, the error is not material. After trial, Mr. Helms submitted an affidavit and a corrected model, which with minor and reasonable adjustments in the underlying assumptions for investment returns and timber growth, demonstrates that the plan is reasonable and properly balances the competing interests of the income and remainder beneficiaries, while adhering to the Testator's desire to maintain the Legacy Tracts for future generations. The Court finds Mr. Helms to be knowledgeable and credible.

Cheryl Holland is a certified financial planner and is the founder and president of Abacus Planning Group. Ms. Holland is also a certified family business planner, and testified that she advises families that have shared assets, such as a closely held business, real estate, timber, or commercial real estate, regarding disposition of those assets. Ms. Holland also testified that during her professional practice, she has provided investment and planning advice to approximately 150 trusts, and that the values of those trusts have ranged from $150,000.00 to $22 million. Notably, Ms. Holland testified that she has experience advising clients with assets similar to those of the Trust.

Ms. Holland reviewed both Mr. Helms plan and Petitioner's plan and concluded that the Helms plan is a "prudent, thorough, patient and rational[] strategy for achieving" the goals of "providing both income and growth of the Trust's assets over the near-term and long term." (Wortley Trial Ex. 3.) Ms. Holland also concluded that Petitioner's "more aggressive real estate

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and timber liquidation plan provides a more challenging time horizon for successfully transitioning an illiquid and concentrated set of holdings." (*Id.*)

Petitioner submitted his own plan for management and investment of the Trust assets. The plan called for the sale of 85% of the Trust's real property, including the Legacy Tracts, within four years. It contained estimates for sales prices which were sometimes obtained from appraisals commissioned by Petitioner as a Trustee, sometimes simply statements of the Petitioner's own opinion as to value, and sometimes based upon Mr. Helms' figures. Petitioner's plan included proposed rates of return on money which would be realized from the sale of Trust property and then invested in the stock market, but did not contain or describe any particular investment allocation strategy or cash flow projections. Notably, Petitioner did not submit his plan to an expert for review, or otherwise engage any expert to assist him in creating the plan, but simply presented it to the Court himself.

Petitioner repeatedly refused to follow the advice of experienced specialists and professionals retained to assist the Trust.

In some cases, Petitioner's refused to cooperate with his fellow Trustees and Trust advisors to obtain leverage to force his Co-Trustees to bend to his will and sell Trust property, including family legacy tracts.

Petitioner's tenure as Trustee was also accompanied by actions motivated by anger and frustration at being outvoted. He frequently belittled and threatened his Co-Trustees and trust advisors.

Respondents had read the terms of the Will on multiple occasions, and also had personal knowledge of the Testator's wishes with regard to the Legacy Tracts. Respondents were also advised by Mr. Bailey and Ms. Thomas, experienced legal counsel that specialize in probate and

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estate planning and tax law, that the Testator's will expressed a strong preference to retain the Legacy Tracts if at all possible. Mr. Bailey and Ms. Thomas testified that they had never seen a testator's desire to retain property expressed so strongly in a will as the Testator did in his Will. James C. Hardin, III, an attorney and fact witness called by Petitioner, agreed that any reasonable person reading the Will would appreciate that the Testator desired to retain the Legacy Tracts. The Court concludes that Respondents' decisions in resisting Petitioner's desires for rapid sale of Trust property, including the Legacy Tracts, were informed by and taken in reasonable reliance upon the provisions of the Testator's Will.

Cross-Claimants testified at trial, but both admitted they had no personal knowledge of the matters described in their pleadings. Nor had they ever spoken to Respondents about their intentions regarding income distributions and diversification of Trust property. Both Respondents testified that they desire to and are willing to diversify Trust assets, but that they wish to do so in a more cautious manner than does Petitioner, a manner which allows the Trust to retain the Legacy Tracts. Respondents employed Mr. Helms to create just such a plan, and submitted this plan to the Court. The Wortley-Belger Plan calls for selling 60% of the Trust's real property over a 15-year period and investing the proceeds in financial assets, such as stocks and bonds. This plan also advocates monetizing the significant conservation values of the Boykin Millpond and other environmentally valuable properties. Respondents have also voted to list approximately $4.2 million of Trust properties for sale. These facts do not support the Cross-Claimants contention that Respondents are unwilling to sell any Trust real property and diversify the Trust's investment assets.

The Trustees agreed to distribute $100,000 per year to income beneficiaries on a temporary basis. Petitioner and Cross-Claimants both argued that there should be a mandatory minimum

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income distribution and that the minimum distribution should be higher, perhaps ranging from $150,000 to $180,000 per year. After review of the Trust Assets and the various management plans provided by the Parties, the Court concludes that it would not be prudent to establish a mandatory minimum distribution, particularly at the levels urged by Petitioner and Cross-Claimants. Setting a mandatory minimum distribution at these levels risks necessitating invading the principal in order to satisfy the distribution obligation. Invasion of the principal places the interests of the income beneficiaries over those of the remainder beneficiaries of the Trust. While the Will permits invasion of the principal of the Trust in the discretion of the Trustees, it does not require it. Pursuant to the clear and unambiguous terms of the Will, income beneficiaries are entitled only to net income. Additionally, Trustees need the freedom to adjust income distributions should unforeseen events affect the net income of the Trust.[2]

Prior to filing suit, Petitioner presented Respondents with a proposed confidential option agreement, in which an undisclosed potential purchaser would pay the trust a $300,000 fee for the right to exercise an option to purchase certain Trust property for the total sum of $3,960,148. Respondents were not parties to any of the negotiations between Petitioner and the undisclosed purchaser. Numerous parties testified that the Petitioner actively concealed the identity of the potential purchaser in discussions in Trustee meetings and other conversations. The properties which would be subject to sale if the option agreement were approved by the Trust included, under various alternative scenarios, the Boykin Millpond and Downtown Boykin. These properties represent the most treasured of the Legacy Tracts. Respondent Wortley was initially willing to

[2] For these reasons, the Court denies the outstanding motion to establish a minimum annual distribution to the income beneficiaries.

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listen to the offer and proposed at least one modification. Respondent Belger, who felt that the offer was contrary to her father's directions as set forth in the Will, was less receptive.

Four versions of the option agreement were presented to Respondents during the period from November 2017 to March 2018, and all versions of the option agreements referred to the prospective purchaser only as the "Donor." One option agreement identified the prospective purchaser as "Boykin Millpond Conservation LLC." Despite Respondents' repeated requests for more information on the "Donor," Petitioner continuously withheld the Donor's true identity from Respondents, and maintained that such secrecy was necessary. (*See* Boykin Dep. 97:20-98:7.) Despite Petitioner's insistence on keeping the Donor's identity confidential however, and unbeknownst to Respondents, counsel for Cross-Claimants was engaged in several email communications between Petitioner and the Donor's counsel concerning the option agreement.

Eventually, the proposed purchaser was revealed to be the Haile Gold Mine, which desired the property for environmental offsets to be used in connection with a permit the mine was seeking for expanded operations.

Notably, the deposition testimony of Dave Thomas, Haile Gold Mine's senior executive, revealed that there was no reason at all for Petitioner to withhold Haile Gold Mine's identity from Respondents. Mr. Thomas testified that he was unaware that Petitioner was withholding Haile Gold Mine's identity from Respondents, and that Haile Gold Mine had no desire or need to conceal its identity from Respondents during negotiations. (Thomas Dep. 26:11-14; 42:8-21.) Mr. Thomas also testified that Haile Gold Mine "ha[s] never in the history of the company concealed or used a surrogate to do a transaction," and that Petitioner is the individual who requested that Haile Gold Mine set up a separate LLC to conceal the purchaser's identity from his Co-Trustees. (*Id.* at 40:24-41:7.)

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The total purchase price offered under the last proposed option agreement was $3.32 million for approximately 618 acres including the Boykin Millpond, adjoining acreage to the north, and additional acreage west of Highway 261, and $1.32 million for approximately 12.5 acres including Downtown Boykin, Swift Creek Church, and several cottages. The option agreement allowed, at the purchaser's option, the purchase of the 618 acre Boykin Millpond assemblage without the 12.5 acre Downtown Boykin parcels. (Thomas Dep. Ex. 21.)

At a Trustees' meeting held on April 3, 2018, the Trustees interviewed Mr. Steve Nichols, a managing partner of Newkirk Environmental, a South Carolina environmental consulting company devoted exclusively to environmental surveying, planning, and permitting. Newkirk Environmental was retained by the owner of the Haile Gold Mine to develop the mitigation plan for its original mining permit for the mine in Kershaw, South Carolina, and had made preliminary surveys of the environmental values of the Boykin Millpond prior to the option agreement. Mr. Nichols advised the Trustees that Newkirk focuses on wetlands and threatened or endangered species, and had established eight mitigation banks in South Carolina and Georgia over the last 15 to 20 years. (Petitioner's Dep. Ex. 11, pp. 13-16.)

Mr. Nichols presented the Trustees with two additional options for monetizing the conservation values of the Boykin Millpond, a mitigation bank and a conservation easement, and compared them to the option agreement, which he characterized as a permittee-responsible plan. (*Id.*, pp. 17-60; Wortley Trial Ex. 11.) Mr. Nichols advised the Trustees that the mitigation bank alternative normally produces the highest returns, and estimated that the Trust could likely receive between approximately $2.7 million and $4.7 million in revenue over a ten year period, after making an approximately $200,000 investment to establish the mitigation bank. (*Id.*)

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Ultimately, Respondents did not approve the proposed option agreement, primarily because it would have required the sale of most of Millway Plantation, one of the Legacy Tracts that was the last to be sold based on the order of priority in the Will. While the conservation values of the land would have been preserved under the option agreement, family members would no longer have had access to the Millway land and the Millpond.

The Residuary Trust has cash on hand to satisfy taxes and expenses and is not currently in a financial position where it must sell any of the Legacy Tracts to meet expenses.

The Court has heard testimony on repairs which would be necessary to repair the Millpond dam and the repairs which would be required by the South Carolina Department of Health and Environmental Control. The Court has also heard testimony on repairs which might be needed to certain buildings in Downtown Boykin, including the Millpond Steakhouse.

Again, the Trust has cash on hand and sufficient projected future cash flows to address these needs such that it is not necessary to sell Trust property to address these expenses in the short term.

The Court heard testimony from both Respondents. Respondent Mary Deas Wortley is Testator's eldest daughter, and was specifically named by Testator in his Will to serve as a trustee of both the Marital Trust and the Residuary Trust. She has actively served in both of these roles since Testator's death in 1990. She is intimately familiar with the Trust property and cares deeply about the property. Respondent Wortley also demonstrated that she has listened to and relied on the advice of the well-qualified advisors who have been engaged to assist the Co-Trustees in managing the Trust. Most importantly, Respondent Wortley has maintained throughout this litigation that her primary concern as a Trustee is to administer the Trust in accordance with her

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father's wishes while making sure that the Trust has sufficient funds to satisfy its obligations. The Court finds Respondent Wortley to be competent, intelligent, and fit to serve as a Trustee.

Like Respondent Wortley, Respondent Belger is intimately familiar with the Trust Property and the family business. Respondent Belger has assisted her husband, Wayne Belger, in farming the Trust's properties. Like Respondent Wortley, Respondent Belger has also consistently demonstrated that her primary objective as a Trustee is to follow the terms of the Will while ensuring that the Trust has the necessary liquidity to fulfill its obligations. The Court finds Respodnent Belger to be competent, intelligent, and fit to serve as a Trustee.

CONCLUSIONS OF LAW

I. Jurisdiction

The Court has jurisdiction of this matter pursuant to S.C. Code Ann. §§ 62-1-302(d)(5), § 62-7-201, and § 62-7-202.

II. Action for Declaratory Relief (Petitioner's Third Cause of Action)

Petitioner's third cause of action in the Amended Petition seeks a declaratory judgment that:

> (a) Petitioner is entitled to employ and compensate, from Residuary Trust Assets, attorneys and/or other agents and advisors who are necessary to assist him with the discharge of his fiduciary duties as Co-Trustee of the Residuary Trust, including past and future fees;
>
> (b) Petitioner is entitled to an award of Trustees fees in an amount to be determined by the Court for his services as sole disinterested Co-Trustee of the Residuary Trust;
>
> (c) Petitioner is entitled to exercise preeminent authority among the three Co-Trustees of the Residuary Trust (including the authority to appoint trust counsel) or otherwise be appointed as a "special fiduciary" under S.C. Code § 62-7-1001(b)(5); and
>
> (d) for otherwise unspecified instructions to Petitioner regarding his duties as Trustee.

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(Am. Petit. at ¶ 59.)

After review of the applicable law and evidence, the Court concludes that there is no basis in law or fact to grant Petitioner's request that he be vested with preeminent authority over his Co-Trustees or to be appointed a special fiduciary with superior authority over his Co-Trustees.[3] There is no provision in the Will that permits a single Trustee to act or make a decision on behalf of the Trust by him or herself. Rather, the Will provides that the Trustees vote on how to conduct Trust business. Specifically, the Will authorizes the Trustees "in *their* absolute discretion with respect to any real property, by unanimous vote, or personal property, by majority vote" to exercise their duties and powers. (*Id.* at Item XIV, pp. 13-14 (emphasis added).) Each Trustee is given one equal vote.

Similarly, there is no basis in law for vesting Petitioner with special authority over his Co-Trustees. The words "preeminent authority" do not appear in the South Carolina Trust Code. The Trust Code does restrict interested trustees from acting in certain circumstances. For example, only a disinterested trustee may adjust principal and income.[4] However, because the factual scenarios implicated by these sections of the Trust Code are not present in this case, these specific statutory prohibitions are inapplicable and therefore do not support Petitioner's argument. Moreover, the fact

[3] Petitioner's claims related to the award of Petitioner's fees and costs to Petitioner's counsel and consultants is addressed in Section VI of the Conclusions of Law, infra.

[4] Petitioner cited to three provisions of the Trust code that he argues demonstrate that disinterested trustees should be granted a heightened level of authority and discretion with respect to trusts, beyond the authority given to trustees who are also beneficiaries: (1) S.C. Code Ann. § 62-7-904(A); (2) § 62-7-904C; and (3) § 62-7-816A. (Am. Petit. at 17, n. 3.) To be sure, these sections do allow disinterested trustees to take certain actions that interested trustees cannot take. However, none of these statutes even tangentially touch on the types of disputes that are currently before the Trustees. Two of the statutes, for instance, simply provide that a trustee who is also a beneficiary of the trust cannot adjust between principal and income in making distributions to a trust beneficiary, and that an interested trustee cannot convert an income trust to a total return unitrust, reconvert a total return unitrust to an income trust, or change the percentage used to calculate the unitrust amount. S.C. Code Ann. §§ 904(A), 904C(A). Likewise, the remaining statute simply confers decanting authority to disinterested trustees. Id. § 816A.

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that the Trust Code enumerates specific instances in which a trustee may not act indicates that, in other instances, there is no similar prohibition. *See Schlafly v. Saint Louis Brewery, LLC*, 909 F.3d 420, 425 (Fed. Cir. 2018) ("The statutory interpretive canon . . . provides that 'expressing one item of [an] associated group or series excludes another left unmentioned.'" (internal citation omitted)).

During his deposition, Petitioner testified that he did not "fully understand" the powers associated with "preeminent authority," and that he requested that the Court grant him such relief because his attorney, James C. Hardin, III, suggested he could seek such additional powers. (Pet. Dep. 202:14-18.) At trial, Mr. Hardin conceded that the phrase "preeminent authority" does not appear anywhere in the South Carolina Probate Code.

Additionally, Petitioner misunderstands the role of special fiduciary. A special fiduciary is not a co-trustee with powers superior to those of his or her co-trustees. Instead, a special fiduciary is akin to a receiver. Reporter's Comment to S.C. Code Ann. § 62-7-1001 (special fiduciary is "also sometimes referred to as a receiver."); *see also Fisher v. Huckabee*, 2016 WL 7495869 at *1 (S.C. App. 2016) (appointing a special fiduciary to accept all assets of an estate). Special fiduciaries are appointed where trustee positions are vacant, or some disability precludes action by an existing trustee, creating the need for a third party to manage the trust until the appointment of new trustees or removal of the disability. *E.g.*, *Fundamental Church of Jesus-Christ of Latter Day Saints v. Lindberg*, 238 P.2d 1054, 1058 (Utah 2010) (appointing a special fiduciary to serve as a trustee until a new trustee can be appointed); *Keith v. Wallerich*, 687 S.E.2d 299 (N.C. App. 2009) (court entered order accepting trustee's resignation and appointing special fiduciary). Special fiduciaries can also be appointed to assist the court. *In re Daily*, 247 B.R. 369, 372 (Bankr. S.D.N.Y. 2000) (probate court appointed a special fiduciary to investigate insolvency of the estate); *In the Matter of the Estate of Plank*, 509 P.2d 812, 813 (Colo. App. 1973) (probate court

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appointed special fiduciary to determine validity of claim against estate). No such circumstances exist in this case. The court is unaware of any law that supports giving a special powers superior to that of a regular trustee.

Finally, the Court specifically requested that each party set forth the relief requested at the conclusion of trial. Despite having spent extensive time briefing the issue in pre- and post-trial submissions, Petitioner did *not* request that he receive special powers and asked that all trustees, including himself, be removed. Given Petitioner's failure to request this remedy when explicitly given the opportunity to do so, the Court finds that Petitioner has abandoned his request to receive preeminent authority, either through declaration of the Court or by way of appointment as a special fiduciary. *See Strickland v. Strickland*, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007) (noting that waiver is a voluntary and intentional abandonment or relinquishment of a known right); *Parker v. Parker*, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994) (waiver may be expressed or implied by a party's conduct).

III. Modification of the Trust (Petitioner's Fourth Cause of Action)

In his fourth cause of action, Petitioner seeks to modify the Trust pursuant to South Carolina Code § 62-7-412 in the following manner:

> (1) the precatory language in Item X of the Will is not binding and does not constitute a mandatory prohibition on the sale of Trust property; and
>
> (2) the Prudent Investor Rule controls and requires the sale of significant trust property to achieve diversification, income generation, and principal growth.

(Am. Pet. at ¶ 68.) As grounds for these modifications, Petitioner asserts that administrative provisions of a trust may be modified where continuing the trust on its existing terms would impair trust administration; that the Testator did not anticipate that the value of the trust property would

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increase dramatically; and that the Testator did not anticipate his eldest son would not have a male child. (*Id.* at ⁋⁋ 63-66.)

South Carolina Code § 62-7-412, which governs modification of trusts, provides in pertinent part that:

> (a) The court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention.
>
> (b) The court may modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or impair the trust's administration.

S.C. Code Ann. § 62-7-412.

The right of a testator to dispose of his property as he or she sees fit is a sacred right. *Cagle v. Schaeffer*, 115 S.C. 35, 35, 104 S.E. 321, 323 (1920). A "cardinal rule of trusts and estates law is that the intent of the testator must prevail wherever possible." *Wilson v. Dallas*, 403 S.C. 411, 453, 743 S.E.2d 746, 770 (2013). "The right to make a will directing the ultimate disposition of one's property is one of the basic rights known to our civilization, and it encompasses the right to make it according to the testator's pleasure and in his absolute discretion . . . subject only to the restraints upon the power of disposition that the law has imposed." *Id.* at 445, 743 S.E.2d at 765. So sacred is this tenant of law that even when a court does engage in equitable deviation, it may modify the trust only by "directing that the trust property be applied or distributed, in whole or in part, in a manner *consistent with the settlor's . . . intent*." S.C. Code Ann. § 62-7-413(a)(3) (emphasis added). "Indeed, [t]he purpose of the 'equitable deviation' authorized by [the statute] is *not* to disregard the settlor's intent but to modify inopportune provisions to effectuate better the settlor's broader purposes." § 62-7-412, Reporter's Comment.

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Given the law's deference to the Testator's disposition of his property, the Court concludes that circumstances do not warrant the requested modifications. The provisions of the Will discussing the Testator's desire to preserve family property are substantive, not administrative. All parties agree, and have at all times agreed, that the Testator's expressed desire to retain land is precatory, and not a binding prohibition on the sale of Trust property. Indeed, the Will expressly authorizes the sale of real property held by the Trust, including the Legacy Tracts, at any time with the unanimous consent of the Trustees. There is no actual dispute regarding whether the Testator's desire to retain Trust property is precatory. Similarly, the parties do not dispute that the Prudent Investor Rule is applicable. Accordingly, there is no necessity to modify the Trust with respect to these matters.

Where the parties do disagree is whether the application of the Prudent Investor Rule requires the sale of significant Trust property to achieve diversification, income generation, and principal growth. The Court concludes that the application of the Prudent Investor Rule does not require the sale of significant Trust property to achieve diversification for a number of reasons.

First, the Trust Code provides that "[t]he prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust." S.C. Code Ann. § 62-7-933(B)(2). The Prudent Investor Act is therefore statutorily subservient to contrary language in the Will. The Will states that the Trustees may "retain any of the original property constituting the estate or trust, regardless of the character of such property . . . or whether it leaves a disproportionately large part of the estate or trust invested in one type of property [.]" (Will Item XIV.B, p. 14.) Accordingly, the Will modifies the statutory duty to diversify imposed by the Prudent Investor Rule, particularly with respect to the original property constituting the Trust, including the Legacy Tracts.

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Second, and in any event, the Prudent Investor Rule as embodied in the Prudent Investor Act, does not mandate diversification. The Prudent Investor Act certainly favors diversification, but it does not universally require diversification at any cost. For example, the Prudent Investor Act does not favor one type of investment asset over another. Instead, the Prudent Investor Act specifically states that "a trustee may invest in *any kind of property or type of investment* consistent with the standards of this act." *Id.* at § 62-7-933(C)(3)(5)(a) (emphasis added). It also qualifies the duty to diversify in the following manner: "[a] trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying." S.C. Code Ann. § 62-7-933(D) (emphasis added). For instance, "[t]he wish to retain a family business" is a situation in "which the purposes of the trust sometimes override the conventional duty to diversify." S.C. Code Ann § 62-7-933(D), Reporter's Comment. The Prudent Investor Act specifically provides that among the circumstances "a trustee shall consider in investing and managing trust assets are . . . an asset's special relationship or special value to the purposes of the trust or to one or more of the beneficiaries." S.C. Code Ann. § 62-7-933(C)(3)(h) (emphasis added).

Applying these provisions of the Prudent Investor Act to the Trust at issue, special circumstances exist that permit the Trustees to reasonably believe that the purposes of the trust are better served without liquidating the majority of the Trust's land holdings. Specifically, the beneficiaries of the Trust, including Respondents and the remainder beneficiaries, have a special relationship to the land held by the Trust, and in particular to the Legacy Tracts. Essentially, the Trust manages a family business which was operated first by the Testator, and then by the Testator's wife, and now falls to the Trust.

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Because the Prudent Investor Rule does not require the sale of significant Trust property to achieve diversification in this case, it would be error for the Court to modify the Trust to impose such a requirement without legal foundation and when such a requirement would be directly contrary to the intent of the Testator as expressed throughout the terms of the Will.

Finally, the reasons Petitioner sets forth for modifying the Trust are not convincing. First, Petitioner argues that Mr. Boykin "could not have anticipated that . . . Hurricane Hugo would decimate his timber holdings and substantially reduce the value of the assets held in trust." (Am. Pet. at ¶ 66.) This contention lacks merit. Natural disasters are not inherently unforeseeable. Moreover, Hurricane Hugo struck three months prior to the Testator's death. Not only could the Testator have foreseen that a natural disaster, such as a hurricane or fire, could damage the timber tracts he owned, the Testator had actual knowledge of Hurricane Hugo prior to his death and did not change his Will. Hurricane Hugo does not constitute an unanticipated circumstance justifying modification of the Will.

Likewise, the fact that Respondent Whit Boykin does not have male heirs to inherit the Legacy Tracts does not provide a compelling reason to modify the terms of the Trust. While the Will expresses a desire that certain property pass to the male children of Mr. Boykin, Testator could have anticipated that Respondent Boykin would not have a male child. Every adult knows that one cannot control the sex of one's children, or even whether it may be possible for one to have children. Furthermore, the Will does not contemplate that the Legacy Tracts should be preserved solely for the benefit of Respondent Boykin's male children. It states that the Legacy Tracts should be preserved for the benefit of Testator's "*children or their issue.*" (Will Item X, pp. 9-10.) The Testator is survived by his four children and his four grandchildren, two of whom are males; it is clear that there are multiple other beneficiaries for whom the Legacy Tracts may

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be preserved. Thus, Petitioner has provided no compelling reason for this Court to disregard the Testator's intentions as set forth in the Will and modify the terms of the Trust on this basis.

For these reasons, the Court declines to use its equitable powers to modify the terms of the Trust.

IV. Removal of Trustees (Petitioner's Fifth Cause of Action and Respondents' First and Second Counterclaims)

Petitioner's Amended Petition seeks removal of both Respondents, Mary Deas Wortley and Alice Belger, as Trustees. Petitioner's stated grounds for removal of Respondents are: (1) lack of cooperation. (Am. Petit. at ¶ 71.); (2) failure to carry out their duties as Trustees in failing to devise a comprehensive budget, perform a financial analysis, conduct regular trustee meetings; and approve the gold mine option (*Id.* at ¶ 72.); and (3) unfitness to serve as Trustees. (*Id.* at ¶ 73.)

Likewise, Cross-Claimants seek to remove Respondents as Trustees. Cross-Claimants incorporate the arguments asserted by Petitioner. In addition, Cross-Claimants contend that Respondents have an inherit conflict of interest which disqualifies them from service as Trustees.

Finally, Respondents filed two counterclaims against Petitioner seeking his removal as a Trustee. (Second Am. Ans. & Counterclaims at ¶ ¶ 48-73). Respondents' stated ground for removal of Petitioner are: (1) lack of cooperation (*Id.* at ¶ 64) and (2) Petitioner's unwillingness to administer the Trust in a cost-efficient manner (*Id.* at ¶ 73).

Based upon both the Parties' submissions and the testimony and evidence presented at trial, it is apparent to this Court that the current cast of Trustees can no longer effectively administer the Trust. By all accounts, the Trustees have struggled to efficiently administer the Trust since the dispute that underlies this lawsuit first arose in the spring of 2017. This disagreement among the Trustees regarding the proper approach to managing the Trust's assets has greatly affected the

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Trustees' ability to work with one another to efficiently conduct Trust business. Due to the strife among the Trustees, every item of Trust business, including simple administrative decisions, require discussion and debate. This has greatly stymied Trust business and significantly increased the time and effort required of the Trustees to administer the day-to-day operation of the Trust. The Court finds that it is necessary to remove one or more of the current Trustees in order to protect the Trust's assets and ensure administration of the Trust for the beneficiaries.

After careful consideration of the evidence presented at trial and for the reasons set forth below, Petitioner is hereby removed as a Trustee. Respondents will remain Trustees along with a third Trustee to be appointed by the Court consistent with instructions set forth in subsection F below.

Under the South Carolina Trust Code, removal is governed by § 62-7-706. This section provides that a court may remove a trustee if: (1) the trustee has committed a "serious breach of trust"; (2) lack of cooperation among the trustees "substantially impairs the administration of the estate"; (3) removal of the trustee will best serve the interest of the beneficiaries because of the trustee's "unfitness, unwillingness, or persistent failure" to administer the trust effectively; or (4) there has been a "substantial change in circumstances," and removal of the trustee best serves the interests of all of the beneficiaries, is not inconsistent with a material purpose of the trust, and there is a suitable co-trustee or successor trustee available. S.C. Code Ann. § 62-7-706(b). Each of these grounds and the Parties' arguments related to the same are addressed in turn below.

A. Serious Breach of Trust

Failure to administer the Trust is not a specific ground for removal. Based on the pleadings and arguments of Petitioner and his counsel in this case, the Court interprets this portion of

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Petitioner's claim for removal as a claim to remove Respondents under subsection (a) of § 62-7-706 for committing serious breaches of trust.

Subsection (b)(1) of § 62-7-706 provides that "[t]he court may remove a trustee if . . . the trustee has committed a serious breach of trust." It is well established that the standard for removal is whether the trustee has engaged in conduct that is detrimental to the interest of the beneficiaries. Restatement (Third) of Trusts S.C. Code Ann. § 37 cmt. D (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts § 107 cmt. a (1959). However, a breach of trust must be "serious" to justify removal of the trustee. S.C. Code Ann. § 62-7-706, Reporter's Comment. A "serious breach of trust" may consist of a single act that causes significant harm or involves flagrant misconduct, or may consist of a series of smaller breaches which, when considered together, justify removal even though they may not be considered sufficient when considered alone. *Id.* Notably, "[a] trustee who acts in reasonable reliance on the terms of the trust as expressed in the trust instrument is not liable to a beneficiary for a breach of trust to the extent the breach resulted from the reliance." S.C. Code Ann. § 62-7-1006.

Petitioner specifically alleges that Respondents should be removed due to their failure to: (a) devise a comprehensive budget; (b) perform a financial analysis; (c) conduct regular trustee meetings; and (d) approve the gold mine option. The Court concludes that none of these actions constitutes a serious breach of trust warranting removal.

The Trustees have a duty to competently manage the Trust, but that duty may or may not call for development of a budget or financial analysis. Following Mrs. Boykin's death, appraisals had to be performed before the value of the Trust property could be known and informed investment decisions could be made. These appraisals were not complete until the spring of 2017. By this point, Petitioner was already threatening Respondents with litigation. The delay in

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developing a budget or financial plan is understandable under these circumstances and does not rise to the level of a serious breach of trust. This is particularly true where the evidence presented at trial demonstrated that Petitioner himself played a large part in causing the delay in the appraisals process. Finally and most importantly, Respondents have now had a financial analysis, budget and management plan developed such that any alleged failure has been cured.

Petitioner's next argument that Respondents failed to conduct regular trustee meetings is specious. More than twenty-four face-to-face meetings, at least one a month, were held between the date of Mrs. Boykin's death and the filing of this suit. There was a brief period between May and October of 2017 where meetings were not held and business was conducted by phone and email during this interval. The Court finds this likewise does not rise to the level of a serious breach of trust warranting the removal of Respondents.

The failure to approve the option agreement also does not constitute a serious breach of trust. There is no certainty that Haile Gold Mine would have exercised the option had the Trust actually granted it to Haile Gold Mine, making Petitioner's concerns speculative. Much of the financial benefit of the proposed agreement can also be achieved through the sale of conservation credits without sale of Trust property.

Furthermore, one of the reasons Respondents chose not to pursue the option agreement is that it would require the sale of the Legacy Tracts and, notably, the Boykin Millpond, a significant part of Millway Plantation, which is the Legacy Tract that is afforded the most protection in the Will. Preservation of the Legacy Tracts for as long as possible is one of the primary objectives of the Trust based on a plain reading of the terms of the Will. The Court concludes that in refusing the option agreement, Respondents reasonably relied upon the language of the Will which indicates that the property at issue is to be preserved, if at all possible. No trustee who similarly

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acts in reliance upon language of a trust instrument can be liable to a beneficiary for a breach of trust, S.C. Code Ann. § 62-7-1006, and it is reasonable to conclude that, even if failure to approve the gold mine option could be considered a breach of trust, it would not be a breach of trust on which a beneficiary could sue, and is not a serious breach of trust warranting removal.

B. Lack of Cooperation

Subsection (b)(2) of § 62-7-706 provides that "[t]he court may remove a trustee if . . . lack of cooperation among cotrustees substantially impairs the administration of the trust." The lack of cooperation among trustees justifying removal need not involve a breach of trust. Reporter's Comment to S.C. Code Ann. § 62-7-706(b). The key factor is whether the administration of the trust is significantly impaired by the trustees' failure to agree. *Id.* The court may remove one, more, or all of the trustees. *Id.* Friction between trustees and beneficiaries does not ordinarily constitute lack of cooperation for purposes of removal. *Id.* The Court agrees with Petitioner that there has been a lack of cooperation among the Trustees of the Residuary Trust with respect to the issue of the sale of Trust property for purposes of diversification; however, the Court concludes that Petitioner, not Respondents, is guilty of a failure to cooperate.

The Will establishes that there are three Trustees, each with an equal vote. It sets majority rule as the basis of decision, except where certain issues regarding the sale of real property are involved. In those situations, the Will requires the Trustees unanimously agree to sell it. The decision-making process has worked exactly as designed by the Testator. The majority administers the Trust, not the minority.

There has been no evidence that any the Trustees have refused to participate in the decision-making process described above. Instead, evidence suggests that the Trustees meet regularly to discuss Trust issues and bring those issues to a vote. While the Court has been presented multiple

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instances in which Respondents disagreed with Petitioner's proposed actions for the Trust, the objections to the proposed plans are based upon concerns shared by Respondents and were not made for the purpose of frustrating the administration of Trust business. Stated differently, the fact that Respondents disagree with certain proposals from Petitioner is not evidence that Respondents are guilty of failing to cooperate with the Petitioner. Accordingly, I find that that Respondents have not acted uncooperatively in such a manner that would require their removal.

In contrast, Petitioner has attempted to use his position as a Trustee to impose the will of the minority upon the majority. Petitioner has repeatedly refused to follow the advice of experienced trust counsel. He has belittled and threatened trust advisors, and refused to consent to the Section 6166 tax election, an action which Petitioner himself admitted was error. Similarly, Petitioner has refused to even investigate the potential tax savings of the Section 2032A election. Both of these tax elections were strongly recommended by the experienced trust counsel employed by the Trustees. Based on the Court's observations at trail, it would appear Petitioner's goal in refusing to consent to these tax elections has been to gain leverage over Respondents and force them into a position where they have no choice but to accede to his desire to sell a significant portion of the Trust's real property as soon as possible. This desire is at odds with the Testator's stated desire to preserve Trust property if at all possible, and at odds with six of the eight Trust beneficiaries.

Petitioner's tactics and actions constitute a lack of cooperation which has significantly impaired the administration of the Trust. The Court further finds that some of Petitioner's actions and positions were not taken out of genuine concern for the Trust and its beneficiaries, but rather in an attempt to intentionally frustrate Respondents' attempts to administer the Trust and manipulate the actions of his co-trustees. Because of Petitioner, the Trust has had difficulty

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implementing financially beneficial tax elections and other decisions and determining proper distributions to income beneficiaries. Petitioner has further attempted to force his Co-Trustees to sell family property by whatever means necessary, including belittling and threatening experienced Trust advisors and concealing information regarding the identity of prospective purchasers. This behavior warrants his removal under subsection (b)(2) of § 62-7-706.

C. Unfitness, Unwillingness, or Persistent Failure to Administer Trust

Subsection (b)(3) of § 62-7-706 provides that "[t]he court may remove a trustee if . . . because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries." "Unfitness" may include not only mental incapacity but also lack of basic ability to administer the trust. Reporter's Comment, S.C. Code Ann. § 62-7-706. Before removing a trustee for unfitness the court should consider the extent to which the problem might be cured by a delegation of functions the trustee is personally incapable of performing. *Id.* "Unwillingness" includes not only cases where the trustee refuses to act but also a pattern of indifference to some or all of the beneficiaries. *Id.* A "persistent failure to administer the trust effectively" might include a long-term pattern of mediocre performance, such as consistently poor investment results when compared to comparable trusts. *Id.* Removal in any of these cases is allowed only if it best serves the interests of the beneficiaries. *Id.*

Initially, after careful observation of each of the three Trustees's testimony at the trial of this case, the Court finds no evidence any of the current Trustees suffer from mental incapacity. Having determined that none of the Trustees lack mental capacity, the Court now turns to whether any of the Trustees lack the "basic ability to administer the trust" that renders them unfit to serve as Trustee.

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In challenging Respondents' fitness to serve as Trustees, Petitioner has focused on the relative training, experience and education of the Respondents and whether their background was sufficient to handle the administration of a multi-million-dollar Trust. After careful consideration of the evidence presented at trial, the Court finds that Respondents' respective backgrounds are sufficient to qualify them for service as Trustees.

First, Respondents are intimately familiar with the Trust property. They have lived on, visited, or used the family property for their entire lives. They are familiar with the management of the Trust property by Mrs. Boykin, and Respondent Wortley assisted in the management and operation of Trust property as a trustee of the prior marital trust. Mrs. Boykin trained Respondents in the operation of the family business, including timber management, leases of hunting and fishing properties, and management and operation of commercial properties.

Moreover, Respondents have demonstrated that they are willing to listen to, and indeed rely on, the advice of well-respected professionals, such as Mr. Bailey and Ms. Thomas, Ms. Peacock, Mr. Helms, Ms. Holland, Mr. Bunch, as well as other individuals, in administering the Trust. No evidence was presented at trial indicating that Respondents have disregarded the advice of seasoned professionals in pursuit of their own agenda for the Trust. Respondents' training with respect to and familiarity with the Trust property, coupled with their willingness to retain the appropriate professionals to aid them in administering the Trust, more than qualifies them to serve as Trustees.

Additionally, the comments to § 62-7-706 instruct the Court that, before removing a trustee for unfitness, the Court should consider the extent to which the problem might be cured by a delegation of functions the trustee is personally incapable of performing. Reporter's Comment, S.C. Code Ann. § 62-7-706. Petitioner is correct that Respondents do not possess extensive

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experience with the stock market or in tax matters. These deficits in experience, however, are precisely the type of deficits which can be remedied by employing qualified trust advisors in legal, tax, and financial matters. As noted above, Respondents have done just that, employing the aforementioned professionals at various times, as well as individuals such as Ansel Bunch, who serves as an investment advisor for the Trust. Deficits in investment knowledge or experience do not warrant removal in this case.

For these reasons, the Court finds that Respondents are sufficiently qualified to serve as Trustees and should not be removed for being unfit to administer the Trust effectively.

Turning now to Respondents Claim that Petitioner should be removed for his unwillingness to administer the Trust effectively, the Court finds that S.C. Code Ann. § 62-7-706(b)(3) provides an additional ground for his removal. Based upon the conduct highlighted in the preceding subsection, namely the Petitioner's blatant disregard of the advice of the experienced counsel advising the Trust in estate tax matters, the Court concludes that Petitioner has demonstrated an unwillingness to act that warrants his removal. The evidence presented at trial established that Petitioner on numerous occasions took positions as to certain trust business that were not reasonably intended to further the Trust's purposes and were instead intended to manipulate his co-Trustees into acquiescing to his approach. The Court finds this conduct to demonstrate an unwillingness to effectively administer the Trust. This is an additional ground supporting Petitioners removal as Trustee.

D. Removal for Changed Circumstances

The Amended Petition states in a conclusory fashion that removal is warranted because there has been a substantial change of circumstances, removal serves the best interest of all of the beneficiaries, and is not inconsistent with a material purpose of the Trust. (Am. Petit. at ¶ 76.)

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This allegation is almost a verbatim repetition of S.C. Code Ann. § 62-7-706(b)(4). The Amended Petition does not set forth any facts in support of this contention and Petitioner has not argued this provision. The Court thus concludes that Petitioner has abandoned this argument.

Out of an abundance of caution, the Court also holds that removal would not be appropriate under § 62-7-706(b)(4). There has been no substantial change in circumstances. If, as Petitioner alleges, the Trust property has appreciated in value since Mr. Boykin executed his Will, this is not a circumstance which ordinarily warrants removal of a trustee. Indeed, it is good for all of the beneficiaries that the trust property has increased in value, and all beneficiaries will undoubtedly hope for this trend to continue in the future. Similarly, the effects of Hurricane Hugo were known to the Testator *before* he died, and do not represent a change in circumstances of any kind.

Removal of Respondents is also not in the best interest of *all* beneficiaries and would be inconsistent with a material purpose of the Trust. Again, six of the eight beneficiaries wish for Respondents to remain as trustees and to follow their proposed investment plan and strategy. Even if the Court were to ignore the wishes of Respondents, who are Trustees and beneficiaries, four of the remaining six beneficiaries still wish for the same outcome. Removal would be against the wishes of the clear majority of beneficiaries in either circumstance. Moreover, it is undeniable that one purpose of the Trust was to retain the Legacy Tracts as family property for as long as possible. Because Respondents favor following the desires of the Testator in this regard, their removal would be inconsistent with this purpose of the Trust.

E. Removal for Impartiality

Cross-Claimants contend that Respondents have an inherit conflict of interest which disqualifies them from service as Trustees. They assert that while Respondents and Cross-Claimants are all income beneficiaries of the Trust, Respondents may act against their own self-

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interest and those of Cross-Claimants in making Trust decisions because Respondents also have children who are remainder beneficiaries. Cross-Claimants contend Respondents may limit distributions to income beneficiaries in order to increase what will eventually pass to their children. According to Cross-Claimants, Respondents may or have violated the duty of impartiality to income beneficiaries.

The Restatement of Trusts describes the duty of impartiality as follows:

> *b. Meaning of impartiality.* The duty of impartiality is an extension of the duty of loyalty to beneficiaries but involves, in typical trust situations, unavoidably and thus permissibly conflicting duties to various beneficiaries with their competing economic interests.
>
> It would be overly simplistic, and therefore misleading, to equate impartiality with some concept of "equality" of treatment or concern—that is, to assume that the interests of all beneficiaries have the same priority and are entitled to the same weight in the trustee's balancing of those interests. Impartiality does mean that a trustee's treatment of beneficiaries or conduct in administering a trust is not to be influenced by the trustee's personal favoritism or animosity toward individual beneficiaries, even if the latter results from antagonism that sometimes arises in the course of administration. Nor is it permissible for a trustee to ignore the interests of some beneficiaries merely as a result of oversight or neglect, or because a particular beneficiary has more access to the trustee or is more aggressive, or simply because the trustee is unaware of the duty stated in this Section.
>
> It is not only appropriate but required by the duty of impartiality that a trustee's treatment of beneficiaries, and the balancing of their competing interests, reasonably reflect any preferences and priorities that are discernible from the terms (§ 4), purposes, and circumstances of the trust and from the nature and terms of the beneficial interests. Thus, unfortunately, it is often the case that the implications of the duty of impartiality are complicated by the difficulties of determining, and the vagueness of, some relevant aspects of the settlor's intentions and objectives—much of which is left to interpretation and inference.
>
> Therefore, in short, it is the trustee's duty, reasonably and without personal bias, to seek to ascertain and to give effect to the rights and

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> priorities of the various beneficiaries or purposes as expressed or implied by the terms of the trust.

Restatement (Third) of Trusts § 79 cmt. b, Duty of Impartiality (2007).

Stated differently, there is no black and white line with respect to the duty of impartiality. Trustees must balance the competing needs and interests of *all* beneficiaries.

> [The] balancing of diverse interests usually involves not only the obviously competitive interests of successive-interest beneficiaries . . . but also, for example, the competing needs and objectives of multiple life beneficiaries or of multiple remainder beneficiaries. For example, different present-interest beneficiaries may have different needs, objectives, and tax positions, leading to differing preferences (e.g., to emphasize high yield, or capital appreciation, or tax-exempt income) in the trust's investment program. Similarly, different future-interest beneficiaries may have significantly different objectives and concerns (or attitudes) about, for example, the tradeoff between growth and security of capital, or about the types and tax characteristics of assets eventually to be distributed.

Id. at cmt. c. Modern trust law recognizes that a beneficiary is often designated as a trustee in a family trust. As the Restatement of Trusts provides:

> the fact that the trustee named by the settlor is one of the beneficiaries of the trust, or would otherwise have conflicting interests, is not a sufficient ground for removing the trustee or refusing to confirm the appointment. This is so even though the trustee has broad discretion in matters of distribution and investment.

Restatement (Third) of Trusts § *37*, Removal of Trustee cmt. f (2007). The duties of impartiality and loyalty, in typical trust situations, involve "unavoidably and thus *permissibly conflicting duties to various beneficiaries with their competing economic interests.*" *Restatement (Third) of Trusts* § 79 cmt b., Duty of Impartiality (2007) (emphasis added).

Strict prohibitions against conflict of interest transactions do not apply to the extent they are authorized by the terms of the trust, either "expressly or by implication." *Restatement (Third) of Trusts* § 78 cmt. c(2) Duty of Loyalty (2007) (a trustee may be authorized by the terms of the

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trust, expressly or by implication, to engage in transactions that would otherwise be prohibited by the rules of undivided loyalty). "[E]ven the vital fiduciary duty of loyalty is a *default rule* that may be modified by the terms of the trust." *Id.* (emphasis in original).

South Carolina law recognizes these principles. *E.g., First Union Nat. Bank of South Carolina v. Cisa*, 293 S.C. 456, 361 S.E.2d 615 (1987). *First Union* confirmed that it is the trust instrument or will which is ultimately controlling. In that case, the court stated that "[t]he question essentially is whether, when [the settlor] authorized the trustees in his residuary trust to take certain actions, he intended to include his wife [the defendant] as a person authorized to act in such matters as a trustee." *Id.* at 462, 361 S.E.2d at 619.

The Will in this case expressly allows Respondents to participate in all decisions, including those involving the sale of real property held by the Residuary Trust. Indeed, the Will specifically names Respondent Wortley as both a beneficiary and a trustee, and further provides that trustees may nominate an additional "family member" to serve as a Co-trustee. (Will at Items VIII(1), XII(b).) The Will clearly contemplates that beneficiaries will serve as trustees of the Residuary Trust.

Because beneficiaries will serve as trustees, they will necessarily take part in trust decisions. The Will places no limits on the ability of beneficiary trustees to act, and also affirmatively provides that beneficiary trustees will take part in trust decisions. For example:

- The Will specifies that decisions to sell real property must be unanimous and sales of personal property may be by majority vote. If the beneficiary trustees were not intended to vote on the disposition of property of the Residuary Trust, there would be no need for requirements of unanimity and majority. Only one trustee would be empowered to vote. The unanimity and majority requirements would be meaningless if Respondents were not permitted to vote in such transactions;

- The Will vests trustees with the power to determine how all receipts and disbursements of the trust, "including the executor's or trustee's compensation" shall be credited, charged, or apportioned "irrespective of statute or rule of law." (Will at Item XIV.G, p. 16.) Trustees are permitted to take part in decisions

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regarding even their own compensation without regard to any limiting statute or rule of law; and

- The Will expressly permits the trustees to elect to borrow money from any of the trustees themselves, despite the fact that such a transaction would normally be a conflict of interest transaction. (Will at Item XIV.K, pp. 17-18.)

In this case, there is no evidence that Respondents have improperly balanced their loyalties. The plan and investment strategy, which includes proposed distributions to income beneficiaries, has the support of six out of the eight beneficiaries. The plan also properly reflects the preferences set forth in the Will. The Will reflects a strong preference for preservation of the trust property, and in particular the Legacy Tracts. In many ways, it expresses a preference for the interest of the remainder beneficiaries over those of the income beneficiaries. For example, the Will waives the unproductive property rule and instructs the Trustees to consider what other economic resources a particular beneficiary may possess in determining a reasonable distribution, provisions which disadvantage income beneficiaries. The Will also expresses a desire that the Legacy Tracts be preserved for the benefit of *all* beneficiaries—not solely the remainder beneficiaries.[5]

Finally, based upon the testimony and evidence presented at trial, the Court firmly believes that Respondents have affection for their siblings and have consistently acted in what they believe to be the Cross-Claimants' best interest. The Court has no doubt that Respondents would provide for the their brother and sister if they ever needed support from the Trust for their "medical care, comfortable maintenance or welfare" as provided by the terms of the Will.

Accordingly, the Court finds that Cross-Claimants' allegations that Respondents have acted impartially and, by extension, their claim for removal of Respondents as Trustees, are

[5] As to the income beneficiaries, the Will *requires* distributions of *only* the "net income" of the Trust "as the Trustees in their sole discretion shall determine . . . as the need arises primarily for the medical care, comfortable maintenance [and] welfare . . . taking into consideration . . . other income or resources" of the beneficiaries. (Will Item VIII(1), p. 7.)

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without merit.

F. Conclusion and Replacement Trustee

For the foregoing reasons, Petitioner Rigdon Boykin is removed as a Trustee of the Residuary Trust effective immediately. Respondents Mary Deas Wortley and Alice Boykin Belger shall remain Trustees of the Trust.

In leaving Respondents in their position as Trustees, the Court would caution both of them that it is imperative that they implement the management and investment plan presented by their counsel and consultants to the Court at the trial of this matter. Respondents, as Trustees, have a duty to prudently manage the Trust's assets for the benefit of all beneficiaries. This duty requires that Respondents diversify the assets currently held by the Trust and reduce the Trust's concentrated holdings in real estate. Although not required to the extreme contained in Petitioner's plan, the Court finds that all the beneficiaries would be better served and protected by diversifying the Trust's portfolio of assets. The Court finds that the plan presented by Respondents at trial is a reasonable approach to achieving that diversification. Respondents' plan cannot simply be lip service meant to appease the Court. Respondents should closely adhere to the sales schedule contained in their plan. Failure to do so could be a breach of their duties as Trustees and present grounds for their removal from their position as Trustee in the future.

Based upon Respondents prior reluctance to sell Trust properties, the Court maintains some reservations about whether Respondents are capable of executing the plan presented at trial, as it requires sale of properties that their family has held dear for decades. As previously noted, the Will's preference to retain the real property held by the Trust is precatory. The instructions found in the Will are now more than 30 years' old. While this preference is entitled to respect, the Testator's stated desire to retain property cannot overrule the common sense of the Trustees he put

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in charge of his legacy. As times change, the Trustees must use their best judgment to prudently manage the Trust and maximize the Trust's benefits to all beneficiaries.

Ultimately, the Court's decision to permit Respondents to remain as Trustees is based in large part upon their apparent willingness to listen to the advice of their counsel, consultants and other advisors. The advice contained in the plan presented at trial is a wise approach to the management of the Trust and the Court is confident Respondents will continue to heed the sage advice of their trusted counsel and advisors in implementing this plan.

In addition, the Court finds that it would be beneficial to Respondents for Petitioner's vacant Trustee position to be filled by a third party that can continue to provide a different perspective than that of Respondents. Accordingly, the Court hereby proposes to appoint Cheryl Holland to fill the vacant Trustee position. Ms. Holland is already familiar with the Trust's assets and management and has been wise counsel to the Trust. The Court believes Ms. Holland would provide valuable business and investment perspective to Respondents that will complement their familiarity with the family property.

Counsel for Respondents shall notify Ms. Holland of the Court's decision and ask that Ms. Holland to write the Court within 30 days regarding whether she is willing to accept a position as Trustee. If Ms. Holland rejects this position, each party shall submit a proposed replacement to fill the final vacant Trustee position and the Court shall choose a replacement from these proposals. Parties shall submit their proposed replacement in writing within 30 days of the date of Ms. Holland's letter rejecting the position. If the delay in filling this position interferes with administration of the Trust, any Trustee or beneficiary may petition the Court to appoint a special fiduciary until such time as a formal replacement for Petitioner can be instated.

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V. Miscellaneous Claims for Relief Requested at Trial

The relief requested by Petitioner and Cross-Claimants at the conclusion of trial differed substantially from the relief set forth in these parties' pleadings. Petitioner asked the Court to: (i) remove all Trustees; (ii) appoint non-family members to manage the Trust; (iii) modify the Trust to eliminate the unanimous voting requirement for certain decisions relating to the disposition of real property held by the Trust; and (iv) split the Trust into two trusts, one of which would continue to hold the family legacy property discussed in the Will, and one of which would hold other property which could then be sold and invested in the stock market. Cross-Claimants asked the Court to: (i) remove all Trustees; (ii) appoint competent non-family members to manage the Trust; and (iii) modify the Trust to eliminate the unanimous voting requirement for certain decisions relating to the disposition of real property held by the Trust.[6]

These requests for relief were not requested in the pleadings. Neither Petitioner nor Cross-Claimants have sought to amend their pleadings to assert these requests for relief. Respondents and the remainder beneficiaries and interveners did not consent to trial of these matters. The Court concludes that these requests for relief are not properly before the Court, and denies the same.

Alternatively, the additional relief sought is not warranted for the following reasons:

A. Removal of All Trustees

The Court has already declined to remove Respondents Wortley and Belger as Trustees for reasons discussed above.

[6] What is striking about these requests for relief is that the relief requested by all parties, including Petitioner himself, apparently now includes Petitioner's removal and replacement as a Trustee. That all parties and beneficiaries desire Petitioner's removal and replacement is an additional and alternative ground for his removal as Trustee, and the Court so holds.

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B. Appoint Non-Family Members as Trustees

This relief is not appropriate. While the Will does permit the Trustees have the discretion to appoint a trust company or bank trust department of sufficient size "to assist them in the administration of the trust" or "to serve as co-trustee with them should they determine the same to be necessary" (Will Item XII.b, pp. 12-13.), replacing all three Trustees with non-family members would contravene the Testator's intent that his family members control the Trust as expressed by the clear language of the Will. No party has sought a modification of this provision of the Will, or presented any evidence that this modification would be a necessary exercise of the Court's equitable deviation powers. For these reasons, the Court declines to modify the Will and to exclusively appoint non-family members as Trustees.

C. Unanimous Voting Requirement

Petitioner argues that the Trustees are at an impasse as a result of the unanimous voting requirement for certain real property decisions, and that this requirement has proven troublesome to the administration of the Trust. He therefore asks the Court to delete this requirement. Cross-Claimants echo these sentiments. All other parties oppose this suggested change to the Testator's Will.

Impasse connotes deadlock.[7] After careful consideration, the Court concludes that there is no actual deadlock in this matter. The unanimity requirement has most certainly frustrated the Petitioner's desire to sell most of the Trust's real property as quickly as possible, but that is not true deadlock. The unanimity requirement is a default rule. Real property of the Trust cannot be sold unless all Trustees agree. The fact that some Trustees did not agree with Petitioner does not mean that the Trustees are paralyzed and cannot make a decision. The Trust is not prevented from

[7] https://www.merriam-webster.com/dictionary/impasse

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making a decision; rather, under the terms of the Will, the outcome of a less than unanimous vote is that the property under consideration for sale cannot be sold. This mechanism reflects the Testator's desire that Trust property be preserved.

Additionally, the facts do not indicate there is any current necessity for modification of the Trust to eliminate the unanimity requirement. Two of the three Trustees and all four remainder beneficiaries oppose Petitioner's plan for sale of the bulk of the Trust property. Were the Court to eliminate the unanimity requirement and replace it with a majority vote requirement, the sale sought by Petitioner would still be voted down. Modification accomplishes nothing in this instance.

Finally, the Court has removed Petitioner as a Trustee by this Order. As a result, disputes among the parties regarding his plan for selling Trust property are moot. Petitioner is no longer a trustee or a beneficiary and has no standing to pursue modification, and, given the absence of a third Trustee at this time, any argument that deadlock presently exists is speculative.

D. Splitting the trust

The Court understands that Petitioner and Cross-Claimants have proposed splitting the Trust in two, with certain properties managed by Petitioner or others as Trustee and the remaining properties managed by Respondents. Petitioner and Cross-Claimants believe this action would allow the sale of Trust property for reinvestment and also allow preservation of the Legacy Tracts.

While such a solution might have been achievable by way of settlement, the Court is not in a position to do as Petitioner and Cross-Claimants request. No evidence whatsoever was presented regarding what tracts should belong to which trust. Similarly, no evidence was presented on whether the new trusts would possess sufficient assets and income to meet expenses, including distributions to income beneficiaries.

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The Court declines to work such a substantial change on the Trust without the evidence necessary to evaluate the request.

VI. Award of Attorney's Fees

Finally, all Parties (Petitioner, Respondents, and Cross-Claimants) have asked the Court to order that their attorney's fees and costs incurred in connection with this litigation be paid from the Residuary Trust.

"The decision to award attorney's fees is a matter within the sound discretion of the trial judge and the award will not be reversed on appeal absent an abuse of discretion." *Marquez v. Caudill*, 376 S.C. 229, 246, 656 S.E.2d 737, 745-46 (2008) (citing *Buckley v. Shealy*, 370 S.C. 317, 635 S.E.2d 76 (2006)). In this case, the same is true for the parties' experts and consultants who have been intimately involved throughout this matter. The factors used to determine a reasonable attorney's fee are: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; (6) customary legal fees for similar services. *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991). "While 'contingency of compensation' is an appropriate factor considered in awarding attorney's fees, the contingency to be considered is whether the party on whose behalf the services were rendered will be able to pay the attorney's fee if an award is not made." *Marquez*, 376 S.C. at 246, 656 S.E.2d. at 746. "Further, the factor 'beneficial results obtained' merely aids in determining whether an award is appropriate when considering whether the services of a lawyer facilitated a favorable result." Id.

The South Carolina Trust Code also addresses the issue of attorney's fees and authorizes a court to award attorney's fees to be paid by a trust. For example, S.C. Code Ann. § 62-7-709 ("Reimbursement of expenses") provides that "[a] trustee is entitled to be *reimbursed out of the*

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trust property for (1) expenses that were properly incurred in the administration of the trust." S.C. Code Ann. § 62-7-709(a) (emphasis added). Furthermore, S.C. Code Ann. § 62-7-816 ("Specific powers of trustee") provides that a trustee may "pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and all other expenses incurred in the administration of the trust." S.C. Code Ann. § 62-7-816(15).

Section 62-7-1004 provides:

> In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party *or from the trust that is the subject of the controversy*.

S.C. Code Ann. § 62-7-1004 (emphasis added).

The South Carolina appellate courts have likewise endorsed the entitlement of a trustee to employ attorneys and to pay their fees from the assets of the trust. In *Rembert v. Gressette*, 318 S.C. 519, 458 S.E.2d 552 (1995), the circuit court held for the trustees in connection with certain beneficiaries' actions against the Trustees for alleged breach of fiduciary duty and mismanagement. In affirming the judgment of the circuit court in favor of the Trustees, the Court of Appeals of South Carolina approved of the trustees' having engaged an attorney to assist the trustees. The Court of Appeals, citing the stature of the attorney for the Trustees as a certified specialist in estate planning and probate law in South Carolina, detailed the five years of representation the attorney had provided the trustees, and the successful results the attorney had obtained, thus preserving trust assets. The court upheld the trustees' payment of the fees of trust counsel from the assets of the trust as well as the amount of those fees.

Courts have routinely awarded trustees their reasonable attorneys' fees under their state's counterpart to S.C. Code Ann. § 62-7-1004. *Garwood v. Garwood*, 233 P.3d 977, 985 (Wyo.

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2010) ("[A] trustee should not be personally responsible for litigation expenses associated with the proper exercise of its official duties."); *Klinkerfuss v. Cronin*, 289 S.W.3d 607 (Mo. Ct. App. 2009) (awarding payment under Missouri's version of § 1004, "[o]therwise . . . the trustee would have to personally bear the expense for performing his duty to the trust"); *see also O'Riley v. US Bank NA*, 412 S.W.3d 400 (Mo. Ct. App. 2013) ("[A]n award of attorney's fees under section 456.10-1004 was proper where the litigation was brought and defended in good faith and there were issues raised which could only have been settled via judicial determination."); *In re Gene Wild Revocable Trust*, 299 S.W.3d 767 (Mo. Ct. App. 2009) (same).

Payment of a trustee's attorneys' fees and expenses out of trust assets is appropriate where such expenses were incurred in good faith, and for the benefit or preservation of the trust. *Rapp v. Rapp*, 562 N.W.2d 359, 362 (Neb. 1997); *see also Shriners Hosps. for Crippled Children v. Robbins*, 450 So. 2d 798, 802 (Ala. 1984) ("When litigation expenses are necessary for the proper administration, preservation, and execution of the trust, the attorney's fees incurred by the trustees are chargeable against the estate."); *In re IMO Trust ex rel. Gore*, C.A. No. 1165-VCN, 2013 WL 771900 (Del. Ch. Feb. 27, 2013) (approving payment of substantial fees to trustee's litigation counsel and holding that "[a] trust should pay its trustee's attorneys' fees and expenses when the attorneys' services were necessary for the proper administration of the trust or where the services otherwise resulted in a benefit to the trust."); *Rouner v. Wise*, No. WD75305, 2013 WL 3880150 (Mo. Ct. App. July 30, 2013) (finding trial court did not abuse its discretion in awarding attorney's fees in favor of defendants where it determined that complex issues raised in plaintiffs' petition were not frivolous and required judicial determination and that defendants incurred litigation expenses while carrying out duty to defend the trust); *Anselmo v. Guasto*, 13 S.W.3d 650 (Mo. Ct. App. 1999) (upholding award of attorneys' fees to trustee's litigation counsel where services

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performed by the attorneys were for the benefit of the trust); *Matter of Great Northern Iron Ore Properties*, 311 N.W.2d 488 (Minn. 1981) (same); *Nickas v. Capadalis*, 954 S.W.2d 735 (Tenn. App. 1997) ("In an action involving a trust, the award of attorney's fees from the trust corpus is permitted only when the services of such attorneys inure to the benefit of the entire estate as distinguished from services rendered to benefit one or more of the individuals interested in the trust.").

The Court finds that the South Carolina Trust Code and the Will of L.W. Boykin, II authorize lawyers and professional consultants to be hired by the Co-Trustees of the Residuary Trust, and to be compensated from trust principal or income or both. S.C. Code Ann. §§ 62-7-709 ("Reimbursement of expenses"), 62-7-816 ("Specific powers of trustee"), 62-7-1004 ("Attorney's fees and costs"). Specifically, Item XIV, Paragraph J of the Will provides that Co-Trustees are authorized to employ and compensate, out of the principal or income of the Residuary Trust, agents, accountants, brokers, attorneys, tax specialists, and their assistants, advisors deemed needful for the proper management, handling and administration of the Residuary Trust, provided such professional representatives are selected and retained with reasonable care. Additionally, Item XIV, Paragraph N of Decedent's Will grants the Co-Trustees "the authority to do all things and the right to exercise all powers reasonably necessary or incidental to the proper management" of the Residuary Trust.

The Court finds that the attorneys' and consultants' fees incurred by all the parties in this case have been occasioned by their attempt to manage and operate the Trust, and therefore those are valid fees chargeable to the Trust. Accordingly, the court must now apply the relevant Glasscock factors to determine the reasonableness of these fees being awarded from the assets of the Trust.

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At the close of the trial of this case, the Court requested that counsel for the parties submit affidavits of attorneys' fees and costs. The Court has reviewed those affidavits, the supporting documentation provided therein, the law regarding awards of attorneys' and consultants' fees, and finds as follows:

A. Petitioner is entitled to $593,878.20 to be paid in attorneys' and consultants' fees and costs from the Trust.

Petitioner's team of legal counsel and experts consisted of Richard S. Rosen, Esquire, and Liam D. Duffy, Esquire, whom are both experienced, skilled attorneys, of high professional standing in the community and in good standing with the Bar of this State. In addition, Peitioner employed James C. Hardin, III, Esquire, William H. Harrison, Jr., and Richard C. Tiller as consultants to advise Petitioner as Trustees and testify at the trial of this matter. The fees charged in this matter were on an hourly basis and not based upon a contingency of compensation. Upon review of the affidavits submitted by Petitioner, the Court finds the hourly fees charged by Petitioner's counsel are of those customarily charged in the locality for similar legal services.

A review of the billing records submitted by Petitioner clearly indicates that they are properly detailed and that the time and labor spent by Petitioner's counsel is both reasonable for the effort required to litigate this case and was not duplicative. This was a case of complex nature, involving nuanced legal issues related to fiduciary management, prudent investment, appropriate beneficiary distributions, conflicts of interest, powers and duties of trustees, and other matters made even more challenging by the highly contentious nature of this litigation.

Unfortunately, the beneficial results obtained by counsel for Petitioner do not warrant the full award of fees being sought. Petitioner was unsuccessful in each of his causes of action. Instead, Petitioner is now being removed as Trustee. Additionally, the Court finds that the fees sought for Mr. Hardin are excessive in light of his contribution to the development of this action.

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Mr. Hardin's testimony at trial was limited and much of his advice to Petitioner runs completely contrary to the Court's interpretation of the applicable law.

Based on the foregoing, the Court finds that the fees sought by Petitioner to be paid by the Trust are unreasonable in light of the Glasscock factors and the amount to be paid by the Trust must be reduced. Accordingly, the Court orders that the fees sought in connection with Mr. Rosen and Mr. Duffy's representation should be reduced by 20%, but that the costs associated with the same be paid in full. The Court further orders that the fees sought in connections with Mr. Hardin's representation should be reduced by 50%. The remaining consultant fees related to Mr. Harrison and Mr. Tiller's work for Petitioner shall be paid in full.

B. Respondents are entitled to $729,614.06 to be paid in attorneys' and consultants' fees and costs from the Trust.

Respondents team of legal counsel consisted of James Y. Becker, Esquire, Robert L. Reibold, Esquire, and Mary Cothonneau Eldridge, Esquire, all of whom are experienced, skilled attorneys, of high professional standing in the community and in good standing with the Bar of this State. Respondents also employed John R. Helms and Cheryl Holland as consultants to advise Respondents as Trustees and testify at the trial of this matter. In addition, Respondent Belger is seeking reimbursement of fees she paid to Nelson Mullins, LLP, Siddons Law Firm PC, and Bundy McDonald LLC for legal services they rendered to her in connection with her duties as a Trustee. The fees charged in this matter were on an hourly basis and not based upon a contingency of compensation. Upon review of the affidavits submitted by Respondents, the Court concludes that the hourly fees charged by Respondents counsel are of those customarily charged in the locality for similar legal services.

A review of the billing records submitted by Respondents clearly indicates that they are properly detailed and that the time and labor spent by counsel is both reasonable for the effort

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required to litigate this case and was not duplicative. As previously noted, this was a case of complex nature, involving nuanced legal issues related to fiduciary management, prudent investment, appropriate beneficiary distributions, conflicts of interest, powers and duties of trustees, and other matters made even more challenging by the highly contentious nature of this litigation.

Counsel for Respondents obtained substantial beneficial results for their clients. Respondent's counsel was able to successfully defend each of the claims brought against their client and successfully pursue the removal of Petitioner as Trustee. Based on the foregoing, the Court finds that the fees sought by Respondents are reasonable in light of the Glasscock factors and orders that the fees sought by Respondents be paid in full from the assets of the Trust.

C. Cross-Claimants Whit Boykin and May Cantey Boykin are entitled to $106,343.53 to be paid in attorney's fees and costs from the Trust.

Cross-Claim Respondents Whit Boykin's and May Boykin's attorney, William S. Tetterton, Esquire, is an experienced, skilled attorney of high professional standing in the community and in good standing with the Bar of this State. The fees charged in this matter were on an hourly basis and not based upon a contingency of compensation. The hourly fees charged by Mr. Tetterton are of those customarily charged in the locality for similar legal services. A review of the billing records submitted by Respondents Whit Boykin and May Boykin clearly indicates that they are properly detailed.

However, the Court finds that the time and labor spent by their counsel was excessive in light of the limited role that counsel played in this action. Specifically, counsel for Cross-claimants largely adopted the positions taken by Petitioner. Further, counsel for Cross-claimants was unable to obtain any significant beneficial results on behalf of his clients.

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Based on the foregoing, the Court finds that the fees sought by Cross-Claimants to be paid by the Trust are unreasonable in light of the Glasscock factors and the amount to be paid by the Trust must be reduced. Accordingly, the Court orders that the fees sought in connection with Mr. Tetterton's representation should be reduced by 50%, but that the costs associated with the same be paid in full.

CONCLUSION

Based on the foregoing, the Court:

1. Grants judgment against Petitioner on his third cause of action for a declaration that he should have pre-eminent authority over his Co-Trustees. The law does not authorize the requested relief;

2. Grants judgment against Petitioner on his fourth cause of action for modification of the Trust. There is no change of circumstances sufficient to warrant the modification of the Trust sought in Petitioner's pleadings;

3. Grants judgment against Petitioner on his Fifth Cause of Action for removal of Respondents Wortley and Belger as Trustees;

4. Grants judgment against Cross-Claimants on their claim for removal of Respondents Wortley and Belger as Trustees; and

5. Grants judgment for Respondents Wortley and Belger and the interveners on their request to remove Petitioner as a Trustee. Petitioner Rigdon Boykin is removed as a Trustee of the Residuary Trust effective immediately. The Court hereby proposes to appoint Cheryl Holland to fill the vacant Trustee position. Ms. Holland shall notify the Court in writing within 30 days if she accepts this position as Trustee. If Ms. Holland rejects this position, each party shall submit a proposed replacement to fill the final vacant Trustee position and the Court shall choose a

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replacement from these proposals. Parties shall submit their proposed replacement in writing within 30 days of the date of Ms. Holland's letter rejecting the position. If the delay in filling this position interferes with administration of the Trust, any Trustee or beneficiary may petition the Court to appoint a special fiduciary until such time as a formal replacement for Petitioner can be instated.

6. Relieves court-appointed trust counsel, Benjamin R. Gooding, Esq., from his duties to the Trust under the Court's May 2, 2018 Order upon the appointment of a successor trustee to Petitioner. Mr. Gooding is instructed wrap up any outstanding work related to his court-appointed representation of the Trust. Additionally, Mr. Gooding may, at the request of the Trustees, continue to do work for the Trust outside of his court-appointed capacity.

6. Grants the Parties request for reimbursement of attorney's fees to the counsel and experts from the Residuary Trust as follows:

a. To Petitioner in the amount of $593,878.20;

b. To Respondents in the amount of $729,614.06; and

c. To Cross-Claimants in the amount of $106,343.53.

AND IT IS SO ORDERED.

The Honorable Jean H. Toal
Presiding Judge

May ___, 2019

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Kershaw Common Pleas

Case Caption: Rigdon Boykin Co-Trustee , plaintiff, et al VS Mary Deas Wortley , defendant, et al

Case Number: 2017CP2800831

Type: Order/Civil Judgment

IT IS SO ORDERED.

s/ Jean H. Toal #2758

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased **Rigdon H. Boykin**, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B; Petitioner, v. **Mary Deas Wortley**, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; et al.; Respondents.	Case No. 2017-CP-28-00831 **ORDER DENYING MOTIONS TO ALTER OR AMEND FINAL ORDER AND JUDGMENT**

Before this Court are three post-trial motions: Petitioner's Motion to Alter or Amend dated June 3, 2019; Respondents' Amended Motion to Alter or Amend dated June 3, 2019; Petitioner's Re-Filing of his Motion to Alter or Amend dated June 13, 2019. The Court has reviewed the memoranda in support and opposition of these motions that were filed by Petitioner, Respondents, and Cross-Claimants. In addition, the Court has reviewed the Petitioner's Supplemental Memorandum regarding Post Trial Motions and the Respondent's Reply to the same. For the reasons stated below, the Court denies each of these motions.

FACTUAL AND PROCEDURAL BACKGROUND

This case arose out of a dispute among the co-trustees of the Lemuel Whitaker Boykin, II Residuary Trusts A and B (the "Residuary Trust" or the "Trust"), a family trust created by the will

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("Will") of Lemuel Whitaker Boykin, II (the "Testator") concerning the governance of the Trust and its assets. Trustee Rigdon H. Boykin ("Petitioner") alleged that his Co-trustees, Mary Deas Wortley and Alice Boykin Belger (collectively, "Respondents") have failed to prudently manage the Residuary Trust in numerous respects.

Petitioner complained, among other things, that the Trustees must re-allocate the Trust's assets and do so as quickly as possible by selling 85% of the Trust's real property holdings within two to four years, including certain properties that the Testator specified in the Will should be preserved, if at all possible. Petitioner also requested that the Court remove Respondents as Trustees of the Trust, as they were not fit or competent to serve in that capacity. Respondents Lemuel Whitaker Boykin, III and May Cantey Boykin ("Cross-Claimants"), who two of Testator's four children and are income beneficiaries of the Residuary Trust, originally joined in Petitioner's request that Respondents be removed as Trustees.

Respondents, who are the remaining children of Testator, argued that, as Trustees, they were bound to follow the clear and unambiguous terms of the Will by preserving those properties identified as legacy property by the Testator. Respondents also asked the Court to remove Petitioner removed as a Trustee.

This case was tried in two phases, with the first phase taking place on July 9 and 10, 2018 and the second phase taking place on September 27 and 28, 2018. Following trial, this Court left the record open to allow the parties to submit additional evidence, including deposition testimony of a rebuttal expert for Petitioner.

On May 24, 2019, this court issued its Final Order and Judgment (the, "Final Order"), in which the Court granted final judgement in favor of the Respondents and ordered that Petitioner be removed as a Trustee of the Residuary Trust.

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Following this order, both Petitioner and Respondents filed Motions to Alter or Amend pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure on June 3, 2019. Petitioner filed his Rule 59(e) motion *pro se*. On June 13, 2019, Wallace K. Lightsey and Wade S. Kolb III filed a notice of appearance on behalf of Petitioner. That same day, Petitioner re-filed his Motion to Alter or Amend, this time signed by his new counsel.

CONCLUSIONS OF LAW

A. Petitioner's Motions to Alter or Amend

The Court finds that Petitioner's original Motion to Alter or Amend filed on June 3, 2019 was not properly filed with the Court as it was filed by Petitioner *pro se*. Petitioner, while an attorney, is not licensed to practice in South Carolina. South Carolina law is clear that "[n]o person may either practice law or solicit the legal cause of another person or entity in this State unless he is enrolled as a member of the South Carolina Bar pursuant to applicable court rules, or otherwise authorized to perform prescribed legal activities by action of the Supreme Court of South Carolina." S.C. Code Ann. 40-5-310. As a trustee, Petitioner is acting in a representative capacity bringing this action on behalf of the beneficiaries of the Trust. An unpublished opinion from our Court of Appeals considered this exact issue and found that a non-attorney trustee cannot represent a trust in South Carolina court. *See Real Estate Unlimited, LLC v. Rainbow Living Trust*, Unpublished Opinion No. 2004-UP-019, (S.C. Ct. App. filed Jan. 15, 2004). Further, neither Petitioner, nor his counsel, filed a motion to withdraw or remove the counsel that represented him at trial. Accordingly, at the time he filed his first Motion to Alter or Amend, Petitioner was still represented by that same counsel. To the extent Petitioner wanted to move before this Court, he should have done so through his trial counsel. Accordingly, the Court finds that Petitioner's Motion to Alter or Amend was improperly filed and dismisses the same.

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In an apparent attempt to correct this error, Petitioner subsequently obtained additional counsel, who appeared in this case and then re-filed the same motion. This second motion was signed by Petitioner's new counsel, who were licensed to practice in South Carolina. However, Rule 59(e) requires that motions to alter or amend be served no later than 10 days after the written notice of the entry of the order. Accordingly, Petitioner's re-filed motion was not timely and is therefore also dismissed.

In addition to the fact that his motions are not properly before this court, either by virtue of Petitioner's first *pro se* filing or his second untimely filing, Petitioner has not raised any valid grounds for altering or amending the Court's Final Order. Petitioner outlines five arguments in his two motions. Each of these arguments is addressed in turn below.

Petitioner first argues that the Final Order fails to account for the fact that the Residuary Trust had virtually "no net fiduciary income for the years 2017 and 2018 and is unlikely to have any net fiduciary income going forward without substantial and immediate diversification." While it is certainly true that the Trust has had little to no net fiduciary income for the last two years, this has been in large part due to the nature of the Trust's current assets, which is primarily timber land. However, during the last two years, the Trustees have sold numerous stands of timber that have generated significant income for the Trust. While this income is not net fiduciary income, that does not mean that the Trust has not had cash to operate or make distributions to its beneficiaries. In addition, the diversification sought by Petitioner is addressed in Respondents' investment plan, although not to the same extreme advocated by Petitioner. Ultimately, the Court stands by its decision to endorse the investment plan advanced by Respondents, which the Court feels adequately balances the interests of the various beneficiaries and the Testator's preferences set forth in his Will.

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Petitioner next argues that the Court erred in failing to rule on "a critical issue in the case – the net asset value of the Residuary Trust." The Court was not required to make a finding of fact concerning the overall value of the Trust's assets in order to resolve the legal issues before it. The issues before the Court included: an action for declaratory relief, an action to modify the terms of the Trust, multiple actions to remove one or more of the Trustees, requests for miscellaneous relief sought at the conclusion of the final hearing (such as the request to spit the trust), and requests for the award of attorney's fees. None of these issues require a finding of fact concerning the value of the Trust's assets. Further, contrary to Petitioner's insistence that this is a critical issue for both the Trustees and the Court, under the unambiguous terms of the Trust, the Trustees are not required to determine the value of the Trust's assets in order to make a distribution to the income beneficiaries. Item VIII of the Will simply requires the "net income" from the Residuary Trust be distributed "in convenient installments at least annually" to the income beneficiaries. Further, as noted by Respondents, the value of these assets will continuously change as markets for Timber and real property fluctuate up and down, making this figure even less useful. Ultimately, the Court finds the issue of the net asset value is not critical to any of the issues before the Court or to the administration of the Trust generally.

In his third argument, Petitioner argues that the Final Order does not distinguish between Residuary Trust property which are subject to the Testator's stated desire for retention and those that are not identified to be retained. The Final Order states that: Testator's desires are expressed in the terms of the Will; the parties all agree these desires are precatory, rather than mandatory; and the Testator's preferences expressed in the Will are entitled to respect. The Final Order also states:

> While this preference is entitled to respect, the Testator's stated desire to retain property cannot overrule the common sense of the

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> Trustees he put in charge of his legacy. As times change, the Trustees must use their best judgment to prudently manage the Trust and maximize the Trust's benefits to all beneficiaries.

Final Order at 49. The Final Order is clear on the appropriate deference that should be given to the Testator's desires for retaining property outlined in the Will.

In his fourth argument, Petitioner argues that the Trial Court erred in appointing Cheryl Holland as the substitute co-trustee to replace Petitioner. Petitioner argues that the third trustee who serves with Respondents should "adequately represent the interests of [Cross-Claimants] Whit and May Boykin." To begin, Cheryl Holland is extremely qualified to serve as a Trustee of the Residuary Trust. Ms. Holland is a certified financial planner and is the founder and president of Abacus Planning Group. She is an expert in the fields of financial planning and investments and fiduciary standards for investing. Ms. Holland is also a certified family business planner, and testified that she advises families that have shared assets, such as a closely held business, real estate, timber, or commercial real estate, regarding disposition of those assets. Ms. Holland also testified that during her professional practice, she has provided investment and planning advice to approximately 150 trusts, and that the values of those trusts have ranged from $150,000.00 to $22 million. Notably, Ms. Holland testified that she has experience advising clients with assets similar to those of the Trust. Further, based upon her testimony at the final hearing, the Court is confident that Ms. Holland will manage the trust and advise her co-trustees in an objective manner, using her best professional judgment. Finally, Petitioner's argument that the third trustee should represent the interest of Cross-Claimant ignores the fact that every Trustee owes fiduciary duties to all the Trust's beneficiary. Accordingly, the Trustees, including Ms. Holland and Respondents, must manage the Trust in such a way that is mindful of both the income and residual beneficiaries' interests.

In his final argument, Petitioner argues that the Court misconstrued the parties arguments

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concerning the "underproductive property rule." Petitioner's argument in support of this position does not make sense. In the Final Order, the Court cites the Testator's waiving of the unproductive property rule as evidence of "a preference for the interest of the remainder beneficiaries over those of the income beneficiaries." In Petitioner's own words,

> The unproductive property rule was to the effect that if an unproductive asset was at some point made productive (such as by the sale of the asset) the trust beneficiaries were to be made whole by the trustees' [sic] paying them "delayed income," that is, income which would have been received by them during the period when the asset was unproductive. When the [Testator] in this case said he waived the delayed income requirement, he was providing that the four beneficiaries (Respondents Wortley, Belger, Whit Boykin, and May Boykin) were not to be made whole.

Pet. Mot. to Alter or Amend at 4. By Petitioner's own description of this rule, the waiver of the unproductive property rule supports the point being made in the Final Order, which was that the Will contains many terms that benefit the remainder beneficiaries at the expense of the income beneficiaries. The Court does not see how the waiver of this rule "is indicative of [Testator's] belief that real estate must be sold." To the contrary, the Testator expressly stated a preference for the retention of property in numerous places throughout the terms of his Will. As noted previously, the Trustees should mindful of Testator's stated desires as they manage the Trust's assets and fulfil their duties as trustees.

In conclusion, Petitioner's two Motions to Alter or Amend are not properly before the Court. Petitioner's first motion was improperly filed by Petitioner, who is not licensed to practice in this state and therefore cannot proceed in this case *pro se.* Petitioner's second motion is untimely. Finally, none of the arguments raised by Petitioner have merit, and as a result, the Court would have denied these motions if either were properly before the Court.

B. Respondents' Motion to Alter or Amend:

Respondents have also filed a Motion to Alter or Amend related to the Court's Final Order.

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For the reasons outlined below, this motion is denied.

This motion raises two grounds for reconsideration. The first ground relates to the Court's failure to address the Respondents' outstanding Motion to Compel Petitioner and Cross-Claimants to Consent to an IRC §2032A Tax Election, which was filed with this Court on November 28, 2018. This motion will be addressed in a separate order to be entered by this Court. Accordingly, the issues raised in Respondents' motion to compel are moot.

The second ground of Respondents' Motion to Alter or Amend focuses on the Court's award of attorney's fees to counsel for Petitioner and Cross-Claimants. Specifically, Respondents argue that (1) there is no legal basis on which to award fees and expenses to Cross-Claimants, (2) the award of attorney's fees to Petitioner should be stricken or substantially reduced, and (3) the award to Petitioner's trust and estate expert, James Hardin III, should be eliminated or further reduced.

Under Section 62-7-1004 of the Trust Code, the Court has the authority to award costs and expenses, including reasonable attorney's fees "as justice and equity may require . . . to any party, to be paid by another party of from the trust that it the subject of the controversy." Under this provision, the awards of attorney's fees made in the Final Order are all authorized by the South Carolina Trust Code.

With regard to the attorney's fees awarded to Cross-Claimants, the Court is also concerned with the practical effect of not awarding attorney's fees to Cross Claimants. Specifically, from their testimony at trial, the Court is aware that Cross-Claimants lack independent means to pay hundreds of thousands of dollars towards legal fees related to this litigation. As a practical matter, if the Court did not award fees in this case, it would seem likely that the Cross-Claimants would petition the Trustees to make a distribution to help pay for this outstanding debt.

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Further, the Court has repeatedly noted its belief that while Petitioner's action ultimately failed under the prevailing law and applicable terms of the Will, this action was nevertheless brought in good faith out of Petitioner's desire to appropriately manage the Trust's assets. The Court further notes that the action resulted in the Trustees developing comprehensive, long-term plans for the management of the Trust's assets. These plans are certainly beneficial to the Trust and its beneficiaries. The Court stands by its prior decision to award attorney's fees and to reduce those fees pursuant to the *Glasscock* factors as laid out in the Final Order.

Ultimately, this action is a sad and complicated dispute between family members about how the Testator's legacy should be managed. The costs of this dispute ballooned rapidly, resulting in an enormous amount spending on legal fees and expenses that have resulted in little financial benefit to any of the Trust's beneficiaries. As the Court stated at the final hearing, it hopes the resolution of this action will help heal the divisions that has developed within this family and allow these siblings to move forward in their relationships. The Court urges this family to put this dispute behind them and reconcile their differences so that the Testator's legacy is not squandered on fighting amongst his children.

Finally, in his Supplemental Memorandum regarding Post-Trial Motions, Petitioner expresses a concern that the Final Order "merely sets the stage for future litigation." The Court hopes that all of the parties have learned from this action about the costs of litigation. This action has certainly taken a hefty toll on both the assets of the Trust and the relationships in the Boykin family. Most of the disputes concerning the appropriate approach to managing the Trust and the Trustees' authority for doing so have been squarely resolved by the current litigation. The Court has a hard time envisioning how additional litigation would be beneficial to the Trust or its beneficiaries. Accordingly, the Court would caution anyone considering filing additional litigation

to think long and hard before filing another action as the Court will be reluctant to permit the cost of any future litigation to be paid out of the Trust's assets.

CONCLUSION

Based on the foregoing, the Court:

1. Dismisses Petitioner's Motion to Alter or Amend as improperly filed;
2. Dismisses Petitioner's Re-Filed Motion to Alter or Amend as untimely; and
3. Denies Respondent's Motion to Alter or Amend.

AND IT IS SO ORDERED.

The Honorable Jean H. Toal
Presiding Judge

August ___, 2019

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Kershaw Common Pleas

Case Caption: Rigdon Boykin Co-Trustee , plaintiff, et al VS Mary Deas Wortley , defendant, et al

Case Number: 2017CP2800831

Type: Order/Amend

IT IS SO ORDERED.

s/ Jean H. Toal #2758

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW)
)
Rigdon Boykin, as sole disinterested Co-Trustee of the L.W. Boykin, II Residuary Trust,) CIVIL ACTION COVERSHEET
)
Plaintiff(s))
) 2017-CP-28-831
vs.)
)
Mary Deas Wortley and Alice Belger, et al.)
)
Defendant(s))

(Please Print)
Submitted By: Richard S. Rosen
Rosen, Rosen & Hagood, LLC
Address: 151 Meeting Street, Suite 400
Charleston, SC 29401

SC Bar #: 4917
Telephone #: 843-266-8124
Fax #: 843-724-8036
Other:
E-mail: rrosen@rrhlawfirm.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

FILED FOR RECORD
2017 SEP 19 PM 2:22
JANET HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499) _____

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date:** September 14, 2017

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

2017-CP-28-831

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
)
COUNTY OF KERSHAW) CASE NO: 2017ES2800633

IN THE MATTER OF:
LEMUEL WHITAKER BOYKIN, II,
deceased

Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B,

Petitioner,

v.

Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin

Respondents.

SUMMONS

FILED FOR RECORD
2017 SEP 19 PM 2:27
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

FILED
2017 AUG 23 PM 1:10
DEBRA B. BRANHAM
JUDGE OF PROBATE
KERSHAW COUNTY, S.C.

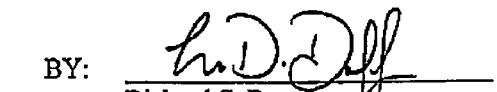
TO THE RESPONDENT(S) ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Petition herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to this Petition upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Petition, judgment by default will be rendered against you for the relief demanded in the Petition.

[SIGNATURE BLOCK ON NEXT PAGE]

A CERTIFIED COPY:
ATTEST: Debra B. Branham
PROBATE JUDGE
KERSHAW COUNTY, S. C.

ROSEN, ROSEN & HAGOOD

BY: 

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Charleston, SC 29401
Telephone: (843) 577-6726
Facsimile: (843) 982-0103
rrhlawfirm.com

Attorneys for Petitioner, Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trust

Charleston, South Carolina

August 23, 2017

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2017 SEP 19 PM 2:27
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA	IN THE PROBATE COURT
COUNTY OF KERSHAW	CASE NO: 2017-CP-28-831
IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Petitioner, v. Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin Respondents.	**PETITION FOR ATTORNEY'S FEES, TRUSTEE FEES AND DECLARATORY JUDGMENT**

FILED
2017 AUG 23 PM 1:10
DEBRA B. BRANHAM
JUDGE OF PROBATE
KERSHAW COUNTY, S.C.

Rigdon H. Boykin ("Petitioner"), as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, hereby petitions the Court, pursuant to S.C. Code Ann. 62-7-201, and the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-50, for an Order determining various questions arising from the administration of the Lemuel Whitaker Boykin II Residuary Trusts A and B, and further instructing the Co-Trustees in discharging their fiduciary duties. Specifically, Petitioner respectfully requests that the Court enter an Order which provides for the payment from trust assets of Petitioner's attorney's fees and trustee fees, which have been

A CERTIFIED COPY:
ATTEST: Debra B. Branham
PROBATE JUDGE
KERSHAW COUNTY, S. C.

and will be necessarily incurred to carry out his fiduciary duties as sole, disinterested Co-Trustee acting in the best interests of all beneficiaries and remainder persons. Petitioner further requests that the Court order that, as sole disinterested, non-beneficiary Co-Trustee of the Residuary Trust, Petitioner is entitled to exercise preeminent authority among the three Co-Trustees of the Residuary Trust (including the authority to appoint trust counsel), or otherwise be appointed as a "special fiduciary" under S.C. Code § 62-7-1001(b)(5).

The grounds for this Petition are as follows:

BACKGROUND AND PARTIES

1. Lemuel Whitaker Boykin, II ("Decedent"), was a resident and citizen of Kershaw County, South Carolina, at the time of his death on December 19, 1989.

2. Decedent's Last Will and Testament (the "Will") was duly executed on June 2, 1989, and provided for the creation of two separate trusts: The Lemuel Whitaker Boykin, II Marital Deduction Trust and the Lemuel Whitaker Boykin, II Residuary Trust. A true and correct copy of Decedent's Will is attached hereto as Exhibit A.

3. Pursuant to an Order entered by the Probate Court for Kershaw County, South Carolina on March 19, 1991, the Marital Deduction Trust was split into two trusts, Marital Deduction Trust A and Marital Deduction Trust B (hereinafter collectively the "Marital Deduction Trust"), and the Residuary Trust was likewise split into two trusts, Residuary Trust A and Residuary Trust B (hereinafter collectively the "Residuary Trust").

4. Decedent was survived by his four children and his spouse, Alice Shoolbred Boykin ("Alice Boykin"), who was also a resident and citizen of Kershaw County, South Carolina. Alice Boykin died on August 8, 2016.

5. Upon the death of Alice Boykin, the remaining assets of the Marital Deduction Trust were transferred as a matter of law into the Residuary Trust pursuant to Item VII of Decedent's Will. The present controversy involves the management and disposition of estate assets which are held in the Residuary Trust.

6. The current income beneficiaries of the Residuary Trust are as follows:

a. Mary Deas Wortley ("Wortley"), Decedent's eldest daughter from his prior marriage. Wortley is a resident and citizen of the State of Ohio and has three (3) children and six (6) grandchildren, none of whom live in South Carolina. Wortley is seventy four (74) years of age.

b. Alice B. Belger ("Belger"), Decedent's and Alice Boykin's daughter. Belger is a citizen and resident of Kershaw County, South Carolina and has one (1) daughter with her husband, Wayne Belger. Alice Belger is fifty six (56) years of age.

c. Lemuel Whitaker Boykin, III ("Whit III"), Decedent's and Alice Boykin's only son. Whit III is a citizen and resident of Kershaw County, South Carolina and has no spouse and no children. Whit III is fifty five (55) years of age.

d. May Cantey Boykin ("May") is Decedent's and Alice Boykin's youngest daughter. May is a citizen and resident of the State of New York and has no children. May is fifty four (54) years of age.

7. The Co-Trustees of the Residuary Trust are Respondent Belger (as successor trustee to Alice Boykin), Respondent Wortley, and Petitioner, who is Decedent's cousin and the only disinterested, non-beneficiary Trustee of the Residuary Trust (collectively, "Co-Trustees"). (Item XII(b)).

8. This Court has jurisdiction over this action pursuant to S.C. Code Ann. § 62-7-201(a) ("[T]he probate court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts."); S.C. Code Ann. § 62-7-201(d) ("The probate court has concurrent jurisdiction with the circuit courts of this State over attorney's fees."); S.C. Code Ann. § 62-7-708 – Compensation of Trustees.

THE RESIDUARY TRUST

9. The terms of the Residuary Trust provide that the Co-Trustees shall pay, for the benefit of Wortley, Belger, Whit III and May, "during their lifetimes the net income from this trust in convenient installments at least annually and in such shares and proportions as the Trustees in their sole discretion shall determine . . . primarily for the medical care, comfortable maintenance, welfare and education of my said beneficiaries . . . ." (Item VII(1)).

10. The Residuary Trust further provides that the Co-Trustees may, in their sole discretion, for the medical care, education, support and maintenance and reasonable comfort of the income beneficiaries, distribute sums from principal of the Residuary Trust to Decedent's children during their lifetime. (Item VII(2)).

11. Importantly, the Residuary Trust requires that the trust be terminated upon the death of Decedent's last surviving child, at which point the Residuary Trust is to be distributed by dividing the assets into separate shares for each of Decedent's deceased children who shall leave living issue. (Item VIII (3)).

12. The only children of Decedent who currently have living issue who could receive the assets of the Residuary Trust upon their death, are Respondents Belger and Wortley. This creates a conflict of interest for Respondents Belger and Wortley. They are acting in their own

personal interests to the detriment of the other income beneficiaries and remainder persons. Pursuant to S.C. Code 62-7-802, a transaction involving the management or investment of trust assets "which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is **voidable by a beneficiary affected by the transaction.**" (emphasis added).

13. Decedent states in the Residuary Trust: "It is my desire, **but I do not direct**, that certain tracts or parcels of real property located in the State of South Carolina . . . shall to the fullest extent possible be preserved for the benefit of or transferred to my children or their issue." However, the Residuary Trust then provides an order of preference for the sale of those tracts or parcels, in the event that they are sold by the Co-Trustees. (Item X) (emphasis added). Clearly Decedent contemplated that circumstances could arise where the prudent exercise of trustee judgment would involve the sale of the parcels of real property identified in Item X of his Will.

14. Under the express terms of the Residuary Trust, the Co-Trustees are entitled to "reasonable compensation" for their services as Co-Trustees. (Item XII(b)).

15. Particularly relevant to the present controversy, Item XIV of the Residuary Trust requires unanimous vote among the Co-Trustees to sell or otherwise act with respect to any real property held by the Residuary Trust.

16. The Co-Trustees must "invest and reinvest the property of the estate or trust in such manner as men of prudence exercise in the management of their own affairs." (Item XIV(c)).

17. Decedent also unambiguously provided that the Co-Trustees have the power (among others) to "employ and compensate, **out of the principal or the income or both** as to the Personal Representative or trustee shall seem proper, agents, accountants, brokers, attorneys-in-

fact, attorneys at law . . . deemed needful for the proper management, handling and administration of the estate or trust . . . ." (Item XIV(j) (emphasis added)).

18. Petitioner and Respondents Belger and Wortley, as Co-Trustees of the Residuary Trust, also owe a number of fiduciary duties to the Residuary Trust beneficiaries and remainder persons under the South Carolina Trust Code, including but not limited to: the Duty of Prudent Investment – S.C. Code Ann. §§ 62-7-804, 62-7-933; the Duty to Diversify – S.C. Code Ann. § 62-7-933; the Duty of Loyalty/Conflict of Interest – S.C. Code Ann. § 62-7-802; the Duty of Impartiality – S.C. Code Ann. § 62-7-803; the Duty to Administer Trust in Good Faith – S.C. Code Ann. §§ 62-7-105, 62-7-801; and the Duty to Prevent/Redress Co-Trustee's Breach of Trust – S.C. Code Ann. §§ 62-7-703(g), 62-7-104(24).

19. To date, Respondents Belger and Wortley have been unwilling to act in a manner which is in the best interests of all beneficiaries and remainder persons.

DISPUTE AS TO MANAGEMENT OF RESIDUARY TRUST ASSETS

20. From the time of Alice Boykin's death on August 8, 2016 until now, there has been considerable disagreement between Petitioner and the other Co-Trustees as to the proper administration, distribution, management, and investment strategy as it relates to the assets of the Residuary Trust.

21. At the time he died, Decedent's estate primarily consisted of a few commercial properties, a liquor store and a substantial amount of farm and timberland. Decedent wanted to leave most of the land around Boykin, South Carolina to Whit III to farm and enjoy, however, he realized his son was not going to be a farmer, timber logger or timber broker. Consequently, Decedent decided to leave his estate in a trust which might be able to keep a portion of the land

intact in the event Whit III had a son who could inherit the land and farm it. See Decedent's Will, Item X (expressing Decedent's desire that Trustees arrange for certain tracts of land to be passed to the oldest male child of Whit III, if possible). At the time Decedent died, the value of the farm and timber land was commensurate with its use for farming and growing trees.

22. From 1989 until August 8, 2016, Respondent Wortley and Alice Boykin were Co-Trustees of the Marital Deduction Trust. (Item VII; Item XI). Throughout that time, the assets of the Marital Deduction Trust—which included approximately 5,400 acres of timberland—were grossly mismanaged by Respondent Wortley and Alice Boykin in violation of the duties imposed on trustees by the South Carolina Trust Code, as well as under Decedent's Will. Specifically, Respondent Wortley and Alice Boykin failed to properly manage the Marital Deduction Trust's timberland assets, in that trees were not thinned or cut at appropriate times, severely undermining the continuity of normal timber revenues.

23. On information and belief, the Residuary Trust, after the settlement of Alice Boykin's estate and the payment of taxes, will have approximately 6,000 acres of land in Kershaw County, Sumter County, and Fairfield County, South Carolina worth between $24,000,000 and $27,000,000 and approximately $1,000,000 in commercial land and liquid assets. The land represents over 90% of the value of the Residuary Trust.

24. Respondents Belger and Wortley, who are Co-Trustees *and* income beneficiaries, have consistently indicated that they want to keep in the Residuary Trust over 80% (in value) of the Residuary Trust's farm and timber land, which will produce minimal income and growth. In fact, the mismanagement of the Marital Deduction Trust assets by Alice Boykin and Wortley has

resulted in a situation where the timberland will produce much less income over the next 15-20 years than a properly managed timber property of an equal number of acres.

25. The other two income beneficiaries, Whit III and May, are not Trustees, do not have any children, and believe the Co-Trustees must act as responsible fiduciaries. Whit III and May believe that the relationship between the value of the land and its historical use as timber land and farm land is substantially different today, 27 years after the inception of the Residuary Trust. Whit III and May believe most of the land should be sold and the assets of the Residuary Trust should be invested in accordance with the standards for prudent investors. See S.C. Code Ann. §§ 62-7-804, 62-7-933 (prudence requires the exercise of "reasonable care, skill and caution"); Decedent's Will, Item XIV(c).

26. It is in the best interest of all the income beneficiaries and remainder persons to reduce risk and diversify the Residuary Trust assets, especially when the current value of over half of the land held in Residuary Trust is substantially above what a reasonable investor would hold as a farm or timber land investment. The Boykin family history has numerous ancestors who lost all of their land and/or a substantial part of their assets due to recessions, depressions and natural disasters. For example, just before he died, Decedent lost over half of his net worth from the destruction of timber during Hurricane Hugo. His grandfather lost most of his land during the depression.

27. Recognizing the significant divide among the Co-Trustees and income beneficiaries, Petitioner proposed a partial solution to the impasse in late 2016.

28. Petitioner offered to support a sale of the two most sentimental pieces of the land to Respondents Belger and Wortley, and the Residuary Trust would finance up to $1,500,000 each

for the land that they desired. At that time, Respondent Belger said she was interested in buying the "Millway" house and land around it and Respondent Wortley said she wanted to buy the Boykin Mill Pond, a buffer area around it, and the half interest the Residuary Trust owned in the cottage (in which Wortley already owned the other half interest). It was also agreed that Respondents Belger or Wortley could use personal funds—in addition to the amount that the Residuary Trust would finance—to increase the amount of land they could buy from the Residuary Trust.[1] Respondent Belger in particular was interested in this option.

29. Pursuant to this offer, Respondents Belger and Wortley agreed that the Residuary Trust would hire an appraiser to determine the fair market value of the two potential purchases. Given Respondent Belger's interest in possibly buying more than $1,500,000 worth of land, the appraiser was instructed to appraise Millway and the land around it (excluding the pond and buffer area) as one parcel and the land adjacent to Millway on the South side of Boykin Mill Road as a separate parcel. Petitioner spent a substantial amount of time working with the Charleston Appraisal Service, Inc., Lindler Surveying, Inc. and Respondents Belger and Wortley to divide the land they were interested in buying into parcels that would enable them to decide how much they wanted to purchase. The Residuary Trust paid approximately $30,000 for this appraisal work.

30. After the appraisals for Millway and the Boykin Mill Pond were received, Respondent Wortley stated she wanted to move forward with the purchase, but Respondent Belger stated that she wanted to study it more before making a decision. During this time, Respondent Belger also withdrew her previous consent to allow the Residuary Trust to sell a number of smaller

[1] S.C. Code Ann. § 62-7-904C(B)(3)(a) evidences the South Carolina General Assembly's approval of trustees who act as prudent investors by coming up with a "written policy" of investment—like the solution proposed here by Petitioner.

parcels of timber land, including the "Swamp Tract", the tract behind the Boykin Fire Station, and Sumter Mountain.

31. Ultimately, at a meeting of the Co-Trustees on March 23, 2017, Respondent Belger announced that she did not want to buy Millway or any Residuary Trust land and that she would oppose the sale of any land to other income beneficiaries. This decision has effectively destroyed efforts to achieve a compromise that would leave Millway and the Boykin Mill Pond in the hands of the income beneficiaries who had children who could inherit it. The sale of these lands also would enable the Residuary Trust to potentially keep another 15% of the land as a responsible trust investment.

32. The Residuary Trust must be managed in a reasonably prudent manner for the benefit of both the income beneficiaries and the ultimate remainder persons. The income beneficiaries, in the aggregate, each year should receive a minimum of 3% of the value of the Residuary Trust's assets. See S.C. Code Ann. § 62-7-904E(B) (stating that no less than 3% nor more than 5% is a "reasonable current return from the trust"). In addition, the Residuary Trust should grow in size for the remainder persons.

33. On information and belief, the Residuary Trust will have a minimum value of $25,000,000. Three percent (3%) of this amount equals $750,000, one fourth of which is the minimum distribution each income beneficiary should receive each year. In addition, the Residuary Trust must pay taxes, fees, and expenses which could total $250,000 or more per year. Also, the Residuary Trust on average should grow in size which will provide increased distributions for the income beneficiaries and a larger corpus for the ultimate benefit of the remainder persons, currently the children of Respondents Belger and Wortley.

34. Respondents Belger and Wortley have stated that periodic sales of timber on the Estate property, the leasing of land for hunting and fishing rights, and the sale of extraneous real property parcels will generate between $400,000 and $600,000 per year on average for the income beneficiaries of the Trust. Even if Respondents Belger and Wortley's gross revenue figures are correct, such a calculation does not account for the expenses of the Residuary Trust, which include but are not limited to attorney's fees, taxes, advisor fees, maintenance expenses, and commissions. Therefore, the amount of revenue generated by that strategy will be insufficient to provide for the income beneficiaries and growth in the Residuary Trust assets for the remainder persons.

35. Furthermore, the strategy proposed by Respondents Belger and Wortley is troubling and imprudent because it concentrates the Residuary Trust's assets in one very narrow category, land used for farming and timber production. From a risk management perspective, this concentration of assets in one category subjects the Residuary Trust corpus to a dangerous and imprudent investment scheme, and is inconsistent with the duties of the Co-Trustees as fiduciaries and is not a strategy consistent with the prudent investor rule, S.C. Code Ann. §§ 62-7-804, 62-7-933, and Item XIV(c) of the Decedent's Will.

36. Petitioner's proposed strategy—of allowing Respondents Belger and Wortley to purchase certain sentimental tracts of land, while selling other Residuary Trust land and to diversify its assets—is more likely to produce a more beneficial result for all beneficiaries and remainder persons. Historically, the stock market has out-performed real estate and can more effectively diversify risk. If, for example, 85 percent of the Residuary Trust assets were invested in the stock market, and had an average return of 6.5 percent per year, the Residuary Trust would generate from those assets alone $1,381,250, pay $750,000 to the income beneficiaries, pay

expenses (estimated to be $300,000 per year), and grow the Residuary Trust corpus by $331,000 annually.

37. It is more prudent to invest the Residuary Trust assets in a diversified portfolio, while still retaining a portion of the Residuary Trust's existing real estate assets.[2]

38. In addition to disagreeing about strategy for investment and management of Residuary Trust property, Respondents Belger and Wortley have also improperly instructed counsel for the Residuary Trust not to release to Petitioner certain memoranda regarding potential tax strategies for the Residuary Trust under IRC § 6166. These memoranda are property of the Residuary Trust, for which Petitioner has been billed (as Co-Trustee) by the Residuary Trust's counsel, and he is therefore entitled to review such documents without interference by Respondents Belger and Wortley.

39. Respondents Belger and Wortley have consistently created obstacles to the efficient administration and management of the Residuary Trust. This includes, but is not limited to, creating unnecessary delay in making critical decisions for the proper administration of the Residuary Trust; reversing votes on previously agreed upon matters; agreeing to submit alternative plans for investing Residuary Trust assets, yet failing to produce any such alternatives; and postponing Co-Trustee meetings without explanation.

[2] The Prudent Investor Act, as adopted by the South Carolina legislature, requires that a trustee acting as a prudent investor "shall" consider the following factors among others: "(a) general economic conditions; (b) the possible effect of inflation or deflation; . . . (e) the expected total return from income and the appreciation of capital; . . . (g) needs for liquidity, regularity of income, and preservation or appreciation of capital." In this instance, compliance with the Prudent Investor Act requires a departure from the status quo "investment strategy" of retaining timberland and farmland which has been urged by Respondents Belger and Wortley.

FOR A FIRST CAUSE OF ACTION
(Attorney's Fees – S.C. Code Ann. § 62-7-1004)

40. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth herein verbatim.

41. S.C. Code Ann. § 62-7-1004 grants the Court the power to award costs and expenses, including reasonable attorney's fees and costs, to be paid from assets of the Residuary Trust, which is the subject of the present justiciable controversy.

42. On information and belief, further Court involvement will be necessary to determine the fiduciary duties and obligations of the Co-Trustees and to determine what actions or inactions in managing the Residuary Trust are in the best interests of the beneficiaries and remainder persons.

43. On information and belief, resolution of the dispute between and amongst the Co-Trustees regarding management, administration, distribution, and/or investment of the Residuary Trust assets will require Petitioner to employ and compensate legal counsel and/or advisors to represent Petitioner in his capacity as disinterested, non-beneficiary Co-Trustee.

44. Because Petitioner is not a beneficiary of the Residuary Trust, he requests that the Court enter an Order requiring his reasonable attorney's fees to be paid from the Residuary Trust assets because Petitioner's employment of attorneys and/or other professional agents is necessary and proper for the benefit of the Residuary Trust and its beneficiaries and remainder persons.

FOR A SECOND CAUSE OF ACTION
(Trustee Fees – S.C. Code Ann. § 62-7-708)

45. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth herein verbatim.

46. Petitioner is a duly appointed Trustee of the Residuary Trust pursuant to Item XII(b) of Decedent's Will.

47. Petitioner has expended considerable time and effort in serving as the sole, disinterested Co-Trustee of the Residuary Trust, including but not limited to: (i) coordinating real estate appraisals; (ii) communicating with attorneys and other agents and advisors of the Estate of Alice Boykin regarding trust issues; (iii) arranging for the listing and sale of certain Residuary Trust assets; and (iv) other substantial efforts to increase the productivity of the Residuary Trust assets. In addition, Petitioner has expended a considerable amount of time explaining to the other Co-Trustees that trust assets have to be transferred at fair market, especially if to a beneficiary or trustee, and explaining the responsibility of the Co-Trustees to act as prudent investors.

48. Pursuant to S.C. Code Ann. § 62-7-708 and in accordance with the express terms of Item XII(b) of Decedent's Will, Petitioner is entitled to reasonable compensation for his services as Co-Trustee of the Residuary Trust.

49. A determination of what constitutes "reasonable compensation" for Petitioner's services as Co-Trustee should include consideration of the various efforts set out herein above.

50. Standard fees charged by professional trustees for their services can range from 1.00 to 1.50% on the first $2,000,000 of trust assets; 0.80 to 0.90% on the next $3,000,000; 0.60 to 0.70% on the next $5,000,000; and 0.45% on the balance over $10,000,000. Also, there usually is a very large additional surcharge when a trust holds substantial real estate assets.

FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment – S.C. Code Ann. §§ 15-53-50, 62-7-201)

51. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth herein verbatim.

52. A substantial and ongoing dispute exists between Petitioner and Respondents Belger and Wortley as to the proper administration, management, and disposition of the Residuary Trust property.

53. As the only disinterested, non-beneficiary Co-Trustee of the Residuary Trust, Petitioner owes fiduciary duties and undivided loyalty to all beneficiaries and remainder persons.

54. In attempting to faithfully discharge his fiduciary duties in managing the Residuary Trust, Petitioner has incurred, and will continue to incur, attorney's fees which are necessary and proper for the benefit of the Residuary Trust and its beneficiaries and remainder persons. These fees include engaging attorneys and/or other agents or advisors to provide Petitioner with guidance and counsel in connection with the discharging of his fiduciary duties as Co-Trustee.

55. Decedent's Will expressly provides that Petitioner has the power to employ and compensate, out of trust assets, attorneys and other professional agents to the extent necessary for the proper management, handling and administration of the Residuary Trust.

56. Petitioner requests that the Court enter an Order declaring that his reasonable attorney's fees, or fees of other agents or advisors, be paid out of the principal or income (or both) of the Residuary Trust in accordance with Decedent's express wishes under Item XIV(j) of his Will.

57. Due to the facts, conditions, and circumstances as set forth in this Petition, an actual and justiciable controversy has arisen and now exists between Petitioner Rigdon Boykin and Respondents Belger and Wortley regarding the obligations and fiduciary duties of the Co-Trustees of the Residuary Trust. Declaratory relief is necessary to adjudicate the rights of the parties.

58. S.C. Code Ann. § 62-7-201 authorizes the Court to instruct Petitioner in the exercise of his fiduciary duties, to resolve questions arising from the administration or distribution of the Residuary Trust (including questions of construction), and to determine the fiduciary duties and obligations of the Co-Trustees of the Residuary Trust.

59. Petitioner is entitled to a declaratory judgment declaring the rights of the parties and, more specifically:

a. Declaring that Petitioner is entitled to employ and compensate, from Residuary Trust assets, attorneys and/or other agents and advisors who are necessary to assist him with the discharge of his fiduciary duties as Co-Trustee of the Residuary Trust, including past and future fees;

b. Declaring that Petitioner is entitled to an award of Trustee fees in an amount to be determined by the Court for his services as sole disinterested Co-Trustee of the Residuary Trust;

c. Declaring that, as sole disinterested, non-beneficiary Co-Trustee of the Residuary Trust, Petitioner is entitled to exercise preeminent authority among the three Co-Trustees of the Residuary Trust (including the authority to appoint trust counsel), or otherwise be appointed as a "special fiduciary" under S.C. Code § 62-7-1001(b)(5)[3]; and

[3] The S.C. Trust Code clearly contemplates that disinterested trustees should be granted a heightened level of authority and discretion with respect to trusts, beyond that which is given to trustees who are *also* beneficiaries of a trust. See S.C. Code Ann. § 62-7-904(A) (the "power to adjust" between trust income and principal under subsection (A) may only be exercised by a non-beneficiary trustee, such as Petitioner); S.C. Code Ann. § 62-7-904C ("A trustee, other than an interested trustee . . . may: (1) convert an income trust to a total return unitrust; (2) reconvert a total return unitrust to an income trust; or (3) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust . . . .") (emphasis added); S.C. Code Ann. § 62-7-816A (giving disinterested trustee the power of "decanting," but barring interested trustees from exercising the same).

d. Further instructing Petitioner in the exercise of his fiduciary duties with regard questions arising from the administration, management, and distribution of the Residuary Trust.

WHEREFORE, by reason of the foregoing, Petitioner respectfully prays for an Order and judgment of the Court as follows:

(a) For an order declaring that

a. Petitioner is entitled to employ and compensate, from Residuary Trust assets, attorneys and/or other agents and advisors who are necessary to assist him with properly discharging his fiduciary duties as Co-Trustee of the Residuary Trust, including past and future fees;

b. Petitioner is entitled to an award of Trustee fees in an amount to be determined by the Court for his services as sole disinterested Co-Trustee of the Residuary Trust;

c. Petitioner shall be entitled to submit, as necessary, any supplemental petitions for trustee fees and/or attorney's fees (and fees of other agents and advisors) for the reasons set forth above; and

d. As sole disinterested, non-beneficiary Co-Trustee of the Residuary Trust, Petitioner is entitled to exercise preeminent authority among the three Co-Trustees of the Residuary Trust (including the authority to appoint trust counsel), or otherwise be appointed as a "special fiduciary" charged with administering the Residuary Trust.

(b) For such other and further relief as the Court deems just and proper.

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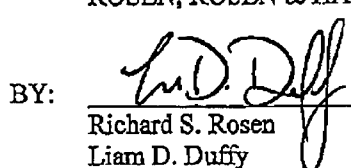
BY: 

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Attorneys for Petitioner, Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trust

Charleston, South Carolina

August 23, 2017

Exhibit A

A CERTIFIED COPY:
ATTEST Debra B Brooks
PROBATE JUDGE
KERSHAW COUNTY, S. C.

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

LAST WILL AND TESTAMENT

I, Lemuel Whitaker Boykin, II, a resident of and domiciled in the State of South Carolina, County of Kershaw, being of sound and disposing mind and memory, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

ITEM I: I direct that all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), or on any insurance upon my life or on any property held jointly by me with another or on any transfer made by me during my lifetime or on any other property or interest in property included in my estate for such tax purposes be paid out of my residuary estate and shall not be charged to or against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

ITEM II: I give and bequeath my family portrait to my son, L.W. Boykin, V, if he shall survive me. If my said son shall not survive me, then said item shall pass under Item III herein.

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HEEN & BYARS
HURCH STREET
..., S.C. 29020

Copy

A CERTIFIED COPY:
ATTEST:
PROBATE JUDGE
KERSHAW COUNTY, S.C.

ITEM III: I give and bequeath all of the rest of my personal effects of every kind, including but not limited to, pictures, books, jewelry, wearing apparel, boats, automobiles and other vehicles, and all policies of fire, burglary, property damage and other insurance on or in connection with the use of this property, to my beloved wife, Alice S. Boykin, if she shall survive me. If my said wife shall not survive me, I give and bequeath all of said property to my children, Mary Deas Wagner, Alice Shoolbred Boykin, L.W. Boykin, V and May Cantey Boykin, in approximately equal shares, provided, however, the issue of a deceased child surviving me shall take, per stirpes, the share his or her parent would have taken had he or she survived me; and provided further that, if any child of mine predeceases me without leaving a child surviving him or her, then such share as would have been acquired by my deceased child shall be divided equally among my surviving children. If my named beneficiaries do not agree to the division of the said property among themselves, my Personal Representatives shall make such division among them, the decision of my Personal Representatives to be in all respects binding upon my issue. If any beneficiary hereunder is a minor, my Personal Representatives may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representatives.

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I CHURCH STREET
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ITEM IV: I give and bequeath the following general legacies:

(1) The sum of Three Thousand Five Hundred and 00/100 ($3,500.00) Dollars to James Moore, if he shall survive me, or if he shall not survive me, to his wife, Bina Moore, if she shall survive me.

(2) The sum of Two Thousand and 00/100 ($2,000.00) Dollars to Helen Stradford, if she shall survive me, or if she shall not survive me, to her husband, Singleton Stradford, if he shall survive me.

ITEM V: I give and devise all my right, title and interest in and to the easternmost three (3) acres of a certain (5) acre parcel of real property located in Sumter County, South Carolina, and acquired by me from Helen Boykin Moses, together with all of the improvements thereon and appurtenances thereto, to James Moore, if he shall survive me, or if he shall not survive me, to his wife, Bina Moore, if she shall survive me. I also give and devise unto James Moore a tract of land in Sumter County containing four (4) acres, more or less, adjoining the four (4) acre parcel which I have previously deeded to him to begin at the northeast corner of the parcel previously given him and to be adjacent to the tract which I have already given him. I direct this be surveyed under the direction of my Personal Representatives and a deed of distribution delivered to him for the said parcel. If he fails to survive me, then unto his wife, Bina Moore, if she survives me.

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ITEM VI: I give and devise all my right, title and interest in and to the westernmost three (3) acres of a certain six (6) acre parcel of real property located in Sumter County, South Carolina, and acquired by me from Helen Boykin Moses, together with all of the improvements thereon and appurtenances thereto, to Helen Stradford, if she shall survive me, or if she shall not survive me, to her husband, Singleton Stradford, if he shall survive me.

ITEM VII: If my wife, Alice S. Boykin, shall survive me, I give, devise and bequeath to my Trustee hereinafter named, cash, securities or other property of my estate (undiminished by any estate, inheritance, succession, death or similar taxes) having a value equal to the maximum marital deduction as finally determined in my federal estate tax proceedings, less the aggregate amount of marital deductions, if any, allowed for such tax purposes by reason of property or interests in property passing or which have passed to my said wife otherwise than pursuant to the provisions of this Item; provided, however, the amount of this devise or bequest shall be reduced by the amount, if any, needed to increase my taxable estate (for federal estate tax purposes) to the largest amount that, after allowing for the unified credit against the federal estate tax, and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state), will not result in a federal estate tax being imposed on my estate. The

term "maximum marital deduction" shall not be construed as a direction by me to exercise any election respecting the deduction of estate administration expenses, the determination of the estate tax valuation date, or any other tax election which may be available under any tax laws, only in such manner as will result in a larger allowable estate tax marital deduction than if the contrary election had been made. My Personal Representatives shall have the sole discretion to select the assets which shall constitute this devise or bequest. In no event, however, shall there be included in this devise or bequest any asset or the proceeds of any asset which will not qualify for the federal estate tax marital deduction, and this devise or bequest shall be reduced to the extent that it cannot be created with such qualifying assets. My Personal Representatives shall value any asset selected by my Personal Representatives for distribution asset at the date of distribution of such asset.

I direct my Personal Representatives to elect as provided in Internal Revenue Code Section 2056(b)(7)(B)(v) to cause the property distributed to the Trustees of this trust to be treated on the federal estate tax return of my estate as qualified terminable interest property.

This trust shall be held, administered and distributed as follows:

(1) Commencing with the date of my death, my Trustees shall pay to or apply for the benefit of my said wife during her

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lifetime all the net income from this trust in convenient installments, but no less frequently than quarter-annually. Any accrued and undistributed income at the death of my wife shall be paid to her Personal Representatives.

(2) In addition, my Trustees may pay to or apply for the benefit of my said wife such sums from the principal of this trust as in their sole discretion shall be necessary or advisable from time to time for the medical care, support, maintenance and reasonable comfort of my said wife, taking into consideration to the extent my Trustees deem advisable, any other income or resources of my said wife known to my Trustees.

(3) My said wife may, at any time by written notice, require my Trustees either to make any nonproductive property of this trust productive or to convert such nonproductive property to productive property within a reasonable time.

(4) Unless my wife's will specifically provides that the estate, succession, death or similar taxes assessed with respect to the assets of this trust be paid otherwise, my Trustees shall pay to the Personal Representatives and administrators of the estate of my wife for the purposes of paying such taxes, the amount by which such taxes assessed by reason of my wife's death shall be increased as a result of the inclusion of the assets of this trust in her estate for such tax purposes.

(5) Upon the death of my said wife, the entire remaining principal of this trust shall be added to and become a part of the Residuary Trust set forth in Item VIII herein and

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shall be held and administered or distributed in whole or in part as if it had been an original part of Residuary Trust set forth in Item VIII herein.

ITEM VIII: I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this will, to my Trustees hereinafter named. This trust shall be known as the "Residuary Trust" and shall be held, administered and distributed as follows:

(1) Commencing with the date of my death, my Trustees shall pay to or apply for the benefit of my children, Mary Deas Wagner, Alice Shoolbred Boykin, L.W. Boykin, V., and May Cantey Boykin during their lifetimes the net income from this trust in convenient installments at least annually and in such shares and proportions as the Trustees in their sole discretion shall determine providing to each a reasonably equal division of income as the need arises primarily for the medical care, comfortable maintenance, welfare and education of my said beneficiaries, taking into consideration to the extent my Trustees deem advisable, any other income or resources of my said beneficiaries known to my Trustees. In addition, my Trustees shall pay to or apply for the benefit of any one or more of the issue of a deceased child such of the net income of this trust as my Trustees shall determine for the medical care and support of such issue, taking into consideration to the

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extent my Trustees deem advisable, any other income or resources of such issue known to my Trustees.

(2) My Trustees may pay to or apply for the benefit of any one or more of my said children such sums from the principal of this trust in such shares and proportions as in their sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance and reasonable comfort of my said children, taking into consideration to the extent my Trustees deem advisable, any other income or resources of my said children known to my Trustees. In addition, my Trustees may, if my Trustees deem advisable, pay to or apply for the benefit of any one or more of the issue of a deceased child such of the principal of this trust as my Trustees shall determine for the medical care and support of such issue, taking into consideration to the extent my Trustees deem advisable, any other income or resources of such issue known to my Trustees. I direct that the distributions shall be kept reasonably equal to each beneficiary over a period of years, however, my Trustees shall have final and complete authority to determine the fairness thereof.

(3) This trust shall terminate upon the death of the last to survive of my said children.

(a) My Trustees at that time shall divide this trust as then constituted into separate shares so as to provide one (1) share for each deceased child of mine who shall leave issue then living.

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(b) My Trustees shall transfer and pay over the then remaining trust principal, if any, and any accrued and undistributed income on hand, to the child or children of my issue who shall be then surviving, per stirpes.

(c) In the event that no children of mine shall survive me, I give, devise and bequeath my residuary estate to the issue of my child or children, per stirpes.

ITEM IX: The determination of my Personal Representatives or my Trustees, as the case may be, with respect to the identification of any property passing under this, my Last Will and Testament, including any tract or parcel of real property, shall be binding and conclusive upon all persons interested in my estate or any trust hereby created.

ITEM X: It is my desire, but I do not direct, that certain tracts or parcels of real property located in the State of South Carolina and presently owned by me or by corporations the stock of which is owned in whole or in part by me, namely Millway Plantation (consisting of approximately 884 acres), the "Laney Tract" (consisting of 101 acres), Broadview Plantation (consisting of approximately 324½ acres), the "Swamp Tract" (acquired from my mother and consisting of approximately 416 acres), the "Cantey Tract" (consisting of approximately 140 acres), and the "Gillis Tract" (consisting of approximately 112 acres), shall to the fullest extent possible be preserved for

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the benefit of or transferred to my children or their issue. However, if any or all of these parcels must be sold, they should be sold in the following order:

(1) Swamp Tract

(2) Broadview Plantation, Cantey Tract, Gillis Tract

(3) Millway Plantation and Laney Tract

Any sale or mortgage of these parcels (exclusive of timber rights) must be by unanimous consent of the Trustees after consultation with and approval of a majority of the four (4) named beneficiaries of this trust unless any be not sui juris in which event approval is waived. I direct that my trustees may cut and remove timber which shall be treated as a crop. It is my further desire, but I do not direct, that my son, L.W. Boykin, V, be employed by the farm with suitable salary and other operating arrangements for my said son, to the extent that my Trustees, in whom I have complete confidence, shall determine the same to be advisable and in the best interest of my said son. It is my further desire, but I do not direct, that at any time and from time to time during the continuance of the trust created under Item VIII of this, my Last Will and Testament, or upon the termination of said trust, my Trustees shall arrange to distribute Broadview Plantation, the "Swamp Tract", the "Cantey Tract" and the "Gillis Tract", or such of said parcels, if any, as shall from time to time be held by my Trustees, to the oldest male child of my son, L.W. Boykin, V, who shall be living at the

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time of any such distribution. In exercising the discretionary powers granted to my Trustees under Items VII and VIII and all other powers granted to my Personal Representatives and Trustees under this, my Last Will and Testament, it is my hope that my Personal Representatives and Trustees will be mindful of my intentions. My Trustees shall be free from all liability or responsibility in making any determination from time to time to exercise or to not exercise any of the powers granted to them hereunder, but shall attempt to be as nearly equitable as possible among beneficiaries of my estate or any trust hereby created, regardless of the tax or other effects thereof, and any such determination shall be binding and conclusive upon all persons interested in my estate or any trust hereby created.

ITEM XI: I hereby nominate, constitute and appoint as Personal Representatives of this my Last Will and Testament, my beloved wife, Alice S. Boykin, and my daughter, Mary Deas Wagner, and direct that they shall each serve without bond. If either one of them is unable or unwilling to serve or continue to serve, then I hereby nominate, constitute and appoint as substitute or successor Personal Representative, Rigdon H. Boykin, and direct that he shall also serve without bond. If any two (2) are unable to serve or cease to serve, then the third above named shall serve as sole Personal Representative, without bond.

ITEM XII:

(a) I hereby nominate, constitute and appoint as Trustees of the trusts created under Item VII of this my Last

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Will and Testament, my daughter, Mary Deas Wagner, and my wife, Alice Shoolbred Boykin, and direct that they shall serve without bond. Should Mary Deas Wagner be unable to serve or cease to serve for any reason, then I nominate and appoint Rigdon H. Boykin to serve in her place and stead, also without bond.

(b) I hereby nominate, constitute and appoint as Trustees of the trust created in Item VIII of this, my Last Will and Testament, my cousin, Rigdon H. Boykin, my daughter, Mary Deas Wagner, and my wife, Alice Shoolbred Boykin, and direct that they shall serve without bond. I further grant unto my wife, Alice Shoolbred Boykin, the right to designate by a written instrument filed in the office of the Judge of Probate, her successor trustee to serve either upon her resignation, incapacity to serve or death. I further grant unto my Trustees the authority to nominate one (1) additional family member to serve with them as co-trustee should any one of the other two (2) Trustees fail to qualify or cease to serve for any reason. This designation shall be by instrument filed in office of the Judge of Probate for Kershaw County. I also grant unto my Trustees the authority to select a trust department of a bank or a trust company to assist them in the administration of the trust if they deem the same to be necessary and I further direct that they may name a trust department of a bank or a trust company managing assets of at least One Hundred Million and 00/100 ($100,000,000.00) Dollars to serve as co-trustee with them should they determine the same to be necessary, either at

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that time or in the future. The appointment of any corporate trustee shall be accomplished by the filing of an instrument signed by the Trustees with the Probate Court of Kershaw County. The appointment of such Trustee shall neither increase nor decrease the liabilities and responsibilities of my Trustees acting hereunder, and I expressly confirm and ratify the appointment of any such additional trustees. For their services as Trustees, my individual Trustees and/or corporate Trustees shall be entitled to reasonable compensation for the services provided for the trust under Item VII or under Item VIII as the case may be. Such compensation shall not exceed the amount provided by law.

ITEM XIII: Whenever the words "Personal Representative" and/or the word "Trustee", or any modifying or substituted pronouns therefor are used in this my Will, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative and/or Trustee named herein and to any successor or substitute Personal Representative and/or Trustee acting hereunder, and such successor or substitute Personal Representative and/or Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon my Personal Representative and/or Trustee originally named herein.

ITEM XIV: My Personal Representatives and Trustees, respectively, are authorized in their absolute discretion

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AMDEN, S.C. 29020

with respect to any real property, by unanimous vote, or personal property, by majority vote, at anytime held under any provision of this Will and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Will or by statute or general rule of law:

A. To sell, transfer and convey the whole or part of the property, whether real or personal, constituting this estate or trust, at such time or times, in such manner, upon such terms and conditions, and for such price, as to the Personal Representative or trustee shall seem best, together with the power to make, execute and deliver such instruments as shall be necessary to effectuate such sale or sales without an order of the Court, but I direct that two (2) independent appraisals be made on each such sale of real estate.

B. To retain any of the original property constituting the estate or trust, regardless of the character of such property or whether it is such as then would be authorized by law for investment by Personal Representatives or trustees or whether it leaves a disproportionately large part of the estate or trust invested in one type of property, for such time as to the Personal Representative or trustee shall seem best, and to dispose of such property by sale, exchange or otherwise as and when they shall deem advisable.

C. To invest and reinvest the property of the estate or trust in such manner as men of prudence exer-

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cise in the management of their own affairs. At any time, and from time to time, to keep all or any portion of the estate or trust in cash and uninvested for such period or periods of time, as he may deem advisable, without liability for any loss in income by reason thereof. In addition, the "under productive property rule" of the Revised Uniform Principal and Income Act shall not be applicable.

D. To vote in person or by special, limited or general proxy with power of substitution, all stocks and other securities held by them and to exercise in their sole discretion any option or privilege to exchange such stocks or other securities held by them in any corporation for other stocks or securities at such time and upon such terms and conditions as they shall deem proper, and to exercise all conversions, subscription and other rights of whatsoever nature pertaining thereto or to sell such rights; to consent to and participate in any plan of reorganization, consolidation, merger, combination, or other similar plan, and to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to such plan, and to exchange the securities held by them for the securities issued in connection therewith, and to deposit any such securities with protective, reorganization or similar committee, to delegate discretionary power thereto, and to pay part of their expense and compensation as assessments levied with respect to such securities, as the Personal Representative or trustee may deem expedient for the

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TEEN & BYARS
URCH STREET
N, N.C. 28020

protection of their interest as holder of any stocks, bonds or other securities of any corporation, and generally to exercise in regard to all stocks, bonds or other investments held by the Personal Representative or trustee all such rights, powers and privileges as are, or may be lawfully exercised by any person owning similar property in his own right.

E. To extend the time of payment of any obligation held by them and to compromise, settle, and submit to arbitration upon such terms as to them may seem proper, or to release any claim in favor of or against the estate or trust property, and the right in their sole discretion when deemed advisable to abandon any property. To lease real estate, including the right to lease for terms that may extend beyond the date of the termination of the estate and trust, for fixed or contingent rent or both; to improve and remodel real estate and to borrow money for the purpose, to secure the borrowing by mortgage of the real estate or pledge of the lease or leases, or both.

F. To carry such insurance against such hazards including public liability, and in such amounts in either stock companies or mutual companies as to the Personal Representatives and/or trustees shall seem advisable.

G. To determine, irrespective of statute or rule of law, how all receipts and disbursements of this estate or trust or any share thereof, including the executor's or trustee's compensation, shall be credited, charged or

VAGE, ROYALL,
QUEEN & BYARS
CHURCH STREET
MDEN, S.C.

apportioned as between income and principal, and the decision of the Personal Representative or trustee shall be final and not subject to any question by any beneficiary thereof.

H. To charge or not charge against income depreciation on any asset of the estate or trust as the Personal Representative or trustee in their sole discretion shall determine and to establish or not establish depreciation reserves as the Personal Representative or trustee in their sole discretion shall determine.

I. To amortize or not amortize the premiums paid in connection with the purchase of any securities. Discounts may be disregarded.

J. To employ and compensate, out of the principal or the income or both as to the Personal Representative or trustee shall seem proper, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors and other assistants, advisors and a manager of the assets, which manager may also be one of the Trustees, deemed needful for the proper management, handling and administration of the estate or trust, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided he was selected and retained with reasonable care.

K. To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as to them shall seem advisable, includ-

WAGE, KIRALL, GREEN & EARS
CHURCH STREET
EDEN, S.C. 29020

ing the power to borrow from the Personal Representative or trustee and to mortgage or pledge such portion of the estate or trust as may be required to secure such loans; and as maker or endorser to renew existing loans.

L. To value and appraise the assets hereof in any division or distribution of the estate or trust and to distribute the same in kind at such appraised value, which shall be conclusive against all persons interested hereunder.

M. To retain, buy, sell or otherwise deal with stock and securities of the Personal Representative and trustee as the Personal Representative or trustee shall deem best.

N. In addition to the powers, authority and discretion herein conferred or conferred by law, the Personal Representative or trustee shall have the authority to do all things and the right to exercise all powers reasonably necessary or incidental to the proper management of the estate or trust and the Personal Representative or trustee shall not be liable for any loss to the estate or trust occasioned by his acts in good faith, nor for honest errors in judgment.

O. Notwithstanding any other provisions hereof, the trustees, by unanimous consent, may in their discretion elect to dedicate any portion of the real property to a conservation easement or family managed non-profit foundation primarily for the purpose of protecting wildlife habitat.

VAGE, ROYALL
SHEEN & BYARS
URCH STREET
EN, LA 3020

ITEM XV: In the event for any reason there is liquidation and/or sale and/or exchange of real properties included in my estate or held by corporations in which I own stock, tracts and/or parcels other than those listed in Item X should be liquidated, sold and/or exchanged first. Further, I shall endeavor to leave a suggested list of the order of liquidation, attached to this Will, which list shall not be controlling, but shall be used as a guide for my Personal Representatives and/or Trustees. The powers and discretion of my Personal Representatives and Trustees under this Will shall not be superceded by this Item XV.

ITEM XVI: My Personal Representatives shall have absolute discretion, but shall not be required, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Personal Representatives believe has had the effect, directly or indirectly, of preferring one (1) beneficiary or group of beneficiaries over others. In determining the federal estate and income tax liabilities of my estate, my Personal Representatives shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as federal estate tax deductions or as federal income tax deductions and shall have the discretion to file a joint income tax return with my spouse.

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& BYARS
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S.C. 29020

ITEM XVII: It is expressly provided that the grant of rights, powers, privileges and authority to my Personal Representatives and Trustees in connection with the imposition of duties upon my Personal Representatives and Trustees by any provision of this my Will or any statute relating thereto shall not be effective if and to the extent that the same, if effective, would disqualify the marital deduction as established in the Marital Trust hereof. It is my intention that my said wife, under the provisions of the Marital Trust, have substantially that degree of beneficial enjoyment of the Trust Estate during her lifetime which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust and my Personal Representatives and Trustees shall not exercise their discretion in a manner which is not in accord with this expressed intention. My Personal Representatives and Trustees shall invest the Trust Estate so that it will produce for my said wife during her lifetime an income or use which is consistent with the value of the Trust Estate and with its preservation. It is expressly provided that my Personal Representatives and Trustees shall not in the exercise of their discretion make any determination inconsistent with the foregoing, especially in regard to and including, but not limited to, the powers granted in Paragraphs (1), (2), (5), (13), (22), (23), (24), (26) and (39) of Item XIV hereof and by any statute granting powers to a trustee.

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MDEN, S.C. 29020

ITEM XVIII: For purposes of this Will, "children" means the lawful blood descendants of the first degree of the parent designated, including all of my children by my previous marriage; and "issue" and "descendants" means the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his issue shall be considered as issue of the adopting parent or parents and if anyone who is by blood or adoption an ancestor of the adopted parent or either of the adopting parents.

ITEM XVIV: Notwithstanding anything herein to the contrary, the Trusts created under this my Will shall terminate no later than twenty-one (21) years after the death of the last survivor of my children's issue living on the date of my death, when my Trustee shall distribute each remaining trust hereunder to the beneficiary or beneficiaries of the current income thereof, and if there is more than one beneficiary, in the proportion in which they are beneficiaries.

ITEM XX: If any share hereunder become distributable to a beneficiary who has not attained the age of twenty-one (21) years, then such share shall immediately vest in such beneficiary, but notwithstanding the provisions herein, my Trustees shall retain possession of such share in trust for such beneficiary until such beneficiary attains the age of Twenty-one (21) years, using so much of the net income and principal of

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such share as my Trustees deem necessary to provide for the proper support, medical care and education of such beneficiary, taking into consideration to the extent my Trustees deem advisable any other income or resources of such beneficiary or his or her parents known to my Trustee. Such beneficiary's share shall be paid over and distributed to such beneficiary upon attaining age twenty-one (21), or if he or she shall sooner die, to his or her personal representatives or administrators. My Trustees shall have, with respect to each share so retained, all the powers and discretions had with respect to the trust created herein generally.

ITEM XXI: In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of my Trustee unable properly to administer such amounts, then such amounts shall be paid out by my Trustee in such of the following ways as my Trustee deems best: (1) directly to such beneficiary; (2) to the legally appointed guardian of such beneficiary; (3) to some relative or friend for the care, support and education of such beneficiary; (4) by my Trustee using such amounts directly for such beneficiary's care, support and education.

ITEM XXII: If any beneficiary and I should die under such circumstances as would render it doubtful whether the

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151 CHURCH STREET
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beneficiary or I died first, then it shall be conclusively presumed for the purposes of this my Will that said beneficiary predeceased me; provided, however, that if my beloved wife, Alice S. Boykin, shall die with me as aforesaid, I direct that my said wife shall be conclusively presumed to have survived me.

ITEM XXIII: If at any time Trust B created hereunder has a fair market value as determined by my Trustee of Fifteen Thousand and 00/100 ($15,000.00) Dollars or less, my Trustees, in their absolute discretion if they determine that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one (1) income beneficiary, my Trustees shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if not proportion is designated, in equal shares to such beneficiaries.

ITEM XXIV: On the death of any person entitled to income or support from Trust B hereunder, my Trustees shall be authorized to pay the funeral expenses and the expenses of the last illness of such person from the corpus of the Trust from which such person was entitled to income or support.

ITEM XXV: Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject o anticipation, assignment, pledge, sale or transfer in

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any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of my Personal Representatives or Trustees, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this 2 day of June, 1989.

Lemuel Whitaker Boykin (SEAL)
Lemuel Whitaker Boykin, II

I, Lemuel Whitaker Boykin, II, the testator, sign my name to this instrument this 2 day of June, 1989, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Lemuel Whitaker Boykin
Lemuel Whitaker Boykin, II
Testator

AVAGE, ROYALL,
IEHEEN & HYARS
1 CHURCH STREET
AMDEN, S.C. 29020

We, Lynn H. Robinson, and Julie D Johnson, the witnesses, sign our names to this instrument, and at least one of us being first duly sworn, does hereby declare, generally and to the undersigned authority that the testator signs and executes this instrument as his Last Will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Lynn H. Robinson
Witness

Julie D Johnson
Witness

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

Subscribed, sworn to and acknowledged before me by Lemuel Whitaker Boykin, II, the testator, and subscribed and sworn to before me by Lynn N Robinson, witness, this 2nd day of June, 1989.

Julie D Johnson
Notary Public of South Carolina
My commission expires: 4/15/96

SAVAGE, ROYALL, SCREEN & BYARS
113 CHURCH STREET
CAMDEN, S.C. 29020

2017-CP-28-831

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)
)
In the Matter of)
Lemuel Whitaker Boykin, II, deceased

Rigdon H. Boykin, as sole disinterested Co-Trustee Of the Lemuel Whitaker Boykin, II Residuary Trusts A and B.
☒ Petitioner)
)
)
)
Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, et al.)
☐ Respondents)

IN THE PROBATE COURT

CASE NO: 2017-ES-2800333

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

FILED FOR RECORD
2017 SEP 19 PM 2:28
JANET G. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

Petitioner's Attorney: Richard S. Rosen, SC # 4917 Liam D. Duffy, Address: Rosen, Rosen & Hagood, LLC 151 Meeting St., Ste. 400, Charleston, SC 29401 phone: 843-577-6726 fax: 843-724-8036 e-mail: rsrosen@rrhlawfirm.com other: lduffy@rrhlawfirm.com	Respondent's Attorney: James Y. Becker Address: Haynsworth Sinkler Boyd, PA 1201 Main Street, 22nd Floor Columbia, SC 29201 phone: 803-779-3080 e-mail: jbecker@hsblawfirm.com

☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information
Nature of Motion: Motion for Fees and Appointment of Trust Counsel (Expedited Hearing Requested)
Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type
☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Petitioner/ ☐ Respondent — September 6, 2017 Date submitted

SECTION III: Motion Fee
~~☒ PAID – AMOUNT: 25.00~~ RHE
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

FILED
2017 SEP -6 PM 3:06
DEBRA B. BUCHANAN
JUDGE OF PROBATE
KERSHAW COUNTY, S.C.

JUDGE'S SECTION
☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE
CODE: Date:

CLERK'S VERIFICATION
Collected by: Date Filed:
☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

2017-CP-28-831

STATE OF SOUTH CAROLINA	IN THE PROBATE COURT
COUNTY OF KERSHAW	CASE NO: 2017-ES-2800333
IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Petitioner, v. Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin Respondents.	**MOTION FOR FEES AND APPOINTMENT OF TRUST COUNSEL (EXPEDITED HEARING REQUESTED)**

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2017 SEP 19 PM 2:28
JANET C. [illegible]
CLERK OF COURT
KERSHAW COUNTY, S.C.

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2017 SEP -6 PM 3:06
DEBRA B. GRAHAM
JUDGE OF PROBATE
KERSHAW COUNTY, S.C.

Petitioner, Rigdon H. Boykin ("Petitioner"), as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trust A and B (the "Residuary Trust"), hereby moves the Court for an Order: (1) allowing Residuary Trust assets to fund fees and costs for Petitioner as Co-Trustee, including reasonable attorney's fees, expert fees, and costs for counsel to represent him in this matter, other related matters, and any other litigation or controversies involving the Residuary Trust; and (2) authorizing Petitioner to appoint counsel for the Residuary Trust.

A CERTIFIED COPY:
ATTEST [signature]
PROBATE JUDGE
KERSHAW COUNTY, S. C.

1. In support of this Motion, Petitioner respectfully craves reference to the Residuary Trust instrument in this case, namely, the Lemuel Whitaker Boykin, II Last Will and Testament, which includes the following provisions:

(a) L.W. Boykin, II Last Will and Testament, Item XIV, Paragraph J provides that the Co-Trustee has the authority to employ and compensate, out of the principal or income of the Residuary Trust, agents, accountants, brokers, attorneys, tax specialists, and other assistants, advisors deemed needful for the proper management, handling and administration of the Residuary Trust, provided such professional representatives are selected and retained with reasonable care.

(b) L.W. Boykin, II Last Will and Testament, Item XIV, Paragraph N states that, in addition to the powers, authority and discretion expressly conferred by the trust instrument (or by law), the Co-Trustees of the Residuary Trust shall also have "the authority to do all things and the right to exercise all powers reasonably necessary or incidental to the proper management" of the Residuary Trust.

2. The Residuary Trust is currently the subject of this lawsuit, which was filed by Petitioner on August 23, 2017 in the Probate Court for Kershaw County, South Carolina. Petitioner was required to initiate this litigation for the benefit of all Residuary Trust beneficiaries and remainder persons, and has had to retain counsel and experts to assist him in the prudent exercise of his fiduciary obligations as Co-Trustee of the Residuary Trust.

3. Petitioner craves reference to and incorporates herein the allegations contained in his Complaint filed August 23, 2017, as well as his Affidavit dated September 6, 2017 (attached hereto as "Exhibit A") and the attachments thereto.

4. The hourly rates for Petitioner's counsel and experts are as follows: Richard S. Rosen – $450.00; Liam D. Duffy – $200.00; James C. Hardin, III – $600.00.

5. Fees of the Petitioner's counsel and experts exceed $72,410.37 as of September 1, 2017.

6. Petitioner respectfully requests that the Court shorten the time for notice of a hearing on this Motion and hear this Motion on an expedited basis at the next available opportunity, as Petitioner, the sole disinterested Co-Trustee, has already incurred significant fees, and will continue to incur such fees on a daily basis.

7. In addition, the Residuary Trust continues to be without counsel, and it has a necessary and immediate need to have trust counsel appointed by Petitioner for the benefit and protection of all beneficiaries and remainder persons.

For the foregoing reasons, Petitioner requests this Court to issue an Order authorizing the use of Residuary Trust assets to fund payment of current and future fees of Petitioner's counsel and/or experts, in connection with the prudent exercise of his fiduciary obligations as sole disinterested Co-Trustee of the Residuary Trust.

This motion is supported by the affidavit of Petitioner which is being filed herewith, the laws of the State of South Carolina, and any Memorandum of Law, pleadings or discovery in this case and arguments of counsel as allowed by the Court.

ROSEN, ROSEN & HAGOOD

BY: _____

Richard S. Rosen
Liam D. Duffy
151 Meeting Street, Suite 400
Charleston, SC 29401
Telephone: (843) 577-6726
Facsimile: (843) 982-0103
rrhlawfirm.com

Attorneys for Petitioner, Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trust

Charleston, South Carolina

September 6, 2017

Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF KERSHAW	)	CASE NO: 2017-ES-2800333
	)	
IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	)	
	)	
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B,	)	**AFFIDAVIT OF RIGDON H. BOYKIN**
Petitioner,	)	
v.	)	
Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin	)	
Respondents.	)	

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2017 SEP 19 PM 2:28
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

PERSONALLY APPEARED before me Rigdon H. Boykin, who being duly sworn does state as follows:

1. My name is Rigdon H. Boykin and my address is address is 1626 Sumter Highway, Rembert, South Carolina 29128.

2. I am the only non-beneficiary, disinterested Co-Trustee of the Lemuel Whitaker Boykin, II, Residuary Trust, which was created pursuant to Item VIII of the Lemuel Whitaker Boykin Last Will and Testament, dated June 2, 1989. The other Co-

Trustees are Respondents Alice Belger and Mary Deas Wortley.

3. To assist me in the performance of my duties as Co-Trustee, I have necessarily engaged the services of the attorneys Richard S. Rosen and Liam D. Duffy at Rosen, Rosen & Hagood, LLC of Charleston, South Carolina, who have also engaged James C. Hardin, III of The Law Offices of James C. Hardin, III to advise and assist as an expert consultant in this matter.

4. I am submitting this affidavit in support of the motion for an award of attorney's fees and expert consultant's fees and costs simultaneously filed in this matter.

5. The prudent administration and management of the Residuary Trust has been vigorously contested and substantially impeded by Respondents Belger and Wortley. The litigation involves complex issues of South Carolina trust law, and is necessary for the protection and benefit of the Residuary Trust, its beneficiaries, and remainder persons.

6. I am informed and believe that the time spent by my attorneys and expert consultants as set forth more fully in the attached invoice was necessary and reasonable for the fulfillment of my role and duties as Co-Trustee, the prosecution of the claims asserted in this matter and the protection and benefit of the Residuary Trust, its beneficiaries, and remainder persons.

7. A true and correct copy of the invoice for fees and costs in this matter, which I have received from Rosen, Rosen & Hagood, LLC, is attached as "Exhibit 1" to this affidavit and is incorporated herein by reference. Attached to the invoice from Rosen, Rosen & Hagood, LLC is an affidavit of James C. Hardin, III, along with his professional curriculum vitae.

8. The fees, costs, and expenses referenced in this affidavit are for the time period spanning from May of 2017 until August 31, 2017.

9. I anticipate and expect that I will continue to incur fees for attorneys and expert consultants which are necessary to assist me with the prudent exercise of my obligations and duties as Co-Trustee of the Residuary Trust; necessary for the prosecution of this matter; and necessary for the protection and benefit of the Residuary Trust, its beneficiaries, and remainder persons.

10. I hereby respectfully request that the Court review the file herein, together with the exhibits filed in support of the motion, and enter an Order confirming that the attorney's and expert consultant's fees and costs earned or incurred in this matter (current and future) are properly payable out of the Residuary Trust assets and requiring their payment or reimbursement from the Residuary Trust assets and/or from any funds or assets held in any bank, financial, or investment accounts for the Residuary Trust.

FURTHER AFFIANT SAYETH NOT.

Rigdon H. Boykin

SWORN to before me this
6th day of September, 2017.

Notary Public for South Carolina
My commission expires: 9/30/23

Exhibit 1

Rosen, Rosen & Hagood, LLC

Attorneys and Counselors at Law
P. O. Box 893
Charleston, South Carolina 29402
Phone: (843) 577-6726
Fax: (843) 724-8036
www.rrhlawfirm.com

INVOICE

DATE: SEPTEMBER 6, 2017

MATTER NO.9710.000

TO: RIGDON H. BOYKIN
PO Box 69
REMBERT, SC 29128

Re: Ridgon H. Boykin as Co-Trustee of the Lemuel Whitaker Boykin II Residuary Trust

DESCRIPTION			AMOUNT
Services Rendered through August 31,2017			$ 51,336.57
Expert Consulting and Support Services through August 31, 2017 – James C. Hardin III, PLLC			$21,073.80
DUE UPON RECEIPT		TOTAL	**$ 72,410.37**

Make all checks payable to Rosen, Rosen & Hagood, LLC

Please contact Accounting Department for wire instructions

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

AFFIDAVIT OF
JAMES C. HARDIN III

PERSONALLY APPEARING BEFORE ME, and, being duly sworn, the Deponent states as follows:

1. My name is James C. Hardin III and my address is James C. Hardin III, PLLC 113 East Main Street, Suite 330, Rock Hill, SC 29730. My curriculum vitae is attached hereto and incorporated herein as Exhibit Number 1 to this Affidavit.

2. I have been engaged by Richard S. Rosen, Esquire of the law firm of Rosen Hagood, LLC of Charleston, South Carolina. That law firm represents Rigdon Boykin as Co-Trustee of the Residual Trust (the "Trust") under the Will of Lemuel Whitaker Boykin II. Rosen Hagood, as legal counsel to Mr. Boykin, has engaged me to provide expert consulting and support services in the areas of trust administration, the standards of trust investment applicable to Mr. Boykin and his Co-Trustees, and other areas of trust and estate law applicable in South Carolina.

3. In connection with its engagement of me to render such expert services, through August 31, 2017 the firm of Rosen Hagood, LLC has incurred fees to me totaling Twenty-One Thousand Seventy Three Dollars and 80/100 ($21,073.80) as reflected on my Invoice to that firm dated August 31, 2017, which Invoice is attached hereto and incorporated herein as Exhibit Number 2 to this Affidavit.

3. It is anticipated that I will be asked to render additional expert consulting and support services and will be rendering future invoices to Rosen Hagood, LLC in connection therewith.

FURTHER, AFFIANT SAYETH NOT.

James C. Hardin III

SWORN BEFORE ME this 31st
day of August, 2017.

Notary Public for South Carolina
My Commission expires: 5/24/21

00158872

Exhibit 1

CURRICULUM VITAE

James C. Hardin III
James C. Hardin III, PLLC
Wells Fargo Center
113 East Main Street, Suite 330
Rock Hill, South Carolina 29730

Telephone: (803) 329-7601
Facsimile: (803) 329-8121

Other firm office where practice conducted:

Charlotte Office
6135 Park South Drive, Suite 510
Charlotte, NC 28210

Admitted to practice in South Carolina and North Carolina.

Native of Rock Hill, South Carolina. Graduate of Wofford College (B.A., magna cum laude, (1969), where he was a member of Phi Beta Kappa. Received his master's degree in history from University of Virginia (M.A., 1970) and law degree with distinction from Duke University (J.D., 1974). Instructor, Winthrop University, 1979 to 1990.

Co-Author with Professor S. Alan Medlin of the book, *The South Carolina Trust Code*, S.C. Bar Publishers, 2006, with the second edition in process; Contributor to *The Transcript* and to *South Carolina Lawyer*. Contributor to North Carolina Bar Association Newsletter, *The Will and the Way*. Speaker at numerous seminars including, among others, American College of Trust and Estate Counsel Southeast Regional meetings, the South Carolina Bar, the North Carolina Bar Association, the Vermont Bar Association, Palmetto Land Title Association, South Carolina Probate Judges' Association, Duke University Estate Planning Council, and seminars sponsored by bank trust departments in both the Carolinas. (See attached list of publications and presentations made in the last 21 years.)

Service as expert witness and consultant in a number of federal and state court cases involving allegations of attorney or fiduciary negligence or breach of duty in the estate planning and estate and trust administration process.

S.C. Bar Certified Specialist, Estate Planning and Probate Law, 1985 – present; Fellow of the American College of Trust and Estate Counsel since 1986; South Carolina State Chair of the College 2001-2006; member, State Laws Committee of the College, 2000 - 2014; Fiduciary Income Tax Committee of the College, 2012-present; Certified Circuit Court Mediator, 2006 - present; Member Uniform Trust Code Study Committee, National Conference of Commissioners on Uniform State Laws, 2004 – 2006; S.C. Commission on Continuing Legal Education and Specialization, 1991-1997. Chair, S.C. Supreme Court Specialization Advisory Board on Estate Planning and Trust Law Specialty, 1988-1989; S.C. Bar House of Delegates, 1984-1986, 1990-1991, 2005-2006.

Chair, Estate Planning, Probate and Trust Section, S.C. Bar, 1981-1982, 1989-1990, 2003-2004. Member, Section Council, Estate Planning, Probate and Trust Law Section, S.C. Bar, 1996-present; Vice-Chair, 2002; Chair, Uniform Trust Code Study Committee 2003-2005; Chair (1999-2002) and Member 1999 - present, Legislative Affairs Committee of Estate Planning, Probate and Trust Law Section, S.C. Bar. Chair, Joint Probate-Real Estate Section Study Committee on Probate and Estate Planning Aspects of Title To Real Estate, 1999-2000. Served as one of several S.C. Bar liaisons to the General Assembly during its consideration of adoption of the South Carolina Probate Code (1981-1986), the Uniform Prudent Investor Act (2001), the Uniform Principal and Income Act (2001) and the Uniform Trust Code (2006); preparer of Reporter's comments to a portion of the South Carolina Probate Code; Member of Probate and Trust Code Revisions Study Committee leading to enactment in 2013 of SC Senate Bill 143 – Probate and Trust Code Revisions, including Unitrust Conversions and Decanting. Offered testimony to House and Senate Subcommittees in connection therewith.

N.C. Bar Certified Specialist, Estate Planning and Probate Law, 2004 – present; Member and Past Chair of N.C. Estate Planning and Fiduciary Law Section; Member, N.C. Estate Planning and Fiduciary Law Section Council; Member, Legislative Affairs Committee of Section; Member, N.C. Trust Code Committee of Section; Member, Specialization Advisory Board, Estate Planning and Fiduciary Law Specialty, N.C. State Bar; Member, Duke University Estate Planning Council; Member, Charlotte Estate Planning Council; Member, Charlotte Estate Planning Luncheon Group.

In forty-two years of practice concentrating in estate planning, probate and trust law, has prepared estate plans for clients with net worths in excess of $100,000,000 and has administered estates of clients in this asset category. Has served as Personal Representative and Trustee and as attorney for such fiduciaries. Has performed estate planning services for corporate executives, closely-held business owners and farmers. Has established and created private foundations for clients and also assisted clients in charitable giving both with remainder trusts and lead trusts, charitable gift annuities, and gifts of open space easements. Has revised charitable giving forms for Duke University. Has in 2014 represented a family of beneficiaries of in excess of forty (40) trusts aggregating $500 million in assets in a successful conversion of those trusts to unitrusts, and secured Internal Revenue Service approval of the conversion of these trusts which were grandfathered from the application of the Generation-Skipping Transfer (GST) tax.

Manager, James C. Hardin III, PLLC since 2005. Joined the Firm of Roddey Carpenter & White upon graduation from law school in 1974 and became partner in 1978. Partner there until joining Kennedy, Covington, Lobdell and Hickman as a Partner in 1986 to establish their South Carolina office. Practiced with and Chaired the Wealth Transfer Department of Kennedy Covington in their Rock Hill, Charlotte and Raleigh offices until 2005 when established own niche firm specializing in estate planning for both Carolinas.

Listed in the *Best Lawyers in America (Trusts & Estates and Fiduciary Litigation)*, Woodward & White, since 1987; designated by Woodward White as "Lawyer of the Year" for Charlotte, North Carolina in Trusts and Estates in 2014: Selected by peers in North Carolina Legal Elite; Top 100 North Carolina Super Lawyers in 2006; South Carolina Super Lawyers; Martindale Hubbell rating of "AV."

Title of Seminar/Paper/Article	Publication / Venue	Date Presented /Published
Unitrust Conversion of Grandfathered GST Trusts	American College of Trust and Estate Counsel Southeast Regional Meeting	November 2014
Author of Chapter: "Mapping the Plan" in Estate Planning in South Carolina	S.C. Bar Publishers	Pending
Decanting and the Power to Adjust in South Carolina and North Carolina	American College of Trust and Estate Counsel Southeast Regional Meeting	September 2013
Recent Estate Tax Changes About Which A CPA Should Be Aware	South Carolina Journal for Certified Public Accountants	2011
Proposed South Carolina Probate Code Changes Affecting Creditor's Claims Against An Estate	The South Carolina Probate Bench-Bar Seminar	Fall 2011
New Directions or the Well Worn Path? Best Practices of Trust and Estate Attorneys	North Carolina Bar Advanced Planning and Drafting Seminar	September 2007
Drafting Trusts After the Enactment of the South Carolina Trust Code	South Carolina NAELA (Elder Lawyers) Fall Retreat	September 2007
The Section 643 Regulations: Did the Treasury Throw a Bone or an Anvil?	Al Todd Estate Planning Workshop: South Carolina Bar	July 2007
A Comparison of the South Carolina and North Carolina Trust Codes	Grand Strand Estate Planning Council	February 22, 2007
The South Carolina Trust Code	Greenville Estate Planning Council	January 2007
A Comparison of the South Carolina and North Carolina Trust Codes	American College of Trust and Estate Counsel Southeast Regional Meeting	November 2006
Trust Actions: SCTC Background, Planning Analysis and Comments. James C. Hardin III, Alan M. Tewkesbury, Jr. and Julian W. Walker, Jr.	South Carolina Bar Association 14th Annual Probate Bench/Bar	September 15, 2006
South Carolina Trust Code Dissecting the Parts: Part 6 Revocable Trusts (presented with Carolyn Rogers)	South Carolina Bar Uniform Trust Code Seminar	May 2006
Estate Planning 101	York County Legacy Group Inaugural Speaker (multiple nonprofit organizations joining together for charitable giving education)	May 2006
Moderator: The South Carolina Trust Code	South Carolina Bar Annual Convention: Probate, Estate Planning & Trust/Tax Law/Elder Law Sections Seminar	January 2006
The Section 643 Regulations and The North Carolina Trust Code	North Carolina Bar Association CLE Seminar	July 2005
The New South Carolina Trust Code	South Carolina Bar Seminar	December 14, 2005
The Use of Revocable Trusts under the New North Carolina Trust Code	North Carolina Bar Association CLE Seminar	2005
The New South Carolina Trust Code	South Carolina Bar Association Probate Bench/Bar	2005

Title of Seminar/Paper/Article	Publication / Venue	Date Presented /Published
Hot Topics: The North Carolina Principal and Income Act	North Carolina Bar Association CLE Seminar	September 2004
Charitable Giving Techniques	South Carolina Association of Planned Giving Administrators	February 2004
The New Principal and Income Act	CPA Association of Wilmington/Wrightsville Beach, NC	January 19, 2004
The New Prudent Investor Act	*South Carolina Lawyer* Magazine	Fall 2003
A New Regime for the Total Return Trust: The 2001 South Carolina Uniform Principal and Income Act (co-authored with Laura Pleicones)	South Carolina Bar Association CLE Seminar (Tax Law and Probate Law Sections)	January 25, 2003
A New Regime for the Total Return Trust: The 2001 South Carolina Uniform Principal and Income Act (co-authored with Laura Pleicones)	Wachovia Wealth Management LMA Carolinas Conference	October 21, 2002
A New Regime for the Total Return Trust: The 2001 South Carolina Uniform Principal and Income Act (co-authored with Laura Pleicones)	*South Carolina Lawyer* Magazine	July/August 2002
Post-Mortem Estate Planning: Selected Topics (co-authored with Laura Pleicones and Sarah J. Rich)	Wachovia Wealth Management LMA - Carolinas Conference	October 21, 2002
The New Separate Share Regulations Under Section 663(c) (co-authored with Laura Pleicones)	South Carolina Bar Association CLE Seminar	August 16, 2002
Qualified Conservation Contributions	Kennedy Covington Real Estate Department CLE Seminar	August 1, 2002
Total Return Meets the Power to Adjust	South Carolina Bar Association CLE Seminar	August 2002
Mapping the [Estate] Plan	Chapter 3, Estate Planning in South Carolina, Vol. 11, ed. Albert C. Todd III; presented at South Carolina Bar CLE Seminar	June 2002
Tax Consequences of Trusts	Presented to Charlotte, NC, Merrill Lynch investment advisors	November 19, 2001
Selected Marital Deduction Issues, Together with New Planning Strategies under EGTRRA	Kennedy Covington Wealth Transfer Department CLE Seminar	October 31, 2001
Current Probate Issues Relating to Real Estate	Palmetto Land Title Association Seminar	October 24, 2001
Recent South Carolina Statutory Changes (Proposed and Enacted) Affecting the Probate Bench and Bar	South Carolina Bar Association Probate Judges Seminar	October 8, 2001
Estate Planning for Stock Options (co-authored with James E. Earle)	Kennedy Covington Wealth Transfer/ Employee Benefits Department CLE Seminar	August 16, 2001
Post-Mortem Estate Planning: Selected Topics (co- authored with Laura Pleicones and Sarah J. Rich)	North Carolina Bar Association Foundation, 22nd Annual Estate Planning and Fiduciary Law Program	July 20, 2001

Title of Seminar/Paper/Article	Publication / Venue	Date Presented /Published
Transfer of Real Estate at Death – Do Probate Code Changes Resolve the Issue?	*South Carolina Lawyer* Magazine	January 2001
Rest in Peace: Will the Recent Probate Code Changes Finally Resolve the Transfer of Real Estate at Death?	*South Carolina Lawyer* Magazine	2000
Editor, Recent Developments Column	*The Will and the Way*, North Carolina Bar Assn Probate Section newsletter	1999
The Elective Share: A Right in Transition	*South Carolina Lawyer* Magazine	circa 1998
Terminating the Irrevocable Trust: Drafting and Judicial Solutions	South Carolina Bar Association CLE Seminar	circa 1996
The Multi-State Revocable Trust	Professional seminar sponsored by Wachovia Bank	September 1995
Tax Considerations in the Choice of a Will versus a Revocable Trust	Charlotte Estate Planning Luncheon Group	August 18, 1994
Estate Planning: The Multi-State Spectrum	Wachovia Seminar to trust officers and attorneys	January 26, 1994
Lifetime Giving	First Charlotte Bank	November 3, 1993
Multi-State Estate Planning	Vermont Bar Association	May 1993

Exhibit 2

JAMES C. HARDIN III
ATTORNEY AT LAW

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BOARD CERTIFIED SPECIALIST:
ESTATE PLANNING AND PROBATE LAW
FELLOW: AMERICAN COLLEGE OF
TRUST AND ESTATE COUNSEL

August 31, 2017

Richard S. Rosen, Esquire
Rosen Hagood, LLC
151 Meeting St., Suite 400
Charleston SC 29401

RE: Rigdon Boykin, as Co-Trustee of Residual Trust Under Will of Lemuel Whitaker Boykin II
File No. 002137-001

FOR EXPERT CONSULTING SERVICES RENDERED AND COSTS ADVANCED THROUGH AUGUST 31, 2017

TOTAL FEES DUE UPON RECEIPT $21,073.80

00155864

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT
	)	
COUNTY OF KERSHAW	)	CASE NO: 2017-ES-2800333
	)	
IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	)	
	)	
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B,	)	CERTIFICATE OF SERVICE
	)	
Petitioner,	)	
	)	
v.	)	
	)	
Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin	)	
	)	
Respondents.	)	
	)	

I hereby certify that I have this 6th day of September, 2017, served a copy of the foregoing **Motion for Fees and Appointment of Trust Counsel** by mailing copies of same, electronically and/or postage prepaid, in the United States mail, with sufficient postage affixed as follows:

James Y. Becker, Esquire
Haynsworth Sinkler Boyd, PA
1201 Main Street, 22nd Floor
Columbia, SC 29201
jbecker@hsblawfirm.com

William S. Tetterton, Esquire
Tetterton Law Firm LLC
P.O. Box 530
Camden, SC 29020-0530
wstmail@bellsouth.net

CERTIFIED COPY:
ATTEST Debra B. Beasley
PROBATE JUDGE
KERSHAW COUNTY, S. C.

W. H. Bundy, Esquire
BUNDY MCDONALD, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485
whbundy@att.net

Cynthia H. Gourdine
Legal Assistant to Richard S. Rosen

2017-cp-28-831

STATE OF SOUTH CAROLINA COUNTY OF KERSHAW IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	IN THE PROBATE COURT CASE NO.: 2017ES2800333
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Petitioner, v. Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III and May Cantey Boykin, Respondents.	**SUMMONS**

FILED FOR RECORD
2017 SEP 19 PM 2:28
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

FILED
2017 SEP -8 AM 11:47
DEBRA B. BRANHAM
JUDGE OF PROBATE
KERSHAW COUNTY, S.C.

YOU ARE HEREBY SUMMONED and required to Answer the Cross Claim in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the Respondents Lemuel Whitaker Boykin, III and May Cantey Boykin or their attorney, WILLIAM S. TETTERTON, at his offices located 608 Lafayette Avenue, Camden, South Carolina, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to Answer the Cross Claim within the time aforesaid, Judgment by Default will be rendered against

A CERTIFIED COPY:
ATTEST: Debra B. Branham
PROBATE JUDGE
KERSHAW COUNTY, S.C.

you and the Respondents Lemuel Whitaker Boykin, III and May Cantey Boykin will apply to the Court for the relief demanded in their Cross Claim.

William S. Tetterton
Attorney for Respondents Lemuel Whitaker Boykin, III and May Cantey Boykin
Tetterton Law Firm, LLC
608 Lafayette Ave. (29020)
P.O. Box 530
Camden, SC 29021
(803) 432-1496 Phone
(803) 432-1498 Fax
wstmail@bellsouth.net

Sept 8, 2017.

2017-CP-28-831

FILED FOR RECORD
2017 SEP 19 PM 2:29
JANET C. HASTY
CLERK OF COURT
KERSHAW COUNTY, S.C.

FILED
2017 SEP -8 AM 11:47
DEBRA C. BRANHAM
JUDGE OF PROBATE
KERSHAW COUNTY, S.C.

STATE OF SOUTH CAROLINA COUNTY OF KERSHAW IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Petitioner, v. Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III and May Cantey Boykin, Respondents.	IN THE PROBATE COURT CASE NO.: 2017ES2800833 **ANSWER OF LEMUEL WHITAKER BOYKIN, III AND MAY CANTEY BOYKIN AND CROSSCLAIM AGAINST MARY DEAS WORTLEY, INDIVIDUALLY, AS CO-TRUSTEE OF THE LEMUEL WHITAKER BOYKIN, II RESIDUARY TRUST A AND B, CO-TRUSTEE OF THE LEMUEL BOYKIN MARITAL DEDUCTION TRUST A AND B, AND AS CO-PERSONAL REPRESENTATIVE OF THE ESTATE OF ALICE S. BOYKIN; AND ALICE B. BELGER, INDIVIDUALLY, AS CO-TRUSTEE OF THE LEMUEL WHITAKER BOYKIN, II RESIDUARY TRUST A AND B AND AS CO-PERSONAL REPRESENTATIVE OF THE ESTATE OF ALICE S. BOYKIN**

The Respondents Lemuel Whitaker Boykin, III (Whit, III) and May Cantey Boykin (May) answering the Petition of the Petitioner and by way of crossclaim against Mary Deas Wortley and Alice B. Belger, would respectfully show unto the Court:

1. That they deny each and every allegation of the Petition not hereinafter admitted, qualified or otherwise explained.

2. That they admit paragraphs 1 through 17, 19 through 23, 26, 33, and 52 through 55.

3. That these respondents admit the Petitioner's First Cause of Action (paragraphs 40-44).

4. That as to the Petitioner's Second Cause of Action, these Respondents admit paragraphs 46, 47, 48 and 49.

5. Further, that these Respondents admit the Petitioner's Third Cause of Action (paragraphs 52-59).

6. That as to the allegations of paragraph 18, these Respondents admit the allegations of that paragraph with the exception of reference to Code Section 62-7-104 (24). They are informed and believe that this might be a typographical error.

7. That as to the allegations of paragraph 24, these Respondents are informed and believe that Belger and Wortley have taken the position indicated therein and have further decided in concert to refuse to objectively consider the Petitioner's plan or produce an investment strategy of their own that would meet the requirements of the UPIA or the intent of the Residuary Trust. Further these Respondents, on information and belief, would admit that there has been prior mismanagement of the Marital Deductible Trust resulting in the reduction in the value of some or all of the timber land held in the Residuary Trust.

8. As to the allegations set out in paragraph 25, these Respondents would admit that they are not Trustees and do not have any children, and further, that the Co-Trustees must act as responsible fiduciaries. However, these Respondents are informed and believe that the Co-Trustees Belger and Wortley, both as Co-Trustees and having a sibling relationship with these respondents, have failed and refused to exercise reasonable care and skill as required by the Uniformed Prudent Investment Act (UPIA).

9. That as the allegations of paragraph 27, these Respondents admit, on information and belief, that there is considerable discord between all three Co-Trustees to the extent that Wortley and Belger have taken the position that they will just vote "no" on every investment strategy plan proposed by the Petitioner.

10. That as to the allegations set out in paragraph 28, these Respondents have been informed and believe that the Petitioner did propose a plan as set out in this allegation and have no reason to believe that this would not be a prudent investment strategy as required by the UPIA or with the intent the Trust, more particularly Item VIII paragraphs 1 and 2.

11. As to the allegations of paragraph 34, these Respondents do not have sufficient information to either admit or deny the statements of Belger and Wortley, but would show that if, in fact this is a prudent investment strategy proposed by them, the Petitioner has a fiduciary duty to agree with the other Co-Trustees.

12. As to the allegations of paragraph 35, these Respondents would admit that such investment strategy is both troubling and imprudent on its face and would agree that such strategy did not objectively consider the risks and return reasonable suited to the trust.

13. That as the allegations of paragraph 36, these Respondents would admit that the Petitioner's strategy, if well founded and supported by historical economic and investment data, should be adopted by the Co-Trustees; again, these Respondents are informed and believe that Belger and Wortley would not agree to even reasonably consider the Petitioner's proposal or even suggest the imprudence of such an investment strategy.

14. These Respondents would admit the allegations of paragraph 37 are consistent with the intent of the UPIA.

15. As to the allegations of paragraph 38, these Respondents do not have sufficient information to either admit or deny this allegation and would show that if true it would again support these Respondents' concern that the Co-Trustees are not capable of working together in fulfilling their fiduciary duties or the trust imposed on them of acting in good faith as required by the South Carolina Trust Code §62-7-105.

16. As the allegations of paragraph 39, these Respondents would admit on information and belief that there has been consistent delays in the administration of this Trust and that the Co-Trustees are definitely at an impasse all to the detriment of these Respondents and the other beneficiaries.

CROSSCLAIM AGAINST MARY DEAS WORTLEY, INDIVIDUALLY CO-TRUSTEE OF THE L. W. BOYKIN RESIDUARY TRUST A AND B, CO-TRUSTEE OF THE L. W. BOYKIN MARITAL TRUST A AND B, CO-PERSONAL REPRESENTATIVE OF THE ESTATE OF ALICE S. BOYKIN AND ALICE B. BELGER INDIVIDUALLY CO-TRUSTEE OF THE L. W. BOYKIN RESIDUARY TRUST A AND B, CO-PERSONAL REPRESENTATIVE OF THE ESTATE OF ALICE S. BOYKIN

FOR A FIRST CAUSE OF ACTION- NEGLIGENCE

17. The Respondents incorporate and reiterate the statements and allegations contained in all previous paragraphs.

18. These Respondents are informed and believe that these individuals in their individual capacity and as Co-Trustees and Co-Personal Representatives have been negligent,

grossly negligent, willful and wanton in the administration of the L. W. Boykin Residuary Trust A and B, the L. W. Boykin Marital Trust A and B and of the Estate of Alice S. Boykin in one or more of the following particulars:

a. Failing to develop an overall investment strategy that would objectively consider all risks and returns of the Residuary Trusts;

b. Failing to skillfully analyze the expected return from income and appreciation of capital involved in both the L. W. Boykin Residuary Trust A and B and the L. W. Boykin Marital Deductible Trust A and B, and of the Estate of Alice S. Boykin;

c. Failing to consider the disbursement of income as intended by the Residuary Trust to these Respondents;

d. Failing to make a reasonable effort to verify any historical or empirical investment data relevant to diversifying the assets of the Residuary Trust;

e. Failing to diversify the assets of the Residuary Trust;

f. Filing to make and implement decisions concerning the management of Residuary Trust assets in compliance with the trust purposes of the UPIA within a reasonable time;

g. Failing to cooperate within reason with the other Co-Trustees within a reasonable time;

h. In failing to purpose an investment strategy plan that would meet the intent and requirements of the Residuary Trust; and

i. Not exercising that reasonable skill, care and diligence or prudence in fulfilling their fiduciary duties as will be more fully developed during the pendency of this litigation;

j. In failing to exercise that degree of care, skill, prudence or diligence necessary in managing the respective Residuary Trusts, the Marital Deductible Trust or the Estate of Alice S. Boykin;

k. In failing to diligently work with other Co-Trustees in developing an overall investment strategy plan that was both prudent and objective in fulfilling the intent and desires of the trust;

l. In not exercising that degree of care, skill or prudence in scheduling Co-Trustees meetings to fully develop and investment strategy plan that would meet the intent and desires of the Residuary Trust;

m. Being grossly negligent in managing the L. W. Boykin Residuary Trust A and B, the L. W. Boykin Marital Deductible Trust A and B, and the Estate of Alice S. Boykin;

n. In failing to have the requisite degree of skill, care, experience, diligence or prudence in fulfilling the duties of a fiduciary in a trust capacity;

o. In failing to maintain a personal connection with these Respondents who are also their siblings and are entitled to at least being informed and involved in the management of the different trusts and the estate;

p. In not administering the trust in good faith, thereby disregarding the interests of these Respondents;

q. Failing to maintain that degree of impartiality or good faith with regards to protecting the interests of these Respondents;

r. Failing to cooperate with other Trustees in considering reasonable and prudent investment strategies that would benefit these Respondents;

s. Disregarding their duty of loyalty to these Respondents as income beneficiaries and asset beneficiaries of the L. W. Boykin Residuary Trust A and B and L. W. Boykin Martial Deductible Trust A and B;

t. In failing to seek the advice of competent investment advisors in order to make sound, prudent and reasonable investment strategies for the management of the different trusts and the estate;

u. Failing to keep the trusts' assets productive;

v. Failing to insure that the trusts' assets produce reasonable income;

w. Failure to insure that the trusts' assets produce reasonable income to offset any of the necessary expenses of administering the trusts as well as providing these beneficiaries with the income as intended by the trusts; and

x. Mismanaging the timber assets of the trusts.

y. Failure to collect rents owed to the trusts.

19. That the abovementioned particulars of willful, wanton, negligent and grossly negligent conduct of Wortley and Belger have proximately caused these Respondents to suffer actual and consequential damages for which they are informed and believe that they are entitled to recover.

20. That further because of the willful, wanton, negligent and grossly negligent conduct of the Wortley and Belger, these Respondents are informed and believe that they are entitled to punitive damages.

21. That these Respondents are further informed and believe that they are entitled to attorney's fees and costs of this action.

FOR A SECOND CAUSE OF ACTION- BREACH OF FIDUCIARY DUTY

22. The Respondents incorporate and reiterate the statements and allegations contained in all previous paragraphs.

23. That Wortley and Belger had a duty to these Respondents to properly and prudently invest trust assets.

24. These Respondents are informed and believe that Wortley and Belger failed to conform to the applicable standard of care of their management duties and have seriously breached their fiduciary duties in one or more of the following particulars:

    a. Failing to develop an overall investment strategy that would objectively consider all risks and returns of the Residuary Trusts;

    b. Failing to skillfully analyze the expected return from income and appreciation of capital involved in both the L. W. Boykin Residuary Trust A and B and the L. W. Boykin Marital Deductible Trust A and B, and of the Estate of Alice S. Boykin;

    c. Failing to consider the disbursement of income as intended by the Residuary Trust to these Respondents;

    d. Failing to make a reasonable effort to verify any historical or empirical investment data relevant to diversifying the assets of the Residuary Trust;

    e. Failing to diversify the assets of the Residuary Trust;

    f. Filing to make and implement decisions concerning the management of Residuary Trust assets in compliance with the trust purposes of the UPIA within a reasonable time;

g. Failing to cooperate within reason with the other Co-Trustees within a reasonable time;

h. In failing to purpose an investment strategy plan that would meet the intent and requirements of the Residuary Trust; and

i. Not exercising that reasonable skill, care and diligence or prudence in fulfilling their fiduciary duties as will be more fully developed during the pendency of this litigation;

j. In failing to exercise that degree of care, skill, prudence or diligence necessary in managing the respective Residuary Trusts, the Marital Deductible Trust or the Estate of Alice S. Boykin;

k. In failing to diligently work with other Co-Trustees in developing an overall investment strategy plan that was both prudent and objective in fulfilling the intent and desires of the trust;

l. In not exercising that degree of care, skill or prudence in scheduling Co-Trustees meetings to fully develop and investment strategy plan that would meet the intent and desires of the Residuary Trust;

m. Being grossly negligent in managing the L. W. Boykin Residuary Trust A and B, the L. W. Boykin Marital Deductible Trust A and B, and the Estate of Alice S. Boykin;

n. In failing to have the requisite degree of skill, care, experience, diligence or prudence in fulfilling the duties of a fiduciary in a trust capacity;

o. In failing to maintain a personal connection with these Respondents who are also their siblings and are entitled to at least being informed and involved in the management of the different trusts and the estate;

p. In not administering the trust and good faith, thereby disregarding the interests of these Respondents;

q. Failing to maintain that degree of impartiality or good faith with regards to protecting the interests of these Respondents;

r. Failing to cooperate with other Trustees in considering reasonable and prudent investment strategies that would benefit these Respondents;

s. Disregarding their duty of loyalty to these Respondents as income beneficiaries and asset beneficiaries of the L. W. Boykin Residuary Trust A and B and L. W. Boykin Martial Deductible Trust A and B;

t. In failing to seek the advice of competent investment advisors in order to make sound, prudent and reasonable investment strategies for the management of the different trusts and the estate;

u. Failure to collect rents owed to the trusts.

25. That because of the willful and wanton breach of fiduciary duties by Wortley and Belger, these Respondents are informed and believe that they are entitled to actual and punitive damages.

26. That these Respondents are further informed and believe that they are entitled to a full accounting of all of the trusts' assets, expenditures and disbursements; a suspension of Wortley and Belger/Boykin as Co-Trustees, removal of Wortley and Belger/Boykin as

Co-Trustees or in the alternative, reducing or denying compensation to these Co-Trustees.

27. That because of the breach of fiduciary duties owed by Wortley and Belger to these Respondents, they have had to obtain the services of an attorney and have incurred attorney's fees and costs for which they are informed and believe that they are entitled to be compensated.

28. That the above mentioned particulars of Breach of Fiduciary Duties proximately caused these Respondents to suffer actual and consequential damages.

29. That these Respondents are informed and believe that because of the aforementioned breaches of fiduciary duties, the Respondents are informed in and believe that they are entitled to punitive damages as well as attorney's fees and costs of this action.

WHEREFORE, these Respondents demand the following relief:

1. As to the First Cause of Action- Negligence:
    a. These Respondents demand judgment against Wortley and Belger for actual damages, consequential damages and punitive damages in an amount to be determined at the trial of this case.
2. As to the Second Cause of Action- Breach of Fiduciary Duty:
    a. Suspension and or removal of these Co-Trustees;
    b. Denial of any compensation for these Co-Trustees;
    c. The appointment of the Petitioner as the sole disinterested Trustee to make the appropriate decisions for the proper management of the trusts;

d. Actual and Punitive damages; and

e. Attorney's fees and costs in this action.

3. For any other and further appropriate relief as this Court deems fair and equitable.

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Sept 8, 2017.

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	CASE NO: 2017-CP-28-831
	)	
IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	)	
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Petitioner, v. Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin Respondents.	)	**PETITIONER'S MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FEES AND APPOINTMENT OF TRUST COUNSEL**

Petitioner, Rigdon H. Boykin ("Petitioner"), the sole disinterested Trustee of the L.W. Boykin, II Residuary Trusts A and B (hereinafter collectively the "Residuary Trust"), respectfully submits this Memorandum of Law in support of his Motion for Fees and Appointment of Trust Counsel. For the reasons set forth below, Petitioner requests that the Court enter an Order authorizing him to pay the fees of his attorneys and expert consultants from the principal or income

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of the Residuary Trust, and authorizing him to select and appoint qualified counsel for the Residuary Trust.[1]

BACKGROUND

The settlor of the Residuary Trust, L.W. Boykin, II ("Decedent"), died on December 19, 1989. At the time of his death, Decedent was survived by his spouse, Alice S. Boykin, and four children, Mary Deas Wortley (his daughter from a prior marriage), Alice Belger, L.W. Boykin, III ("Whit"), and May Cantey Boykin ("May"). Upon Decedent's death, a majority of his sizeable estate—including roughly 6,000 acres of timberland and farmland in rural Kershaw, Sumter, Fairfield, and Lee Counties—was transferred into the L.W. Boykin, II Marital Deduction Trust A and B (hereinafter collectively the "Marital Deduction Trust"). On August 8, 2016, Alice Boykin died, and pursuant to instructions in Decedent's Last Will and Testament dated June 2, 1989 (the "Will"), the assets held in the Marital Deduction Trust were transferred to the Residuary Trust. The Co-Trustees of the Residuary Trust are Mary Deas Wortley ("Wortley"), Alice Belger ("Belger"), and Decedent's cousin, Petitioner Rigdon H. Boykin, who is the only disinterested, non-beneficiary Co-Trustee of the Residuary Trust. The income beneficiaries are Wortley, Belger, Whit, and May. Of those four, only Wortley and Belger have children who stand to inherit substantial assets if the status quo of the Residuary Trust persists. The current estimated value of the Residuary Trust is between approximately $25,000,000 and $30,000,000.

[1] Petitioner filed his Motion for Fees and Appointment of Trust Counsel on September 6, 2017. Exhibit 1 to that Motion was an invoice of Petitioner's attorneys' fees and costs—including those of Petitioner's expert consultant, James Hardin, Esquire—through August 31, 2017, which totaled $72,410.37. As of January 10, 2018, Petitioner's attorneys' fees and costs (again, including those of James Hardin) total approximately $148,818.41. As discussed more fully below, these fees have been incurred by Petitioner in good faith, for the benefit or preservation of the trust, and in connection with the prudent exercise of his duties as Co-Trustee.

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Since the death of Alice Boykin and the pour over of the Marital Deduction Trust into the Residuary Trust in August of 2016, Petitioner has faced from his Co-Trustees consistent impediments to the timely, efficient, and prudent management and administration of the Residuary Trust. Based on the fact that approximately ninety percent (90%) of the Residuary Trust's total value (after payment of taxes) is currently held in timberland and farmland—the current marketable value of which far exceeds its value as it is currently being utilized (or under-utilized)—there has been considerable disagreement among the Co-Trustees about how to manage the Residuary Trust. Petitioner has sought repeatedly to resolve the disagreements as to management and investment of the Residuary Trust assets, including submitting an investment plan, offering to finance Co-Trustee Belger's and Wortley's purchase of certain sentimental pieces of Residuary Trust property, and insisting upon regular Co-Trustee meetings to work through the various issues.

Despite Petitioner's good faith efforts, his attempts to date to resolve the issues surrounding the Residuary Trust have been to no avail. In fact, Petitioner's Co-Trustees have continually cancelled trust meetings so that the Co-Trustees have not been able to discuss urgent trust matters requiring attention. As a result, and in keeping with his fiduciary duties as Co-Trustee imposed upon him by the Will, the South Carolina Trust Code, and common law, Petitioner has instituted this action seeking instruction from the Court, as well as for declaratory judgment, attorneys' fees, appointment of trust counsel, and further relief as more fully set forth in his Petition. This dispute among the Co-Trustees involves complex questions of trust law, risk mitigation, fiduciary duty, and prudent investment of assets, among others. Petitioner, to fulfill his fiduciary duties, has had to engage counsel and expert consultants to advise and assist him in carrying out his obligations,

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as would any prudent fiduciary. However, Petitioner is the only disinterested Co-Trustee who stands to gain nothing from this litigation or from the Residuary Trust. Petitioner is acting solely for the benefit and protection of the Residuary Trust, its beneficiaries, and remainder persons in bringing this good faith action, as he is required to do under the South Carolina Trust Code and common law. Therefore, Petitioner should not be forced to personally bear the expense of this litigation, and furthermore should be permitted to immediately select and appoint qualified legal counsel for the Residuary Trust, which is currently without counsel.

ARGUMENT

A. Petitioner's present and prospective fees of attorneys and other agents should be paid from the Residuary Trust.

Petitioner moves for an Order directing the Co-Trustees to immediately pay from Residuary Trust assets, or to reimburse Petitioner, for the present and prospective legal and expert consulting fees incurred by him in connection with the fulfillment of his fiduciary duties to invest and reinvest the Trust assets as a prudent investor.

1. Both Decedent's Will and the South Carolina Trust Code expressly authorize the payment of Petitioner's attorneys' fees from the Residuary Trust assets.

In gleaning the intent of Decedent with respect to the attorney and other fees which have been necessarily incurred by Petitioner, the Court need look no further than the express terms used by Decedent in his Will, which established the Residuary Trust. Specifically, in Item XIV of the Will, Decedent gave the Co-Trustees the following powers (among others):

a. In Item XIV, Paragraph J, Decedent empowers the Trustees to employ and compensate, out of the principal or income of the Residuary Trust, agents, accountants, brokers, attorneys, tax specialists, and their assistants, advisors deemed needful for the proper management, handling and administration of

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the Residuary Trust, provided such professional representatives are selected and retained with reasonable care.

b. In Item XIV, Paragraph N, Decedent states that, in addition to the powers, authority and discretion expressly conferred by Will (or by law), the Co-Trustees of the Residuary Trust shall also have "the authority to do all things and the right to exercise all powers reasonably necessary or incidental to the proper management" of the Residuary Trust.

The powers granted to the Co-Trustees by these express provisions of Decedent's Will are further supported by the relevant governing provisions of the South Carolina Trust Code. For example, S.C. Code Ann. § 62-7-709 ("Reimbursement of expenses") provides that "[a] trustee is entitled to be reimbursed out of the trust property for (1) expenses that were properly incurred in the administration of the trust." S.C. Code Ann. § 62-7-709(a) (emphasis added). Furthermore, S.C. Code Ann. § 62-7-816 ("Specific powers of trustee") provides that a trustee may "pay taxes, assessments, compensation of the trustee and of employees and agents of the trust, and all other expenses incurred in the administration of the trust." S.C. Code Ann. § 62-7-816(15).

The South Carolina Trust Code unequivocally authorizes the Court to award a fiduciary's (including a trustee's) attorneys' fees to be paid from trust assets.[2] Section 62-7-1004 provides:

> In a judicial proceeding involving the administration of a trust, the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust that is the subject of the controversy.

S.C. Code Ann. § 62-7-1004 (emphasis added); see also S.C. Code Ann. § 62-1-111 ("In a formal proceeding [such as one concerning the internal affairs of trusts], the court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party, to

[2] The decision to award attorney's fees under S.C. Code Ann. § 62-7-1004 is left to the broad discretion of the trial court, and is reviewable only for an abuse of discretion. See S.C. Dep't of Transp. v. Revels, 411 S.C. 1, 8, 766 S.E.2d 700, 703 (2014) ("The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion.")

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be paid by another party or from the estate that is the subject of the controversy.") (emphasis added). All of the above statutes are part of the South Carolina Probate Code, Articles 1 through 8 of Title 62 of the Code of Laws (of which the South Carolina Trust Code is Article 7). As with the Probate Code generally, S.C. Code Ann. § 62-7-106 ("Common law of trusts; principles of equity") states that "[t]he common law of trusts and principles of equity supplement this article, except to the extent modified by this article of another statute of this state."

Section 62-7-1004 of the South Carolina Trust Code is based in large measure on the Uniform Trust Code, initially promulgated by the Uniform Laws Commissioners in 2000. To date, over thirty-five (35) states have enacted the Uniform Trust Code. As more fully discussed in Section A.2 of this memorandum, the courts in a number of those states have regularly awarded Trustees their reasonable attorney's fees under their state's counterpart of South Carolina S.C Code Ann. § 62-7-1004.

The South Carolina appellate courts have likewise endorsed the entitlement of a Trustee to employ attorneys and to pay their fees from the assets of the trust. In Rembert v. Gressette, 318 S.C. 519, 458 S.E.2d 552 (1995), the circuit court held for the Trustees in connection with certain beneficiaries' actions against the Trustees for alleged breach of fiduciary duty and mismanagement. In affirming the judgment of the circuit court in favor of the Trustees, the Court of Appeals of South Carolina approved of the Trustees' having engaged an attorney at law to assist the Trustees. The Court of Appeals, citing the stature of the attorney for the Trustees as a certified specialist in estate planning and probate law in South Carolina, detailed the five years of representation the attorney had provided the Trustees, and the successful results the attorney had

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obtained, thus preserving Trust assets. The court upheld the Trustees' payment of the fees of trust counsel from the assets of the Trust as well as the amount of those fees.

Based on the express authority granted under Decedent's Will,[3] together with S.C. Code Ann. §§ 62-7-709, 62-7-816, 62-7-1004, 62-1-111 and the endorsement by South Carolina appellate courts of the payment of a trustee's legal fees from Trust assets, Petitioner clearly should be authorized to compensate his attorneys and expert consultants with Residuary Trust funds.

2. Courts routinely permit a trustee's attorneys' fees to be paid from trust assets, particularly where the litigation is brought in good faith and for the benefit of the trust.

Petitioner is entitled to an immediate award of attorneys' fees and costs, both retrospectively and prospectively, in connection with this litigation. Petitioner is entitled to—indeed, he has a duty to—bring suit to compel a Co-Trustee to redress a breach of trust or to prevent a breach of trust. See S.C. Code ann. § 62-7-703(g); United States v. Boucher, 735 F. Supp. 987, 989 (D. Colo. 1990) ("[I]t is a fundamental element of trust law that the trustee has a duty to protect the trust assets.").

When obligations are owed to a trust, courts have recognized that an interim award of fees and costs can be appropriate to avoid a situation in which the fiduciary would have to personally bear the expense of performing his or her duty to the trust. See Shurtleff v. United Effort Plan Trust, 289 P.3d 408, 416 (Utah 2012) (Based on Utah's statute, which is virtually identical to S.C. Code Ann. § 62-7-1004, upholding an interim payment of over $5.7 million in trustee fees and costs to the special fiduciary appointed to protect trust beneficiaries because the award was

[3] Although Decedent's Will was executed in 1989, and the South Carolina Trust Code became effective on January 1, 2006, S.C. Code Ann. § 62-7-1106 provides that "this article applies to all trusts created before, on, or after its effective date." S.C. Code Ann. § 62-7-1106(a)(1).

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appropriate to avoid a situation where otherwise the special fiduciary would have to personally bear the expense for performing his duty to the trust); In re Life Ins. Trust Agreement of Julius F. Seeman, Dated Apr. 19, 1962, 841 P.2d 403, 404–05 (Colo. App. 1992) (upholding award of trustee fees to trustee and attorneys' fees to attorney for trustee over objections of co-trustee and beneficiaries even though they had a pending lawsuit against the trustee alleging improper appropriation of trust funds and breach of fiduciary duty); In re Daly's Estate, 120 N.Y.S.2d 896, 903 (N.Y. Sur. 1953) (holding that a corporate trustee named as a defendant in a suit by an individual trustee was entitled to an award of attorneys' fees from the trust estate prior to the conclusion of the action); see also Ball v. Mills, 376 So. 2d 1174, 1182 (Fla. Dist. Ct. App. 1979) ("If in spite of every effort by a trustee to carry out his duties in a manner exhibiting his concern for the maintenance of a spirit of trust and cooperation, and with due regard for the honest convictions and opinions of his co-trustees with whom he differs, his vigilant concern for the proper administration or protection of the trust requires him to take legal action, we do not think that a partial award of attorney's fees and court costs from trust assets must necessarily await the final conclusion of the lawsuit.") (emphasis added).

Courts have also routinely awarded trustees their reasonable attorneys' fees under their state's counterpart to S.C Code Ann. § 62-7-1004. Garwood v. Garwood, 233 P.3d 977, 985 (Wyo. 2010) (based on Wyo. Stat. Ann. § 4-10-1004, which is identical to S.C. Code Ann. § 62-7-1004, stating: "[A] trustee should not be personally responsible for litigation expenses associated with the proper exercise of its official duties."); Klinkerfuss v. Cronin, 289 S.W.3d 607 (Mo. Ct. App. 2009) (awarding payment under Missouri's version of section 1004, "[o]therwise . . . the trustee would have to personally bear the expense for performing his duty to the trust."); see also O'Riley

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v. US Bank NA, 412 S.W.3d 400 (Mo. Ct. App. 2013) ("[A]n award of attorney's fees under section 456.10-1004 was proper where the litigation was brought and defended in good faith and there were issues raised which could only have been settled via judicial determination."); In re Gene Wild Revocable Trust, 299 S.W.3d 767 (Mo. Ct. App. 2009) (same).

Payment of a trustee's attorneys' fees and expenses out of trust assets is appropriate where such expenses were incurred in good faith, and for the benefit or preservation of the trust. Rapp v. Rapp, 562 N.W.2d 359, 362 (Neb. 1997); see also Shriners Hosps. for Crippled Children v. Robbins, 450 So. 2d 798, 802 (Ala. 1984) ("When litigation expenses are necessary for the proper administration, preservation, and execution of the trust, the attorney's fees incurred by the trustees are chargeable against the estate."); In re IMO Trust ex rel. Gore, C.A. No. 1165-VCN, 2013 WL 771900 (Del. Ch. Feb. 27, 2013) (approving payment of substantial fees to trustee's litigation counsel and holding that "[a] trust should pay its trustee's attorney' fees and expenses when the attorneys' services were necessary for the proper administration of the trust or where the services otherwise resulted in a benefit to the trust."); Rouner v. Wise, No. WD75305, 2013 WL 3880150 (Mo. Ct. App. July 30, 2013) (finding trial court did not abuse its discretion in awarding attorney's fees in favor of defendants where it determined that complex issues raised in plaintiffs' petition were not frivolous and required judicial determination and that defendants incurred litigation expenses while carrying out duty to defend the trust); Anselmo v. Guasto, 13 S.W.3d 650 (Mo. Ct. App. 1999) (upholding award of attorneys' fees to trustee's litigation counsel where services performed by the attorneys were for the benefit of the trust); Matter of Great Northern Iron Ore Properties, 311 N.W.2d 488 (Minn. 1981) (same); Nickas v. Capadalis, 954 S.W.2d 735 (Tenn. App. 1997) ("In an action involving a trust, the award of attorney's fees from the trust corpus is

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permitted only when the services of such attorneys inure to the benefit of the entire estate as distinguished from services rendered to benefit one or more of the individuals interested in the trust.").

The litigation before the Court, and Petitioner's attorneys' and expert consultant's fees incurred in connection with this litigation, are not for his own benefit. Petitioner is not a beneficiary of the Residuary Trust, and does not stand to personally benefit from this action. However, "[a] trustee is held to something stricter than the morals of the market place," Meinhard v. Salmon, 249 N.Y. 458, 164 N.E. 545 (1928) (Cardozo, J.), and in keeping with that charge, Petitioner has been forced to involve the Court in an effort to protect the Residuary Trust. As such, it is nearly axiomatic (and amply supported by the preceding authorities) that Petitioner should not be forced to personally bear the expense of performing his statutorily-imposed duties to the Residuary Trust, including bringing these matters before the Court. Therefore, Petitioner respectfully requests that the Court enter an Order approving the payment from the Residuary Trust assets of Petitioner's attorneys' and expert consultant fees, all of which have necessarily been incurred as the result of the prudent exercise of his duties as Co-Trustee.

B. Petitioner, as the sole disinterested, non-beneficiary Co-Trustee, should be permitted to select and appoint qualified legal counsel for the Residuary Trust.

Petitioner moves, secondly, for an Order of this Court authorizing and directing him, as the sole disinterested Co-Trustee of the Residuary Trust, to employ and compensate legal counsel for the Residuary Trust. To the best understanding of Petitioner after reasonable investigation on his part, the Residuary Trust has no legal counsel. The Petitioner submits the following legal authorities in support of his motion to employ and compensate trust counsel.

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First, the express words of Decedent's Will impose upon Petitioner and his Co-Trustees a modern and progressive standard under which the Residuary Trust's assets are to be invested. Based on their actions to date (as detailed in the Petition), Petitioner's Co-Trustees, Wortley and Belger, have been unwilling to embrace this prudent investor standard. Decedent, in Item XIV, Paragraph C of his Will requires the Co-Trustees to invest and reinvest the Trust assets as men of prudence exercise in the management of their own affairs. This investment standard is similar, if not identical to, that which is required by the South Carolina Prudent Investor Act, S.C. Code Ann. § 62-7-933. While Decedent could have absolved his Co-Trustees from prudent investment, he did not do so, but rather specifically imposed that standard upon them.

It is because Petitioners Co-Trustees, Wortley and Belger, have been unwilling to act as prudent investors that Petitioner, in keeping with his fiduciary duties, initiated this action against his Co-Trustees. While not the subject of this Motion, Petitioner is seeking declaratory relief under S.C. Code Ann. § 15-53-50 and for instructions from the court under S.C. Code Ann. § 62-7-201 to the effect that as the sole disinterested Co-Trustee, he should exercise preeminent authority among the three Co-Trustees, and in addition that he should be designated as the special fiduciary under S.C. Code Ann. § 62-7-1001(b)(5).

The duty to commence this action is imposed on the Petitioner by S.C. Code Ann. § 62-7-703(g)(1) and (2). There, a Co-Trustee is directed to exercise reasonable care to prevent a Co-Trustee from committing a serious breach of trust, and to compel a Co-Trustee to redress serious breaches of trust. The Petitioner can establish that his Co-Trustees have committed serious breaches of trust, which such Co-Trustees should be compelled to redress. A "serious breach of trust" is defined in S.C. Code Ann. § 72-7-103(24) to be "a single act that causes significant harm

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or involves flagrant misconduct, or a series of smaller breaches, none of which individually justify removal when considered alone, but which do so when considered together."

In addition, in his Will, Decedent very clearly gave his Co-Trustees the authority to engage trust counsel. In Item XIV, Paragraph J, Decedent empowers the Co-Trustees "to employ and compensate, out of the principal or the income or both as to the . . . trustee shall seem proper . . . attorneys-at-law . . . deemed needful for the proper management, handling and administration of the . . . trust, and to do so without liability for any neglect, omission, misconduct, or default of any such agent . . . provided he was selected and retained with reasonable care."

Further, such engagement of trust counsel is authorized by applicable statutes.

a. S.C. Code Ann. § 62-7-815 provides that a trustee may exercise all powers conferred by the terms of the trust and, except as limited by the terms of the trust, all powers over the trust property which an unmarried competent owner has over individually owned property. The exercise of a power is subject to the fiduciary duties prescribed by the South Carolina Trust Code and applicable South Carolina cases.

b. S.C. Code Ann. § 62-7-816(15) authorizes and empowers a trustee to "pay taxes, assessments, compensation of . . . employees and agents of the trust, and other expenses incurred in the administration of the trust."

c. S.C. Code Ann. § 62-7-816(24) provides that, without limiting the authority conferred by S.C. Code Ann. § 62-7-815, a trustee is authorized to "prosecute or defend an action, claim, or judicial proceeding in any jurisdiction to protect trust property and the trustee in the performance of the trustee's duties (emphasis added)."

There is ample support under South Carolina law for the proposition that a disinterested Co-Trustee has a special stature, and conversely, that Co-Trustees who are also beneficiaries may have a conflict of interest which should deprive them of taking certain actions as trustee, notwithstanding any provisions of a decedent's will or trust agreement imposing either a unanimity

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or a majority requirement for actions by Co-Trustees. Sections 62-7-105(a) and (b)(11), and 62-7-201 provide the court ample authority to address the internal affairs of trusts, including decision-making by Co-Trustees, to the extent that such authority is necessary in the interests of justice.

Further, South Carolina statutes afford the Court or the Co-Trustees or both the authority to alter the entitlements of the beneficiaries or the terms of a trust in the following ways, among others. First, S.C. Code Ann. § 62-7-904(A) provides that a trustee may adjust between principal and income to the extent that the trustee considers it necessary for the trustee to reconcile both the duty to invest trust assets as a prudent investor and the duty of impartiality among the beneficiaries. Yet S.C. Code Ann. § 62-7-904(C) denies that power to adjust to any trustee who is also a beneficiary of the trust. Similarly, S.C. Code Ann. § 62-7-904C authorizes a trustee to convert "an income trust" to a "unitrust," whereby the beneficiaries receive a payment each year equal to a stated percentage of the value of the trust assets. Yet, S.C. Code Ann. § 62-7-904C(B) authorizes such a conversion to be undertaken only by a disinterested trustee, that is, one who is not also a beneficiary. Finally, S.C. Code Ann. § 62-7-816A authorizes the court or the Trustees or both to undertake the transfer of some or all of the assets of one trust, the original trust, into a new trust for the same or fewer beneficiaries of the original trust. This process is referred to as "decanting." Yet once again, decanting cannot be undertaken by a Co-Trustee who is also a beneficiary. In fact, the comments to S.C. Code Ann. § 62-7-816A(a) state that decanting can be used for, among other reasons, "limiting the authority of interested Trustees . . . " (emphasis added).

Put simply, the South Carolina Trust Code provides abundant authority for the notion that a non-beneficiary Co-Trustee can do things that a Co-Trustee who is also a beneficiary cannot. Here, each Co-Trustee has engaged litigation counsel to advise them with respect to this action,

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and undoubtedly the estate of Alice Boykin has its own counsel. However, Respondents Wortley and Belger also happen to be the Co-Personal Representatives of that estate, such that the estate's counsel is clearly conflicted out of also serving as Residuary Trust counsel. What the Co-Trustees are left with, is a Residuary Trust with no attorney to advise and assist on important matters of administration, distribution, allocation between principal and income, and other trust issues. Because of Petitioner's status as the sole, disinterested Co-Trustee of the Residuary Trust, it is only logical that he would be authorized (based on the foregoing authorities) to select and appoint qualified legal counsel for the Residuary Trust.

CONCLUSION

For the foregoing reasons, Petitioner requests that the Court enter an Order authorizing him to pay the fees of his attorneys and expert consultants from the principal or income of the Residuary Trust, and authorizing him to select and appoint qualified counsel for the Residuary Trust.

ROSEN, ROSEN & HAGOOD

BY: /s/ Liam D. Duffy

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Charleston, South Carolina
January 10, 2018

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW	)	CASE NO: 2017-CP-28-831
IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	)	
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B,	)	**MOTION TO AUTHORIZE THE SALE OF TRUST PROPERTY**
Petitioner,	)	
v.	)	
Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin	)	
Respondents.	)	

Petitioner, Rigdon H. Boykin ("Petitioner" or "Rigdon"), as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trust A and B (the "Residuary Trust"), hereby moves the Court for an Order: (1) authorizing the sale of certain real property (described below) owned by the Residuary Trust; and (2) requiring the Co-Trustees to approve the Option Agreement, attached hereto as Exhibit A, to purchase the Boykin Millpond and/or additional property in downtown Boykin, South Carolina owned by the Residuary Trust (or portions thereof).

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The Residuary Trust owns significant real estate in and around the downtown Boykin, South Carolina area. This includes the Boykin Millpond (approximately 200 acres of flooded land), approximately 281 acres of buffer up to Route 521, the land on the west side of Route 261 (144.84 acres), and the land and buildings in "Downtown Boykin" (consisting of "Rosa Lee's Cottage," "Ginny's Cottage," the Store, the Grits Mill, the Broom Store and the Millpond Steakhouse—all of which occupy approximately 12.2 acres), all referred to as "The Millpond." For ease of reference, all the above land will be referred to as two separate parcels: (1) the "Boykin Millpond" (which excludes the Church); and (2) "Downtown Boykin" (which includes the Church). Petitioner's present Motion seeks to authorize the sale of only these two parcels, and does not implicate any other Residuary Trust land.

At the end of August 2017, Petitioner believed that the rookery on the Boykin Millpond might be so unique that it might be possible to find a conservation donor that would be willing to purchase the Boykin Millpond and donate it to a conservation organization. A potential donor (hereinafter referred to as the "Donor") was identified and an option agreement[1] (hereinafter the "Option Agreement") to purchase the above-describe Boykin Millpond and Downtown Boykin properties was negotiated with the Donor and presented to the two beneficiary Trustees, Belger and Wortley, for their consideration.[2]

[1] The Option Agreement is actually comprised of two separate option agreement. The total purchase price for both options is $335,000, as discussed herein. Of that amount, $35,000 is for the option to purchase Respondent Wortley's one-half interest in a cottage, of which the Residuary Trust owns the other one-half interest. The remaining $300,000 of the purchase price for the Option Agreement is for the Boykin Millpond and Downtown Boykin properties, which are identified in greater detail in Exhibit A.

[2] The Option Agreement is attached hereto as Exhibit A. At the January 10, 2018 Trustee meeting, Petitioner presented the Option Agreement to his Co-Trustees and their counsel. Counsel for Respondent Belger objected to the efficacy and/or validity of the Option Agreement, as they were not yet signed by the Donor at that time, and because the Option Agreement failed to except from Section 7.5 (relating to notice of pending or threatened litigation) the existence of this lawsuit and two personal injury related incidents that could

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The reason the Donor has insisted upon the Option Agreement, as opposed to an outright purchase contract, was to give the Donor sufficient time to have the property and the rookery surveyed by avian, environmental, hydrological and other experts (including building contractors with respect to the existing structures) in order to ascertain whether the property was as represented by Petitioner, and thus worth a very substantial expenditure of the Donor's funds. These necessary environmental surveys and the associated due diligence can take several months to complete. Therefore, in order to ensure that the Donor was serious about exploring the purchase, a significant option fee—$335,000.00—was negotiated by Petitioner. Attached hereto as Exhibit B is a term sheet which sets forth the essential terms of the Option Agreement.

A failure by the Co-Trustees to approve the Option Agreement will jeopardize the sale of the properties and will result in significant and irreparable harm to the Residuary Trust. If the Boykin Millpond and Downtown Boykin properties are not sold, the Residuary Trust will incur significant expenses which will act as a drain on the Residuary Trust assets. Such expenses include, but are not limited to: tens of thousands of dollars per year in taxes, maintenance, and insurance; approximately $250,000 to repair the Boykin Millpond Dam; and approximately $500,000 to $800,000 in remedial maintenance on the buildings in Downtown Boykin, many of which are in substantial disrepair. In addition the Residuary Trust has substantial liability exposure with respect to these properties and downstream people and property. Furthermore, retaining these properties in the Residuary

possibly result in future claims against the Trust. As of the date of the filing of this Motion, the Donor is currently revising the Option Agreements to reflect those requested changes, and has committed to providing a signed Option Agreement no later than January 23, 2018.

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Trust will result in no meaningful income whatsoever that could be used to support the beneficiaries and remainder persons.

Petitioner negotiated the Option Agreement in November of 2017 and has had carefully assuage the concerns of the Donor, who has grown increasingly impatient with the Co-Trustees' inability to reach an agreement. If the Option Agreement is not executed in the next few weeks, the Donor has stated that it will move on to other potential pieces of property. There are thousands of other properties available to the Donor that present equally compelling reasons for preservation. If the Co-Trustees fail to seize this rare and valuable opportunity, they will be inflicting irreparable harm on the Residuary Trust and its beneficiaries.

Section 62-7-816 of the South Carolina Trust Code, which sets forth the specific powers of the Co-Trustees, provides that the Co-Trustees may "grant an option involving a sale, lease, or other disposition of trust property or acquire an option for the acquisition of property . . . ." S.C. Code Ann. §62-7-816(10). If the Co-Trustees fail to exercise that power in the face of this Option Agreement, they will be violating their duty to act as prudent investors, and will be acting contrary to the intent of the settlor of the Residuary Trust and the wishes of three of the four income beneficiaries.

The Trust Code grants this Court the authority to remedy a potential breach of trust by compelling the Co-Trustees to perform their duties. S.C. Code Ann. §62-7-1001(b)(1). Failure to grant the relief sought in this Motion would defeat the overall purpose of the Residuary Trust—which is to provide for the beneficiaries—and would ultimately be to their detriment. *Ex Parte Guaranty Bank & Trust Co.*, 255 S.C. 106, 112, 177 S.E.2d 358, 361 (1970).

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For the foregoing reasons, Petitioner requests this Court to issue an Order authorizing the sale of certain real property owned by the Residuary Trust and requiring the Co-Trustees to approve and accept the Option Agreement attached hereto. In the alternative, the Court should issue an Order approving the sale, regardless of whether the Co-Trustees approve and accept the Option Agreement, because the sale is necessary in the interests of justice to provide for the benefit of the beneficiaries and remainder persons. *See* S.C. Code Ann. §62-7-105(11). This motion is supported by the Affidavit of Petitioner which is being filed herewith as Exhibit C, the laws of the State of South Carolina, and any Memorandum of Law, pleadings or discovery in this case and arguments of counsel as allowed by the Court.

ROSEN, ROSEN & HAGOOD

BY: *s/Liam D. Duffy*

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Attorneys for Petitioner, Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trust

Charleston, South Carolina

January 16, 2018

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EXHIBIT A

(Trust Option Agreement to Purchase Boykin Millpond and Downtown Boykin)
AND
(Mary Deas Wortley Option Agreement for Interest in Miss May's Cottage)

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STATE OF SOUTH CAROLINA	)	
	)	**OPTION TO**
COUNTY OF KERSHAW	)	**PURCHASE REAL PROPERTY**

THIS OPTION TO PURCHASE REAL PROPERTY (this "Agreement") is entered into this ___ day of November, 2017, by and between the L.W. Boykin II Trust A and B, a South Carolina trust whose address is Attention: Jane Peacock, P.O Box 428, Camden, SC 29021 ("Seller"), and _____ LLC, a Delaware limited liability company whose address is c/o Rubin and Rudman LLP, 53 State Street, Boston, MA 02109 ("Purchaser") (collectively, "the Parties"). The "Effective Date" of this Agreement shall be the later of the respective dates on which Purchaser and Seller signed and dated this Agreement as provided on the signature pages.

Seller and Purchaser hereby agree as follows:

1. Grant of Option. In consideration of Three Hundred Thousand Dollars ($300,000.00) (the "Option Consideration") (which is non-refundable except in the event Seller is unable or unwilling to deliver title if the Option is exercised), to be paid by Purchaser to Seller within five (5) days of the Effective Date, Seller hereby grants to Purchaser the sole, exclusive and irrevocable option (the "Option") to purchase those tracts of land consisting of approximately 633 acres in total, situated in the County of Kershaw, South Carolina, and bearing Kershaw County Tax Map Numbers _____, as more fully described on Exhibit A attached hereto, together with the Seller's undivided one-half interest in an additional 3.07 acres known as "Miss May's Cottage" as more fully described on Exhibit A, and all rights, privileges, easements and appurtenances thereunto belonging, including (without limitation) all timber, minerals, buildings, improvements and fixtures of whatsoever kind or nature presently located thereon (collectively, the "Premises"). Each individual parcel making up the Premises shall be referred to as a "Parcel." The Option is granted to Purchaser by Seller in accordance with the terms and conditions of this Agreement, and is subject to the terms and conditions of the Term Sheet attached hereto as Exhibit B. Notwithstanding the foregoing, Purchaser shall have the option to exclude from the Premises being acquired the Parcel or Parcels making up either (i) approximately 12.44 acres of land and buildings consisting of Rosa Lee's Cottage, Ginny's Cottage, the Store, the Grits Mill, the Broom Store, the Millpond Steakhouse, and Swift Creek Church – collectively referred to as "Downtown Boykin Parcels" as identified on Exhibit B, or (ii) the 9.8 acres of the Downtown Boykin Parcels located on the south side of Boykin Mill Road and 0.24 acres related to Swift Creek Church on the north side of Boykin Mill Road. Purchaser shall, when delivering the "Notice" (as defined below), specifically identify the Parcels being acquired and whether or not (x) both of the Downtown Boykin Parcels are included, (y) neither of the Downtown Boykin Parcels are included, or (z) only the 2.4-acre Parcel of the Downtown Boykin Parcels on the north side of Boykin Mill Road is included.

2. Property Documents. Contemporaneously with the execution of this Agreement, Seller shall furnish to Purchaser any documentation pertaining to the Premises in Seller's possession including, without limitation, plans, surveys, environmental reports or assessments, title policies or commitments, permits, licenses, and other such documents (the "Property Documents") excluding attorney-client communications involving legal advice or other attorney's work product. The Property Documents are furnished without representation or warranty of any kind as to their accuracy or completeness. If

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Purchaser decides not to exercise this Option, Purchaser shall return the Property Documents to Seller forthwith. Seller may prepare a list of all documents delivered to Purchaser, which Purchaser agrees to acknowledge.

3. Confidential Nature. Purchaser agrees that all Property Documents obtained by Purchaser from Seller during the term of this Agreement with respect to the Property shall be held in confidence by Purchaser, and Purchaser shall ensure that such Property Documents are not disclosed to any third party except to Purchaser's employees, agents, lawyers, consultants and other professional representatives in connection with Purchaser's Investigations (as defined below), in which event Purchaser shall direct each such recipient of such information to use diligent efforts to maintain the confidentiality of such information. Notwithstanding the foregoing, Purchaser shall not have any obligation under this Subsection 3 to maintain the confidentiality of any materials or information which either (a) are publicly known or are a matter of public record at the time such materials are made available to or information is disclosed to Purchaser, or (b) are already otherwise known to Purchaser at the time such materials are made available to or information is disclosed to Purchaser, or (c) become public during the term of this Agreement other than by means of or as a result of a breach of this provision by Purchaser, or (d) are required to be disclosed by law or court order or (e) are subject to legitimate discovery request in any judicial proceeding.

4. Investigations. Subject to the provisions of this Agreement, Purchaser shall have the right to conduct or cause to be conducted at any time prior to the "Expiration Date" (as hereinafter defined") (the "Investigation Period"), at Purchaser's sole cost and expense, such environmental, geotechnical, engineering and other investigations, inspections and studies of the Premises (including all buildings and improvements), and such reviews of Property Documents and other plans, contracts, permits, and other documents obtained by Purchaser as Purchaser deems necessary or desirable (collectively, "Purchaser's Investigations"). Seller hereby grants to Purchaser, its agents, servants and contractors a non-exclusive license to access the Premises in order to conduct Purchaser's Investigations. Purchaser shall notify Seller prior to conducting any invasive testing on the Premises and shall cause the Premises to be returned after such invasive testing to substantially the same condition as prior to such invasive testing. Before any agent or contractor of Purchaser enters upon the Premises, Purchaser shall provide Seller with evidence of comprehensive general liability insurance naming Seller and its members as additional insureds, which insurance coverage shall have limits of coverage of no less than One Million Dollars ($1,000,000.00) per occurrence. In the event Purchaser does not exercise the Option, Purchaser shall deliver to Seller, for information purposes only, without representation or warranty of any kind as to truth or accuracy and without any right to rely thereon, copies of any third party investigation reports obtained by Purchaser during the Investigation Period.

5. Title and Survey. Purchaser may, at its option and expense, obtain within the Investigation Period (a) a current Commitment for Title Insurance or Preliminary Title Report ("Title Commitment") covering the Premises issued by a Title Insurance Company acceptable to Purchaser (the "Title Company"), whereby the Title Company commits to issue to Purchaser a current Owner's Policy of Title Insurance in the form then promulgated by the American Land Title Association (the "Title Policy") in an amount equal at least to the Purchase Price, (b) true and legible copies of all instruments listed or referred to as exceptions on the Title Commitment, and (c) an ALTA/ACSM Survey by a licensed surveyor reasonably acceptable to Purchaser (the "Survey"). If the Title Commitment and/or Survey disclose any encumbrances, encroachments or other matters affecting title not satisfactory to Purchaser, it shall so notify Seller in writing within the Investigation Period, in which case Seller shall have thirty (30) days from the date of Purchaser's notice of such defects to determine whether it will (i) use good faith efforts to remove the defects prior to the "Closing Date" (as hereinafter defined), or (ii) decline to use good faith efforts to cure title defects, and the Expiration Date shall be postponed until at least three (3)

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business days following Seller's notice of its decision regarding cure. Any matters not raised by Purchaser related to title shall be conclusively deemed to be acceptable, except for matters arising after the date of Purchaser's title examination. If Seller elects to use efforts to cure such defects, but is unable to do so, Purchaser may, at its election, exercise the Option, or Purchaser may terminate this Agreement by sending written notice thereof to Seller.

6. Exercise of Option. In order to exercise the Option, Purchaser must deliver to Seller at the address above written notice of exercise (the "Notice") by no later than 6:00 p.m. on September 1, 2018 (the "Expiration Date"). At any time on or prior to the Expiration Date, Purchaser has the right to exercise the Option by delivering the Notice which shall set a time within sixty (60) days of Notice ("Closing Date") and place for closing (to take place in Kershaw County, South Carolina, unless otherwise mutually agreed). Notwithstanding anything to the contrary contained herein, Purchaser may, by written notice accompanied by payment of an additional One Hundred Fifty Thousand Dollars ($150,000.00) in Option Consideration, extend the Expiration Date until February 1, 2019. In the event that the Option is not exercised on or prior to the Expiration Date (which may be extended), then this Agreement shall terminate and Seller shall be entitled to retain the Option Consideration. If Seller is unwilling or unable to convey the Premises to Purchaser at the Closing with no exceptions to title other than those identified in the Title Commitment and accepted by Purchaser, then at Purchaser's option, Purchaser may either (i) file a claim for specific performance within ninety (90) days from the Expiration Date or scheduled Closing Date, whichever is later, or (ii) demand return of the Option Consideration.

7. Seller's Representations, Warranties and Covenants. Seller represents and warrants to Purchaser, which representations and warranties are true and correct in all material respects as of the Effective Date (hereinafter defined) and, subject to updating, shall be true and correct in all material respects as of the Closing, that:

7.1 Due Formation and Authorization. Seller is duly formed and validly existing under the laws of the state of its formation and the signatories hereto have all requisite power, authority and legal right to execute, deliver and perform the terms of this Agreement and the Closing Documents (hereinafter defined). This Agreement and the Closing Documents constitute valid and legally binding obligations of Seller enforceable in accordance with their respective terms. The execution and delivery of this Agreement and all Closing Documents to be executed by Seller and the performance of the obligations of Seller hereunder or thereunder will not (x) result in the violation of any law or any provision of Seller's organizational documents, (y) conflict with any order of any court or governmental instrumentality binding upon Seller, or (z) conflict or be inconsistent with, or result in any default under, any contract, agreement or commitment to which Seller is bound.

7.2 Consent. To Seller's knowledge, no consent, approval or authorization by any individual or entity or any court, administrative agency or other governmental authority is required in connection with the execution and delivery of this Agreement or the Closing Documents.

7.3 Agreements. Seller has not entered into or assumed any contracts, leases or other agreements affecting the Premises which will be binding upon Purchaser after the Closing.

7.4 Condemnation; Special Assessments. Seller (a) has not received written notice of any pending condemnation proceeding or special assessment and (b) does not have any actual knowledge of any threatened condemnation proceeding or special assessment against the Premises.

7.5 Litigation. Seller (a) has not received written notice of any pending litigation and (b) does not have any actual knowledge of any threatened litigation against Seller or the Premises.

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7.6 Agreements. Seller will not enter into, amend or modify any agreement or other contract that will be an obligation affecting the Premises subsequent to the Closing.

7.7 Title Matters. From and after the Effective Date, Seller shall not execute any instrument which affects title to the Premises without the prior written consent of Purchaser.

8. Closing. The Closing shall be in accordance with South Carolina custom and practice. Seller shall deliver a recordable general warranty deed and such other instruments, affidavits, and other documents as reasonably required by Purchaser or Purchaser's title insurance company, including proof of identity and a South Carolina Tax Compliance Certificate (the "Closing Documents"). Seller shall pay all documentary stamp taxes and all state, county and local transfer fees of every nature (including those required under S.C. Code Ann. Section 12-24-10, *et. seq.*) assessed with respect to the deed conveying title to the Premises. As of the Closing Date, ad valorem taxes for the year of closing shall be prorated on a calendar year basis.

9. Purchase Price. In the event that Purchaser exercises the Option, then the purchase price shall be determined based upon the Parcels purchased and the price per Parcel set forth on Exhibit B. The Option Consideration shall be a credit against the Purchase Price paid to Seller at Closing, subject to standard pro-rations and closing costs as are customary in South Carolina.

10. Title. Seller shall not allow any lien or encumbrance to be placed upon the Premises (or any portion thereof) for the term of this Agreement without the prior written consent of Purchaser. In the event that Purchaser exercises its Option, Seller shall satisfy and remove any lien or encumbrance on the Premises which Purchaser has identified as unacceptable and which Seller has agreed to remove at or before Closing at Seller's expense, including any mortgage liens. Purchaser may cause all monetary encumbrances which may be paid off with a portion of the Seller's Purchase Price proceeds to be paid and discharged at Closing. If Purchaser exercises its Option, and Seller has created or creates a non-monetary lien or encumbrance which cannot be removed and which is unacceptable to Purchaser, then in addition to and not in lieu of all other remedies available to Purchaser, Seller shall return the Option Consideration to Purchaser.

11. Counterparts. This Agreement may be executed in counterparts, each of which may be transmitted electronically or by facsimile to the originating office, and each of which when executed and delivered shall be an original, but all of which together shall constitute the same agreement.

12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective heirs, personal representatives and administrators, legal representatives, successors, successors-in-title, administrators, and assigns. This Agreement shall run with the land and shall be binding on all parties and persons claiming thereunder.

13. Enforcement. Each party shall have the right to enforce this Agreement in law or equity, including the right of specific performance.

14. Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be delivered by overnight courier service, or mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, to the Parties' respective mailing addresses first set forth above. Notices and other information required hereunder shall be deemed delivered upon delivery by nationally recognized courier service (such as Federal Express or UPS), or five (5) days after deposit of the delivered item in the U.S. Mail, correctly addressed, by certified mail, return receipt requested. An attorney for a Party may deliver notice on behalf of that Party. Notice of change of address shall be given

by written notice in the manner detailed in this Section of this Agreement.

15. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of South Carolina.

[signature pages follow]

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IN WITNESS WHEREOF, Seller has caused this Option to Purchase Real Property to be duly executed on the date set forth below.

WITNESSES:

_____
Witness Number 1 (for all Seller signatories)

_____
Witness Number 2 (for all Seller signatories)

SELLER:

By:_____(SEAL)
Name: _____

Date of Execution: _____, 2017

By:_____(SEAL)
Name: _____

Date of Execution: _____, 2017

By:_____(SEAL)
Name: _____

Date of Execution: _____, 2017

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF _____)

I, _____, a Notary Public for South Carolina, do hereby certify that _____, an individual resident of the State of South Carolina, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this ____ day of _____, 2017.

_____ (SEAL)
Notary Public for South Carolina
My commission expires:_____ [AFFIX NOTARY STAMP HERE]

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IN WITNESS WHEREOF, Purchaser has caused this Option to Purchase Real Property to be duly executed on the date set forth below.

WITNESSES:

PURCHASER:

_____, a Delaware limited liability company

_____
Witness No. 1

_____
Witness No. 2

By:_____ (SEAL)
Name:
Title

Date of Execution: _____, 2017

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF LANCASTER)

I, _____, a Notary Public for the State of South Carolina do hereby certify that_____, _____ of _____., a Delaware limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this _____ day of _____, 2017.

_____
Notary Public for South Carolina
My commission expires:_____

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Exhibit A (The Premises)

Legal Description:

All that land together with all improvements thereon located on the West side of Highway 261 (Boykin Mill Road) in Kershaw County, South Carolina comprising approximately 140.55 acres belonging to L.W. Boykin Residuary Trust A and B, being described as follows:

Lots 1, 2, 3 and 4 as shown on a Boundary Survey dated February 1, 2017 prepared by Lindler Surveying, Inc. 1990 Boykin Road, Rembert, SC, being recorded with Kershaw County Registry of Deeds at _____.

All that land together with all improvements thereon situated on the East side of Highway 261,(Boykin Mill Road) being owned by L/W. Boykin Residuary Trust A and B and being described as follows:

[Description to be inserted here]

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Exhibit B (Term Sheet)

This Term Sheet summarizes terms of sale for the following Parcels, collectively referred to as the Premises:

1. "Boykin Millpond," which is approximately 624 acres that includes the following:

   - approximately 200 acres of flooded land east of Route 261 and north of Boykin Mill Road;

   - approximately 281 acres of buffer land north and east of the above-referenced flooded land all the way to Route 521 (excluding approximately 0.24 acres related to the Swift Creek Church that will be surveyed and carved out of the Boykin Millpond);

   - approximately 140 acres of land west of Route 261; and

   - an undivided one-half interest in approximately 3.07 acres related to "Miss May's Cottage" described hereinafter under "Rights of Seller."

2. "Downtown Boykin," which is approximately 12.44 acres that includes the following Parcels:

   - 2.4 acres north of Boykin Mill Road, including the Grits Mill, Broom Store, and Millpond Steakhouse; and

   - 9.8 acres south of Boykin Mill Road (including buildings consisting of Rosa Lee's Cottage and Ginny's Cottage) and 0.24 acres north of Boykin Mill Road (related to Swift Creek Church) for a total of approximately 10.04 acres.

The Option Price payable to L.W. Boykin II Trust A and B for the all of the above-described Premises shall be $300,000 and it shall be exercised on or prior to September 1, 2018. This deadline to exercise the option can be extended to February 1, 2019 by notice and payment of an additional $150,000 to Seller by September 1, 2018. The Option Price is nonrefundable if Purchaser decides not to purchase any portion of the Premises (unless Seller is unable or unwilling to deliver title if option is exercised). All option payments shall be applied to the Purchase Price (defined below).

The Option Price payable to Mary Deas Wortley for her undivided one-half interest in the 3.07 acres related to Miss May's Cottage shall be $35,000 subject to same deadline to exercise the option and extension timeline described above. (Purchaser must pay Mary Deas Wortley $100 to extend its option on her undivided one-half interest in the 3.07 acres related to Miss Mary's Cottage until February 1, 2019.) The option is nonrefundable if Purchaser decides not to purchase any portion of the Premises (unless Seller is unable or unwilling to deliver title if option is exercised). None of the option payment made to Ms. Deas Wortley shall be used to offset the purchase price of her one-half interest in Miss May's Cottage.

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The Purchaser must purchase Parcels related to the Premises in one of the following combinations only:

1. The Boykin Millpond (including Miss May's Cottage but excluding Swift Creek Church) only;

2. The Boykin Millpond (including Miss May's Cottage but excluding Swift Creek Church) and only the 2.4 acres of Downtown Boykin north of Boykin Road; OR

3. The Boykin Millpond (including Miss May's Cottage) and the full 12.44 acres of Downtown Boykin (including Swift Creek Church).

The total cost of all of the Premises owed to L.W. Boykin II Trust A and B depends on which Parcels the Purchaser exercises its option on per the following pricing:

- Boykin Millpond (including ½ interest in Miss May's Cottage but excluding the Church) $2,861,048

- 2.4 Acres of Downtown Boykin (north of Boykin Mill Road) $ 354,500

- 9.8 Acres of Downtown Boykin south of Boykin Mill Road and 0.24 acres related to the Swift Creek Church $ 744,600

If Purchaser exercises its option on the Boykin Mill Pond, it shall pay Mary Deas Wortley $102,550 for her undivided one-half interest in the 3.07 acres comprising Miss May's Cottage.

Rights of Purchaser. Purchaser shall have the right to perform all necessary due diligence related to the Premises, including environmental and resources studies, as well as inspections of buildings/improvements and related permits. If Purchaser ultimately purchases the Boykin Millpond, it shall transfer possession of any or all related parcels (and any related endowment) to a conservation organization to hold and manage the property ("Land Management Organization") as soon as reasonably possible after purchase, including but not limited to one of the following regional (SC) and/or national organizations:

- American Land Trust Alliance
- Coastal Conservation Association
- Congaree Land Trust (SC)
- SC Heritage Trust (SC)
- Katawba Valley Land Trust (SC)
- Low Country Land Trust (SC)
- National Wildlife Federation
- Nature Conservancy
- Sportsman's National Land Trust
- The Conservation Fund

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If a Land Management Organization holding and managing the Boykin Millpond (and any related endowment) ceases to operate as a conservation entity, the purchased property (and any related endowment) will be transferred to a similar entity with the organizational structure to manage the Boykin Millpond.

Rights of Seller. Seller shall have the following rights:

1. Seller may reasonably name any preserve associated with Boykin Millpond, and related literature generated by the Seller (or the Land Management Organization that ultimately receives possession of and manages the Boykin Mill Pond) shall reasonably reference such name prominently.

2. Mary Deas Wortley and her children will retain the use of Miss May's Cottage ("Cottage") and 3.07 acres around it so long as it is used by them (i.e., it cannot be rented or used by others). This retained usage period shall not exceed the life of Mary Deas Wortley plus 3 years. This Cottage shall be named "Miss May's Cottage" on any signage used by the Purchaser or Land Management Organization. (Mary Deas Wortley and/or her children shall be responsible for insurance, maintenance, and utility service during their term of use of Miss May's Cottage.)

3. During the term of use for Miss May's Cottage, the current income beneficiaries of Seller and their children will be permitted to use a hand-powered boat on Boykin Millpond to view birds while keeping a distance of at least 75 yards from any nesting activity.

Additional Obligations of Purchaser. Purchaser shall be responsible for funding the following activities in addition to paying the purchase price for the Parcels purchased:

1. If Purchaser exercises its Option to purchase Boykin Millpond, Purchaser shall be responsible to contribute up to $35,000 (over and above the $35,000 paid for the Option to purchase Mary Deas Wortley's undivided one-half interest in Miss May's Cottage) toward the addition of one bedroom and one bathroom to the Cottage. This contribution shall be made against bills for such work as received by the Purchaser from the Seller for work completed after the effective date of the Option Agreement.

2. Upon purchasing Boykin Millpond, Purchaser agrees to fund dam remediation work required by the South Carolina Department of Health and Environmental Control (DHEC) up to $250,000. Whether done by Purchaser or the Land Management Organization that ultimately holds and manages Boykin Millpond, such work shall be done as soon as is practical following closing. The cost of such work is in addition to the purchase price.

3. If Purchaser elects to purchase the 12.44 acres of Downtown Boykin along with the approximately 624 acres that comprise Boykin Millpond, Purchaser shall set up an endowment to provide funds toward restoring structures in Downtown Boykin to be used for their intended purpose. In addition, funds from the endowment for Downtown Boykin may be used to fund the Boykin Christmas Parade.

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STATE OF SOUTH CAROLINA	)	
	)	**OPTION TO**
COUNTY OF KERSHAW	)	**PURCHASE REAL PROPERTY**

THIS OPTION TO PURCHASE REAL PROPERTY (this "Agreement") is entered into this ___ day of November, 2017, by and between Mary Deas Wortley, whose address is _____ ("Seller"), and _____ LLC, a Delaware limited liability company whose address is c/o Rubin and Rudman LLP, 53 State Street, Boston, MA 02109 ("Purchaser") (collectively, "the Parties"). The "Effective Date" of this Agreement shall be the later of the respective dates on which Purchaser and Seller signed and dated this Agreement as provided on the signature pages.

Seller and Purchaser hereby agree as follows:

1. Grant of Option. In consideration of Thirty-Five Thousand Dollars ($35,000.00), (the "Option Consideration") (which is non-refundable except in the event Seller is unable or unwilling to deliver title if the Option is exercised), to be paid by Purchaser to Seller within five (5) days of the Effective Date, Seller hereby grants to Purchaser the sole, exclusive and irrevocable option (the "Option") to purchase the Seller's undivided one-half interest in 3.07 acres known as "Miss May's Cottage" as more fully described on Exhibit A, and all rights, privileges, easements and appurtenances thereunto belonging, including (without limitation) all timber, minerals, buildings, improvements and fixtures of whatsoever kind or nature presently located thereon (collectively, the "Premises").

2. Property Documents. Contemporaneously with the execution of this Agreement, Seller shall furnish to Purchaser any documentation pertaining to the Premises in Seller's possession including, without limitation, plans, surveys, environmental reports or assessments, title policies or commitments, permits, licenses, and other such documents, if any, (the "Property Documents") excluding attorney-client communications involving legal advice or other attorney's work product. The Property Documents are furnished without representation or warranty of any kind as to their accuracy or completeness. If Purchaser decides not to exercise this Option, Purchaser shall return the Property Documents to Seller forthwith. Seller may prepare a list of all documents delivered to Purchaser, which Purchaser agrees to acknowledge.

3. Confidential Nature. Purchaser agrees that all Property Documents obtained by Purchaser from Seller during the term of this Agreement with respect to the Property shall be held in confidence by Purchaser, and Purchaser shall ensure that such Property Documents are not disclosed to any third party except to Purchaser's employees, agents, lawyers, consultants and other professional representatives in connection with Purchaser's Investigations (as defined below), in which event Purchaser shall direct each such recipient of such information to use diligent efforts to maintain the confidentiality of such information. Notwithstanding the foregoing, Purchaser shall not have any obligation under this Subsection 3 to maintain the confidentiality of any materials or information which either (a) are publicly known or are a matter of public record at the time such materials are made available to or information is disclosed to Purchaser, or (b) are already otherwise known to Purchaser at the time such materials are made available to or information is disclosed to Purchaser, or (c) become public during the term of this Agreement other than by means of or as a result of a breach of this provision by Purchaser, or (d) are required to be disclosed by law or court order or (e) are subject to legitimate discovery request in any judicial proceeding.

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4. Investigations. Subject to the provisions of this Agreement, Purchaser shall have the right to conduct or cause to be conducted at any time prior to the "Expiration Date" (as hereinafter defined") (the "Investigation Period"), at Purchaser's sole cost and expense, such environmental, geotechnical, engineering and other investigations, inspections and studies of the Premises (including all buildings and improvements), and such reviews of Property Documents and other plans, contracts, permits, and other documents obtained by Purchaser as Purchaser deems necessary or desirable (collectively, "Purchaser's Investigations"). Seller hereby grants to Purchaser, its agents, servants and contractors a non-exclusive license to access the Premises in order to conduct Purchaser's Investigations. Purchaser shall notify Seller prior to conducting any invasive testing on the Premises and shall cause the Premises to be returned after such invasive testing to substantially the same condition as prior to such invasive testing. Before any agent or contractor of Purchaser enters upon the Premises, Purchaser shall provide Seller with evidence of comprehensive general liability insurance naming Seller as additional insured, which insurance coverage shall have limits of coverage of no less than One Million Dollars ($1,000,000.00) per occurrence. In the event Purchaser does not exercise the Option, Purchaser shall deliver to Seller, for information purposes only, without representation or warranty of any kind as to truth or accuracy and without any right to rely thereon, copies of any third party investigation reports obtained by Purchaser during the Investigation Period.

5. Title and Survey. Purchaser may, at its option and expense, obtain within the Investigation Period (a) a current Commitment for Title Insurance or Preliminary Title Report ("Title Commitment") covering the Premises issued by a Title Insurance Company acceptable to Purchaser (the "Title Company"), whereby the Title Company commits to issue to Purchaser a current Owner's Policy of Title Insurance in the form then promulgated by the American Land Title Association (the "Title Policy") in an amount equal at least to the Purchase Price, (b) true and legible copies of all instruments listed or referred to as exceptions on the Title Commitment, and (c) an ALTA/ACSM Survey by a licensed surveyor reasonably acceptable to Purchaser (the "Survey"). If the Title Commitment and/or Survey disclose any encumbrances, encroachments or other matters affecting title not satisfactory to Purchaser, it shall so notify Seller in writing within the Investigation Period, in which case Seller shall have thirty (30) days from the date of Purchaser's notice of such defects to determine whether it will (i) use good faith efforts to remove the defects prior to the "Closing Date" (as hereinafter defined), or (ii) decline to use good faith efforts to cure title defects, and the Expiration Date shall be postponed until at least three (3) business days following Seller's notice of its decision regarding cure. Any matters not raised by Purchaser related to title shall be conclusively deemed to be acceptable, except for matters arising after the date of Purchaser's title examination. If Seller elects to use efforts to cure such defects, but is unable to do so, Purchaser may, at its election, exercise the Option, or Purchaser may terminate this Agreement by sending written notice thereof to Seller.

6. Exercise of Option. In order to exercise the Option, Purchaser must deliver to Seller at the address above written notice of exercise (the "Notice") by no later than 6:00 p.m. on September 1, 2018 (the "Expiration Date"). At any time on or prior to the Expiration Date, Purchaser has the right to exercise the Option by delivering the Notice which shall set a time within sixty (60) days of Notice ("Closing Date") and place for closing (to take place in Kershaw County, South Carolina, unless otherwise mutually agreed). Notwithstanding anything to the contrary contained herein, Purchaser may, by written notice accompanied by payment of an additional One Hundred Dollars ($100.00) in Option Consideration, extend the Expiration Date until February 1, 2019. In the event that the Option is not exercised on or prior to the Expiration Date (which may be extended), then this Agreement shall terminate and Seller shall be entitled to retain the Option Consideration. If Seller is unwilling or unable to convey the Premises to Purchaser at the closing with no exceptions to title other than those identified in the Title Commitment and accepted by Purchaser, then at Purchaser's option, Purchaser may either (i) file

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a claim for specific performance within ninety (90) days from the Expiration Date or scheduled Closing Date, whichever is later, or (ii) demand return of the Option Consideration.

7. Seller's Representations, Warranties and Covenants. Seller represents and warrants to Purchaser, which representations and warranties are true and correct in all material respects as of the Effective Date (hereinafter defined) and, subject to updating, shall be true and correct in all material respects as of the Closing, that:

7.1 Due Formation and Authorization. Intentionally omitted.

7.2 Consent. To Seller's knowledge, no consent, approval or authorization by any individual or entity or any court, administrative agency or other governmental authority is required in connection with the execution and delivery of this Agreement or the Closing Documents.

7.3 Agreements. Seller has not entered into or assumed any contracts, leases or other agreements affecting the Premises which will be binding upon Purchaser after the Closing.

7.4 Condemnation; Special Assessments. Seller (a) has not received written notice of any pending condemnation proceeding or special assessment and (b) does not have any actual knowledge of any threatened condemnation proceeding or special assessment against the Premises.

7.5 Litigation. Seller (a) has not received written notice of any pending litigation and (b) does not have any actual knowledge of any threatened litigation against Seller or the Premises.

7.6 Agreements. Seller will not enter into, amend or modify any agreement or other contract that will be an obligation affecting the Premises subsequent to the Closing.

7.7 Title Matters. From and after the Effective Date, Seller shall not execute any instrument which affects title to the Premises without the prior written consent of Purchaser.

8. Closing. The Closing shall be in accordance with South Carolina custom and practice. Seller shall deliver a recordable general warranty deed and such other instruments, affidavits, and other documents as reasonably required by Purchaser or Purchaser's title insurance company, including proof of identity and a South Carolina Tax Compliance Certificate (the "Closing Documents"). Seller shall pay all documentary stamp taxes and all state, county and local transfer fees of every nature (including those required under S.C. Code Ann. Section 12-24-10, *et. seq.*) assessed with respect to the deed conveying title to the Premises. As of the Closing Date, ad valorem taxes for the year of closing shall be prorated on a calendar year basis.

9. Purchase Price. In the event that Purchaser exercises the Option, then the purchase price shall be One Hundred Two Thousand Five Hundred Fifty Dollars ($102,550) ("Purchase Price") and shall further include obligations set forth on Exhibit B. The Option Consideration shall not be a credit against the Purchase Price paid to Seller at Closing. Purchase Price shall be subject to standard pro-rations and closing costs as are customary in South Carolina.

10. Title. Seller shall not allow any lien or encumbrance to be placed upon the Premises (or any portion thereof) for the term of this Agreement without the prior written consent of Purchaser. In the event that Purchaser exercises its Option, Seller shall satisfy and remove any lien or encumbrance on the Premises which Purchaser has identified as unacceptable and which Seller has agreed to remove at or before Closing at Seller's expense, including any mortgage liens. Purchaser may cause all monetary encumbrances which may be paid off with a portion of the Seller's purchase price proceeds to be paid and

discharged at Closing. If Purchaser exercises its Option, and Seller has created or creates a non-monetary lien or encumbrance which cannot be removed and which is unacceptable to Purchaser, then in addition to and not in lieu of all other remedies available to Purchaser, Seller shall return the Option Consideration to Purchaser.

11. Counterparts. This Agreement may be executed in counterparts, each of which may be transmitted electronically or by facsimile to the originating office, and each of which when executed and delivered shall be an original, but all of which together shall constitute the same agreement.

12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and their respective heirs, personal representatives and administrators, legal representatives, successors, successors-in-title, administrators, and assigns. This Agreement shall run with the land and shall be binding on all parties and persons claiming thereunder.

13. Enforcement. Each party shall have the right to enforce this Agreement in law or equity, including the right of specific performance.

14. Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be delivered by overnight courier service, or mailed by first-class, registered or certified mail, return receipt requested, postage prepaid, to the Parties' respective mailing addresses first set forth above. Notices and other information required hereunder shall be deemed delivered upon delivery by nationally recognized courier service (such as Federal Express or UPS), or five (5) days after deposit of the delivered item in the U.S. Mail, correctly addressed, by certified mail, return receipt requested. An attorney for a Party may deliver notice on behalf of that Party. Notice of change of address shall be given by written notice in the manner detailed in this Section of this Agreement.

15. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of South Carolina.

[signature pages follow]

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IN WITNESS WHEREOF, Seller has caused this Option to Purchase Real Property to be duly executed on the date set forth below.

WITNESSES:

_____
Witness Number 1

_____
Witness Number 2

SELLER:

By:_____(SEAL)
Name: _____

Date of Execution: _____, 2017

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF _____)

I, _____, a Notary Public for South Carolina, do hereby certify that _____, an individual resident of the State of South Carolina, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this ____ day of _____, 2017.

_____ (SEAL)
Notary Public for South Carolina
My commission expires:_____ [AFFIX NOTARY STAMP HERE]

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IN WITNESS WHEREOF, Purchaser has caused this Option to Purchase Real Property to be duly executed on the date set forth below.

WITNESSES:

PURCHASER:

_____, a Delaware limited liability company

_____
Witness No. 1

_____
Witness No. 2

By:_____ (SEAL)
Name:
Title

Date of Execution: _____, 2017

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF LANCASTER)

I, _____, a Notary Public for the State of South Carolina do hereby certify that_____, _____ of _____., a Delaware limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and seal this _____ day of _____, 2017.

_____
Notary Public for South Carolina
My commission expires:_____

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Exhibit A (The Premises)

Legal Description: [To be provided]

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Exhibit B (Term Sheet)

This Term Sheet summarizes terms of sale for an undivided one-half interest in approximately 3.07 acres referred to as "Miss May's Cottage."

The option price payable to Mary Deas Wortley for her undivided one-half interest in the 3.07 acres related to Miss May's Cottage shall be $35,000, and it shall be exercised on or prior to September 1, 2018. This deadline to exercise the option can be extended to February 1, 2019 by notice and payment of an additional $100 to Seller by September 1, 2018. The option price is nonrefundable if Purchaser decides not to purchase (unless Seller is unable or unwilling to deliver title if option is exercised). Option payments shall not be applied to the purchase price.

If Purchaser exercises its option to purchase the undivided one-half interest of Mary Deas Wortley in the 3.07 acres comprising Miss May's Cottage, it shall pay $102,550.

Rights of Purchaser. Purchaser shall have the right to perform all necessary due diligence related to the Premises, including environmental and resources studies, as well as inspections of buildings/improvements and related permits. If Purchaser ultimately purchases the undivided one-half interest of Mary Deas Wortley in the 3.07 acres comprising Miss May's Cottage, it shall transfer possession of same (and any related endowment) to a conservation organization to hold and manage the property ("Land Management Organization") as soon as reasonably possible after purchase, including but not limited to one of the following regional (SC) or national organizations:

- American Land Trust Alliance
- Coastal Conservation Association
- Congaree Land Trust (SC)
- SC Heritage Trust (SC)
- Katawba Valley Land Trust (SC)
- Low Country Land Trust (SC)
- National Wildlife Federation
- Nature Conservancy
- Sportsman's National Land Trust
- The Conservation Fund

If the Land Management Organization holding and managing Boykin Millpond (and any related endowment) ceases to operate as a conservation entity, the purchased property (and any related endowment) will be transferred to a similar entity with the organizational structure to manage the Boykin Millpond.

Rights of Seller. Seller shall have the following rights:

1. Mary Deas Wortley and her children will retain the use of Miss May's Cottage ("Cottage") and 3.07 acres around it so long as it is used by them (i.e., it cannot be rented or used by others). This retained usage period shall not exceed the life of Mary Deas Wortley plus 3 years. This Cottage shall be named "Miss May's Cottage" on any signage used by the Purchaser or Land Management Organization. (Mary Deas Wortley and/or her children shall be responsible for insurance, maintenance, and utility service during their term of use of Miss May's Cottage.)

Additional Obligations of Purchaser. Purchaser shall be responsible for funding the following activities in addition to paying the purchase price:

1. If Purchaser exercises its Option to purchase Boykin Millpond, Purchaser shall be responsible to contribute up to $35,000 (over and above the $35,000 paid for the Option to purchase Mary Deas Wortley's undivided one-half interest in Miss May's Cottage) toward the addition of one bedroom and one bathroom to the Cottage. This contribution shall be made against bills for such work as received by the Purchaser from the Seller for work completed after the effective date of the Option Agreement.

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EXHIBIT B

(Term Sheet)

Terms for a sale of the Boykin Millpond (approximately 200 acres of flooded land), approximately 281 acres of buffer up to Route 521, the land on the West side of Route 261 (approximately 140 acres), and the land and buildings in "Downtown Boykin" (consisting of Rosa Lee's Cottage, Ginny's Cottage, the Store, the Grits Mill, the Broom Store and the Millpond Steakhouse - all on approximately 12.2 acres) all referred to as "The Millpond." For ease of reference all the above land will be referred to as two separate parcels, the "Boykin Millpond" which will exclude the Church and "Downtown Boykin" which will include the Church.

If the buyer remains interested after seeing this term sheet, it will be converted into an Option Agreement. The Entity will have full access to The Millpond in order for their teams of specialists to have the characteristics of the land delineated and conduct a full aquatic, plant, wildlife, avian and endangered species assessment and to do its due diligence on the property and buildings.

The four income beneficiaries will have the right to name the preserve and all literature of the entity relating to The Boykin Millpond will prominently reference the name.

1. The Option Price for The Millpond shall be $335,000 and it shall be exercised on or prior to September 1, 2018. It can be extended to February 1, 2019 by payment of an additional $150,000. All option payments shall be applied to the purchase price.
2. There will be no hunting or commercial use permitted on The Boykin Millpond other than for educational use or to ensure the viability of the bird habitat and wildlife balance on the property. The current income beneficiaries and their children will be permitted to paddle a boat, BUT not a motorized boat, to view birds BUT no closer than 75 yards of any nesting activity.
3. The Entity will set up an identified endowment of $_____ in order to provide funds to safeguard and maintain The Millpond ("The Endowment").
    a. Downtown Boykin will be held as part of The Endowment. The Entity /donors affiliated with the Entity will restore the Grits Mill and other structures in Downtown Boykin, including The Church to a standard where they can meet code and provide meaningful income for The Endowment. So long as Downtown Boykin is part of the Endowment, it will organize and fund The Boykin Christmas Parade.

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4. If the Entity ceases to operate as a conservation entity, The Boykin Millpond and related endowment will be transferred to a similar entity with the organizational structure to manage The Boykin Millpond.
5. Mary Deas Wortley and her children will retain the use of Miss May's Cottage ("Cottage") and 3.07 acres around it so long as it is used by them (can not be rented or used by others). This retained usage period shall not exceed the life of Mary Deas Wortley plus 3 years. They will be responsible for insurance, maintenance and utilities. They will also have the right to add one bedroom and a bathroom to the cottage. The Entity will contribute up to $70,000 toward the cost of the addition. $35,000 of this contribution shall be made against bills for the addition as received by the Donor/Entity after the execution of the Option Agreement and shall count as part of the Option Fee. The remainder of the cost will be added to the purchase price at exercise up to $35,000 This Cottage shall be named on any signage, etc. as Miss May's Cottage.
6. The Entity has been informed that it will cost between $150,000 to $250,000 to do the dam remediation work required by DHEC. The Entity will be responsible for doing this work at its own expense as soon as is practical following the exercise of the Option. The cost of any work required by DHEC prior to the Option exercise shall be added to the Purchase Price.
7. The Purchase Price for The Millpond is $4,073,898 composed of the following elements:

a. Original appraisal of pond and 303 acres	$ 665,900
b. Miss May's Cottage and 3.07 acres appraisal	$ 205,100
c. 178.3 additional acre buffer at $7,000 per acre	$1,248,100
d. 91 Acres on the West side of Route 261 appraisal	$ 590,700
e. Survey showed 6.47 more acres at same value as 91	$ 41,948
f. Railroad acreage and the land on the East side of the railroad over to Route 261 is 42.37 acres. I used average estimated value of $5,000 per acre.	$ 211,850
g. The 2.4 acres of Downtown Boykin on the North side of Boykin Mill Road appraised at	$ 354,500
h. The 9.8 acres of Downtown Boykin on the South side of Boykin Mill Road appraised at	$ 744,600
TOTAL	**$4,062,698**

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EXHIBIT C

(Affidavit of Rigdon Boykin)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	CASE NO: 2017-CP-28-831
IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	)	
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Petitioner, v. Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin Respondents.	)	**AFFIDAVIT OF RIGDON H. BOYKIN**

PERSONALLY APPEARED before me Rigdon H. Boykin, who being duly sworn does state as follows:

1. My name is Rigdon H. Boykin and my address is address is 1626 Sumter Highway, Rembert, South Carolina 29128.

2. I am the only non-beneficiary, disinterested Co-Trustee of the Lemuel Whitaker Boykin, II, Residuary Trust (the "Residuary Trust"), which was created pursuant to Item VIII of

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the Lemuel Whitaker Boykin Last Will and Testament, dated June 2, 1989. The other Co-Trustees are Respondents Alice Belger and Mary Deas Wortley.

3. To assist me in the performance of my duties as Co-Trustee, I have necessarily engaged the services of the attorneys Richard S. Rosen and Liam D. Duffy at Rosen, Rosen & Hagood, LLC of Charleston, South Carolina, who have also engaged James C. Hardin, III of The Law Offices of James C. Hardin, III to advise and assist as an expert consultant in this matter.

4. I am submitting this affidavit in support of the Motion to Authorize Sale of Trust Property simultaneously filed in this matter.

5. At the time of Alice S. Boykin's death in August 2016, it was clear to me that there was the potential for a huge difference of opinion among the Co-Trustees and among the income beneficiaries of the Residuary Trust regarding the need for diversifying the assets held by the Residuary Trust.

6. Respondent Belger for years had made it clear that she wanted to own or control most of the land in Boykin. Respondent Wortley for years had advocated putting the Boykin Millpond into a nature conservancy entity. Respondents Whit Boykin, III ("Whit") and May Cantey Boykin ("May"), who have no issue and are unlikely to have issue only wanted the assets to be diversified to reduce risk, and wanted the Trust to be managed pursuant to the prudent investor rule.

7. In an attempt to avoid a huge fight, at the first or second meeting of the Trustees in August of 2016, I suggested that Respondents Wortley and Belger might want to purchase land from the Trust. I also stated that I was prepared to have the Trust loan each of them up to $1,500,000 to help them finance their purchases. They were also told that since this was a self-dealing transaction, the purchase and loan would have to be approved by all the beneficiaries and

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perhaps also by a Judge. I had already cleared this offer with Respondents Whit and May, the other two income beneficiaries. Everyone was also told that the price would have to be "fair market value" as set by a qualified appraiser.

8. Respondents Wortley and Belger expressed great interest in this proposal. Respondent Wortley said she wanted to buy the Boykin Millpond and a buffer around it and perhaps some of the property and buildings in downtown Boykin. She expressed an interest in donating an easement or the fee of the Boykin Millpond to a conservation organization. Respondent Belger wanted to buy the house L.W. Boykin, II ("Whit Sr.") lived in at the time of his death ("Millway") and as much of the land around it that she could afford.

9. Consequently, I hired Charleston Appraisal Service, Inc. who were experienced in these types of appraisals, to appraise the various parcels that were of interest to Respondents Wortley and Belger.

10. During this period, extending for the first four months after Alice Boykin's death, Trustee meetings went fairly smoothly and included discussions about the need to diversify assets including a vote to sell some of the "Treasured" pieces of land included in the precatory language in Whit Sr.'s will. The Trust did sell a small piece of the treasured land – approximately 6.8 acres for $15,000 per acre.

11. It very quickly became apparent that Respondent Belger did not appreciate the meaning of "fair market value" and thought that she should be able to buy the property at farm tax valuations or less. At one point she said she should be able to buy the land for $1,300 per acre. Much time was spent in very emotional Trustee meetings where Karen Thomas, counsel for the Estate of Alice Boykin, and I tried to explain fair market value and urged Respondent Belger to hire counsel to give her independent advice regarding the concept.

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12. Over time, as Respondent Belger began to understand that she would not be able to buy anywhere close to the amount of land she wanted based on the fair market value, Trustee meetings became more and more contentious and Respondent Belger began changing her previous votes to sell land, including the Treasured pieces that had been previously authorized by unanimous vote.

13. In February of 2017, the appraisers began releasing their reports on the various parcels of interest to Respondents Wortley and Belger and meetings became even more contentious as Respondent Belger studied what she wanted to buy. In the meantime, Wortley accepted the appraisal value and continued to state she would buy the Boykin Millpond and a buffer area around it. Also by that time it was becoming very clear to everyone that we were probably going to have to apply to the Probate Court for direction on whether Trust assets would have to be diversified and voting requirements (for example if there was a unanimous vote to sell something, did that vote stand unless there was a unanimous vote to change it?).

14. After months of study , Respondent Belger at a trustee meeting on March 23, 2017, said she had decided against buying any of the Trust land and would not vote to permit Respondent Wortley to buy the Boykin Millpond land. Respondent Belger hired litigation counsel and began to resist sales of property other than commercial property.

15. Respondent Belger's only plan going forward was to continue keeping the farm land and almost all of the timber land. On May 12, 2017 Respondents Belger and Wortley came to the Trustee meeting without a plan for how they were going to generate the income necessary for reasonable distributions to the income beneficiaries, pay expenses, and grow the corpus for the benefit of the remainder persons. At that meeting they again promised to deliver a plan. However, they then began refusing to schedule Trustee meetings and cancelled meetings for

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approximately the next five months. Trustee meetings did not begin again until a Motion to Establish Complex Case Designation was filed on October 3, 2017. On October 13, 2017, a meeting of the Trustees was held after a five month stonewall by Belger and Wortley.

16. During the summer stonewall, I began trying to come up with ways to break the impasse and perhaps reach a settlement. The primary problem in achieving success was that the Treasured pieces of land constituted over 50% of the value of the Trust.

17. In the 1980's, I lived in Bedford Hills, New York and was the founding Chairman of the Westchester Land Trust in Westchester County, New York. That experience taught me about conservation stewardship, as well as land gifts and monetary gifts for the purpose of purchasing land worthy of being preserved in its current condition. Utilizing this experience, I began exploring contacts in the land preservation world to see if there were conservation donors that might be willing to purchase the Boykin Millpond and donate it to a land conservation entity.

18. I found a possible donor in September 2017 that said the existence of the rookery on the Boykin Millpond might be significant enough that it would entertain the proposal. Over the next few weeks, I met with the donor numerous times and was finally able to negotiate the option agreement that is the subject of the Motion to Authorize Sale of Trust Property.

19. This Option has three primary benefits.

a. It will preserve the land for posterity and because of the rookery, public access will be restricted other than a viewing area;

b. It is an above-market price which will give over $4,000,000 to the Trust and the Trust could avoid an expenditure of over a million dollars in dam remediation and repairs to the buildings with no foreseeable possibility of earning a return; and

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c. Most important of all to me, is that it provides the liquidity to enable a potential compromise of the two factions by splitting the Trust into two trusts. One trust would be for the benefit of Respondents Belger and Wortley and would consist of all the remaining Treasured tracts and the rest of the land around the Boykin area that Respondent Belger has indicated she would like to retain. The other trust would be for the benefit of Whit and May and would contain the rest of the land. The cash, including the proceeds from the exercise of the option, would be used to equalize the value of the two trusts. This second trust would sell most of the land and be administered in a prudent fashion. Upon the death of the income beneficiaries, both trusts would be distributed to any remaining issue, per stirpes.

20. Conservation donors are very rare and have thousands of requests for their money. So far, the prospective Donor has been very patient but is now telling me they need to have a final decision by the Trust or they will move on to one of the many of the other projects they have been considering.

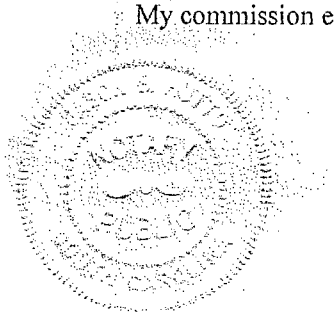
21. I hereby respectfully request that the Court review the file herein, together with the other exhibits filed in support of the motion, and enter an Order authorizing the sale of Trust property which is the subject of the Motion to Authorize Sale of Trust Property, and requiring the Co-Trustees to approve the Option Agreement to purchase the Boykin Millpond and/or additional property in downtown Boykin, South Carolina owned by the Trust (or portions thereof).

FURTHER AFFIANT SAYETH NOT.

Rigdon H. Boykin

SWORN to before me this
16th day of January, 2018.

Notary Public
My commission expires: July 26, 2023



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STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF KERSHAW

IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B. Petitioner, v. Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin , Respondents.	Case No. 2017-CP-28-00831

RESPONDENTS MARY DEAS WORTLEY AND ALICE BOYKIN BELGER ANSWER AND COUNTERCLAIMS TO RIGDON H. BOYKIN'S PETITION

Respondents Mary Deas Wortley and Alice Boykin Belger (collectively "Respondents") submit the following Answer to Petitioner Rigdon H. Boykin's Petition for Attorney's Fees, Trustee Fees, and Declaratory Judgment filed August 23, 2017 ("Petition"):

FOR A FIRST DEFENSE
(General Denial)

1. Except as the allegations may otherwise be specifically admitted herein, Respondents deny each and every allegation of the Petition.

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2. Responding to the first unnumbered paragraph of the Petition, Respondents deny that the Petitioner is a "disinterested" Trustee, deny that Petitioner is acting in the best interests of all beneficiaries of the Lemuel Whitaker Boykin II Residuary Trusts A and B ("Residuary Trust"),[1] and deny that he should be "entitled to exercise preeminent authority among the three Co-Trustees," or otherwise be appointed as a special fiduciary under S.C. Code § 62-7-1001(b)(5).

BACKGROUND AND PARTIES[2]

3. Respondents admit the allegations of Paragraphs 1 through 6.

4. Responding to Paragraph 7, Respondents deny that Petitioner is "the only disinterested" Trustee of the Residuary Trust.

5. Responding to Paragraph 8, Respondents admit only that this action was properly removed by the Probate Judge of Kershaw County to the Court of Common Pleas for the Fifth Judicial Circuit of South Carolina.

THE RESIDUARY TRUST

6. Respondents admit the allegations of Paragraph 9, however, the quoted language is found in Item VIII subparagraph (1) of the Last Will and Testament of Lemuel Whitaker Boykin, II dated June 2, 1989 ("Will"), and not Item VII(1).

7. Respondents admit the allegations of Paragraph 10, however, the referenced language is found in Item VIII subparagraph (2) of the Will, and not Item VII(2)

8. Respondents admit the allegations of Paragraph 11.

[1] For ease of reference, this Answer adopts the defined terms in the Petition.
[2] For ease of reference, this Answer includes the same subject headings as the Petition.

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9. Responding to Paragraph 12, Respondents admit only that they have living issue who could receive the assets of the Residuary Trust upon dissolution, and deny the remaining allegations of Paragraph 12.

10. Responding to Paragraph 13, Respondents admit that the quoted language is found in Item X of the Will, admit that the Will provides an order of preference for the sale of certain specified tracts of real property in the event that circumstances require such a sale, but deny that such circumstances currently exist and that any sale of the property referenced in Item X of the Will is necessary or prudent at this time.

11. Respondents admit the allegations of Paragraphs 14 and 15.

12. Responding to Paragraphs 16 and 17, Respondents admit only that the Trustees "are authorized in their absolute discretion with respect to any real property, by unanimous vote, or personal property, by majority vote," to manage the affairs of the Residuary Trusts for the benefit of ***all*** current income beneficiaries and ***all*** remainder beneficiaries.

13. Responding to Paragraph 18, Respondents admit only that the provisions of Decedent's Last Will and Testament prevail over the provisions of the South Carolina Trust Code, except as provided in S.C. Code Ann. § 62-7-105(b).

14. Respondents deny the allegations of Paragraph 19.

DISPUTE AS TO MANAGEMENT OF RESIDUARY TRUSTS ASSETS

15. Responding to Paragraph 20, Respondents admit only that on most issues, Petitioner has a different view of the proper administration of the Residuary Trust than Respondents.

16. Responding to Paragraph 21, Respondents admit only that Decedent's intentions are unambiguously expressed in his Will.

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17. Responding to Paragraph 22, Respondents admit only that Respondent Wortley served as Co-Trustee of the Marital Deduction Trust from 1989 to August 8, 2016, with Alice S. Boykin ("Mrs. Boykin"). Respondents further admit that the value of Lemuel Whitaker Boykin, II's ("Mr. Boykin's") estate has doubled in value under Respondent Wortley and Mrs. Boykin's management. Respondents deny the remaining allegations of Paragraph 22.

18. Responding to Paragraph 23, Respondents admit only the most substantial part of the Residuary Trust's assets are real property tracts located in Kershaw, Sumter, and Fairfield Counties in South Carolina, and which are used primarily for farming, timber, and hunting.

19. Responding to Paragraph 24, Respondents admit only that they wish to follow the direction expressed by Mr. Boykin in the Will.

20. Responding to Paragraph 25, Respondents admit only that Lemuel Whitaker Boykin, III ("Whit III") and May Cantey Boykin ("May") are not Trustees and do not have any children. Respondents further state that Petitioner has acquired and exercises an undue influence over Whit III and May, and has maliciously disrupted the caring and loving family relationship among Whit III, May, and the Respondents, their spouses, and children.

21. Responding to Paragraph 26, Respondents admit only that investment diversification is one among many factors that the Trustees should consider in administering the Trust assets for the benefit of all income and remainder beneficiaries.

22. Responding to Paragraphs 27 through 31, Respondents admit only that the Petitioner has made several unacceptable proposals to them for the purchase and financing of certain real property assets of the Trust and that Petitioner, acting without a majority vote of the Trustees, has obtained numerous appraisals and surveys which are of significant cost and limited value to the Trust.

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23. Responding to Paragraphs 32 through 36, Respondents admit only that the Residuary Trust must be managed in accordance with the directions expressed in Mr. Boykin's Will, except where those directions may conflict with the provisions of S.C. Code § 62-7-105(b).

24. Respondents deny the allegations of Paragraph 37, including footnote 2, and further denies that the Trustees must follow the provisions of the S.C. Uniform Prudent Investor Act, which states as follows: "The prudent investor rule is a default rule that may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust. A trustee is not liable to a beneficiary to the extent that the trustee acted in reasonable reliance on the provisions of the trust." S.C. Code Ann. § 62-7-933(B)(2).

25. Respondents deny the allegations of Paragraphs 38 and 39.

FIRST CAUSE OF ACTION OF THE PETITION
(Attorney's Fees – S.C. Code Ann. §62-7-1004)

26. Responding to Paragraph 40, Respondents repeat and reallege their answers to each and every previous paragraph of the Petition as though fully set forth herein.

27. Responding to Paragraph 41, Respondents deny that S.C. Code Ann. §62-7-1004 supersedes the provisions of the Trust.

28. Respondents deny the allegations of paragraphs 42, 43, and 44, and further state that it would be inappropriate for this Court to order the Trust to pay the separate attorney's fees of any Trustee, as such an order would only encourage and prolong Petitioner's vexatious and self-serving litigation and further diminish the resources of the Trust for the benefit of the rightful beneficiaries.

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SECOND CAUSE OF ACTION OF THE PETITION
(Trustees' Fees – S.C. Code Ann. §62-7-708)

29. Responding to paragraph 45, Respondents repeat and reallege their answers to each and every previous paragraph of the Petition as though fully set forth herein.

30. Respondents admit the allegations of Paragraph 46.

31. Responding to the allegations of Paragraphs 47 through 50, Respondents admit only that S.C. Code § 62-7-708(b) would apply in this instance and that a fair and reasonable trustees fee would be $100,000, for each trustee, for services rendered as Trustee, from August 8, 2016 to December 31, 2017.

THIRD CAUSE OF ACTION OF THE PETITION
(Declaratory Judgment – S.C. Code Ann. §§15-53-50, 62-7-201)

32. Responding to Paragraph 51, Respondents repeat and reallege their answers to each and every previous paragraph of the Petition as though fully set forth herein.

33. Respondents admit the allegations of Paragraph 52.

34. Responding to Paragraph 53, Respondents deny that Petitioner is a "disinterested" Trustee, and admits the remaining allegations of this Paragraph.

35. Respondents deny Paragraphs 54 through 59, including all subparts and footnote 3, of the Petition.

36. Respondents further deny that Petitioner is entitled to the relief requested in his prayer for relief.

FOR A SECOND DEFENSE
(Failure to Join Necessary Parties)

37. Respondents incorporate and reallege each of the foregoing allegations as fully as if repeated herein verbatim.

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38. Petitioner's action should be dismissed for his failure to join all parties necessary for just adjudication of this controversy, including, but not limited to the following persons: Theodore T. Wagner, M.D., B. Boykin Wagner, Mary Deas Heimbach, and Alice Boykin Belger, who are all remaindermen under the terms of the Residuary Trust.

FOR A THIRD DEFENSE AND FIRST COUNTERCLAIM
("No Fault" Removal of Trustee Pursuant to S.C. Code Ann. § 62-7-706(b)(2))

39. Respondents incorporate and reallege each of the foregoing allegations as fully as if repeated herein verbatim.

40. In his Will, Mr. Boykin established a clear and unambiguous preference that certain parcels of real property "shall to the fullest extent possible be preserved for the benefit of or transferred to my children or their issue." (Will Item X.) These "treasured tracts" are identified as Millway Plantation, the Laney Tract, Broadview Plantation, the Swamp Tract, the Cantey Tract, and the Gillis Tract. (*Id.*) The Will further directs that "[a]ny sale or mortgage of these parcels (exclusive of timber rights) must be by unanimous consent of the Trustees after consultation with and approval of a majority of the four (4) named beneficiaries of this Trust . . . [and] my trustees may cut and remove timber which shall be treated as a crop." (*Id.*)

41. Mr. Boykin further expressed that in exercising "the discretionary powers granted under Item VIII [providing for income to the children or other beneficiaries during their lifetimes]" and "all other powers granted" under the Will, "it is my hope that my . . . Trustees will be mindful of my intentions." (*Id.*) Mr. Boykin also gave to all of the Co-Trustees, "in their absolute discretion with respect to any real property, by unanimous vote, or personal property, by majority vote," to exercise all "rights, power, authority and privileges granted by any other provision of this Will or by statute or general rule of law . . . " (*Id.* at Item XIV.)

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42. Finally, the Will provides the Co-Trustees the discretion "to retain any of the original property constituting the . . . trust, regardless of the character of such property . . . or whether it leaves a disproportionately large part of the . . . trust invested in one type of property . . . and to dispose of such property . . . as and when they shall deem advisable." (*Id.* at Item XIV(B.))

43. At the time he executed the Will, Mr. Boykin appointed three Trustees for the Residuary Trust: (1) his cousin, Petitioner, (2) his eldest daughter, Respondent Wortley, and (3) his wife, Alice Schoolbred Boykin ("Mrs. Boykin"). Mrs. Boykin passed away on August 8, 2016, at which time Respondent Belger became the third Co-Trustee of the Residuary Trust.

44. The Co-Trustees have met numerous times in person, by conference call, and through e-mail since Mrs. Boykin's death in August 2016 regarding administration of the Residuary Trust. During these meetings, the Co-Trustees have conducted considerable business and authorized the sale of numerous Trust assets, consisting primarily of timber and some real estate tracts. (Aff. Alice Boykin Belger ¶ 8.)

45. However, Petitioner and Respondents have had significant good faith disagreements concerning the proper administration, distribution, management, and investment strategy as it relates to certain assets of the Residuary Trust. Specifically, Petitioner alleges in ¶¶ 34-36 of the Petition that Respondents' strategy of managing Mr. Boykin's estate by periodically selling off timber as allowed by the Will, leasing hunting and fishing rights, and selling certain properties is less likely to grow the Residuary Trust, and that the Co-Trustees should sell off most of the real property, including the "treasured tracts," to diversify assets (the "Investment Strategy").

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46. Pursuant to the procedures as set forth in the Will, Petitioner proposed adopting the Investment Strategy at a March 23, 2017 Residuary Trust meeting. After considering his proposal and comparing the proposal with the terms of the Will, Respondents properly voted against adopting the Investment Strategy because they felt such a strategy contradicted Mr. Boykin's clear intent to preserve the real property for the Residuary Trust beneficiaries, as set forth in the Will.

47. Rather than accepting that he was properly outvoted with respect to the Investment Strategy and consider the compromise offers Respondents proposed, Petitioner doubled down on the Investment Strategy and filed his Petition on August 23, 2017.

48. In addition, Petitioner has attempted to override Respondents' votes on certain issues, in clear contravention to the terms of the Will, such as taking unilateral action to shut down Respondents' wedding business in Boykin, South Carolina, which had been a profitable venture for the Residuary Trust.

49. Although the terms of the Will clearly evidence Mr. Boykin's preference for preserving the Residuary Trust's real property assets, Petitioner refuses to administer his duties in accordance with the terms of the Will and instead relentlessly pursues his own agenda, regardless of whether that agenda conforms with Mr. Boykin's intentions as set forth in the Will.

50. In addition, rather than attempting to work with his fellow Co-Trustees as equals in the course of administering the Residuary Trust, Petitioner has treated Respondents with contempt and derision, has been condescending and dismissive of any strategies they set forth, has frequently told them that his vote as Co-Trustee outweighs their votes, has threatened litigation against his Co-Trustees and the Estate's counsel, and has been utterly incapable of cooperating with his fellow Co-Trustees in order to efficiently manage the Residuary Trust in

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accordance with Mr. Boykin's express intentions. Moreover, Petitioner has frequently incurred expenses for the Trust without the consent of either or both of his Co-Trustees.

51. Because Petitioner's strategies for managing the estate diverge significantly with Mr. Boykin's intentions, and because Petitioner has consistently sought to override Respondents' votes as to administrative matters for the Residuary Trust and refuses to compromise with Respondents, the administration of the Residuary Trust is significantly impaired by the Co-Trustees' failure to agree.

52. Based on the foregoing, Respondents are informed and believe that they are entitled to a judgment removing Petitioner as a Co-Trustee pursuant to S.C. Code Ann. § 62-7-706(b)(2) because Petitioner's lack of cooperation with his Co-Trustees substantially impairs the administration of the Trust.

FOR A FOURTH DEFENSE AND SECOND COUNTERCLAIM
("No Fault" Removal of Trustee Pursuant to S.C. Code Ann. § 62-7-706(b)(3))

53. Respondents incorporate and reallege each of the foregoing allegations as fully as if repeated herein verbatim.

54. As alleged in the foregoing paragraphs, Petitioner and Respondents have had significant disagreements regarding the proper administration of the Residuary Trust. These problems have culminated in Petitioner's decision to file his Petition on August 23, 2017, which alleges, in pertinent part, that Respondents mismanaged Mr. Boykin's estate while Mrs. Boykin was alive, and that Respondents continue to mismanage the estate by seeking to administer the trust in accordance with Mr. Boykin's wishes to preserve certain real property, if possible.

55. Contrary to Petitioner's allegations, however, the value of Mr. Boykin's estate has more than doubled in value since he died in 1989, from an estimated value of $10,262.00 at the

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time of Mr. Boykin's death to a current estimated value of approximately $26,000.00, utilizing Mr. Boykin's preferred strategy of real estate investment, farming, and timber management.

56. Moreover, in 2017 the Residuary Trust produced approximately $1,024,122 million in gross revenue, out of which $100,000 was paid to each of the four Residuary Trust income beneficiaries. Respondents both consider this a reasonable income for each of the income beneficiaries.

57. Accordingly, Respondents' proposed methods and strategy for administration of the Residuary Trust are financially sound and prudent, capable of producing adequate income for the income beneficiaries, while still honoring the testator's expressed intent. Thus, Petitioner's claims against Respondents regarding the management of the Residuary Trust are unfounded and frivolous.

58. Despite the frivolous nature of Petitioner's claims, Petitioner continues to drain the resources of the Residuary Trust at an alarming rate by amassing significant legal bills, at the expense of the Residuary Trust and its income beneficiaries and remaindermen. Because Petitioner is neither a beneficiary nor a remainderman of the Residuary Trust, he is not negatively impacted by this rapid depletion of the Residuary Trust's funds.

59. Moreover, Petitioner, as a Co-Trustee, has a duty to act in the best interests of all of the Residuary Trust's beneficiaries and remaindermen. Despite two of the beneficiaries'—Respondents—clear opposition to Petitioner's decision to use the Residuary Trust's assets to pay exorbitant legal expenses, however, Petitioner continues to incur significant legal fees at the expense of the Residuary Trust, leaving Respondents concerned that the Residuary Trust will be significantly drained of funds through this litigation, and that Petitioner will continue to amass significant expenses because he does not stand to inherit under the terms of the Will.

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60. Petitioner's actions in bringing this frivolous action despite Respondents' objections clearly demonstrates an unwillingness to administer the Residuary Trust in reasonable cooperation and compromise with his Co-Trustees and reveals a pattern of indifference as to Respondents.

61. Based on the foregoing, Respondents are informed and believe that they are entitled to a judgment removing Petitioner as a Co-Trustee pursuant to S.C. Code Ann. § 62-7-706(b)(3), because of Petitioner's unwillingness to administer the trust in a cost-efficient manner.

WHEREFORE, having fully answered the Petition, Respondents pray that the Court look into the matters and things alleged in the Petition, dismiss the Petition with prejudice, and for such other and further relief as the Court may deem just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

By: s/James Y. Becker

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By: s/Walter H. Bundy

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Attorney for Respondent Alice Boykin Belger

February 23, 2018

ELECTRONICALLY FILED - 2018 Mar 13 5:20 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW	)	CASE NO: 2017-CP-28-831
IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	)	
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Petitioner, v. Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin Respondents.	)	**PETITIONER'S MOTION FOR A PROTECTIVE ORDER & FOR EXPEDITED HEARING**

TO: **JAMES Y. BECKER, ESQUIRE, WALTER H. BUNDY, ESQUIRE, AND WILLIAM S. TETTERTON, ESQUIRE; ATTORNEYS FOR RESPONDENTS**

YOU WILL PLEASE TAKE NOTICE that Petitioner Rigdon H. Boykin ("Petitioner") hereby moves the Court for an expedited hearing to be schedule by the Court, and for a Protective Order limiting Respondents' scope of examination of Petitioner at his upcoming deposition on March 19, 2018, pursuant to Rules 26(c)(4), 30(d), and 30(j)(3) of the South Carolina Rules of

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Civil Procedure. Specifically, Petitioner seeks protection from inquiry into the facts and circumstances surrounding his negotiations with Boykin Millpond Conservation, LLC (or related entities or agents) (hereinafter the "Donor"), which is the prospective purchaser and conservation donor of approximately 633 acres of land, known generally as the Boykin Millpond and Downtown Boykin properties, owned by the L.W. Boykin, II Residuary Trust (the "Residuary Trust").[1] This protection should extend to any attempts by Respondents' counsel to question Petitioner regarding the identity or ownership structure of the Donor for the following reasons:

1. Petitioner, as sole disinterested Co-Trustee of the Residuary Trust, has worked diligently to attract a conservation donor that would be willing to purchase the Boykin Millpond and donate it to a Land Management Organization. The Donor was identified and an Option Agreement to purchase the Boykin Millpond and Downtown Boykin properties was negotiated between the Petitioner on behalf of the Residuary Trust and the Donor (subject to this litigation).

2. As discussed more fully in Petitioner's Motion to Authorize the Sale of Trust property, a failure to consummate the Option Agreement will result in significant and irreparable harm to the Residuary Trust. The only way to ensure that a sale remains viable is to protect the identity of the Donor.

3. The Residuary Trust still has significant tax liability, and after payment of taxes, over ninety percent (90%) of the value of the Residuary Trust will remain concentrated in real estate. Of the limited portion of real estate that the Co-Trustees have agreed to list for sale, only about $1,000,000 to $1,500,000 worth of land is likely to be sold within the next year due to high

[1] The property subject to the Option Agreement is further described in Petitioner's Motion to Authorize the Sale of Trust Property, which was filed on January 16, 2018 and is hereby incorporated by reference.

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listing prices. Consequently, the Option Agreement to buy the Boykin Millpond and Downtown Boykin properties represents significant forward progress in diversifying Residuary Trust assets (thereby mitigating risk and ensuring proper accretion) and generating income from land which otherwise has no chance to be productive relative to its value.

4. Petitioner's deposition is currently scheduled for March 19, 2018 at 9:00 AM in Camden, South Carolina. Petitioner reasonably expects that Respondents' counsel will seek to examine him regarding the identity of the Donor with whom the Option Agreement was negotiated. Based on prior representations and communications, Petitioner is informed that the Respondent Co-Trustees believe the identity of the Donor to be of paramount importance. While the Donor's identity would likely be important if the Residuary Trust was seeking to sell only a *conservation easement*, in this case, Petitioner has instead proposed that the Residuary Trust (through the Option Agreement) sell the Boykin Millpond and Downtown Boykin properties in *fee simple*. The property will then be donated to one of a number of potential Land Management Organizations "as soon as reasonably possible after the purchase," as described in Exhibit B to the Option Agreement. Furthermore, assuming that the option to purchase the property in fee simple is exercised, the Residuary Trust will be paid a price that is significantly higher than the land's appraised value.

5. The Donor has expressed to Petitioner that it would be extremely detrimental to the Donor's interest if its identity were disclosed. In short, the Donor is rightfully fearful that if its identity is disclosed, it will become inundated with requests from other landowners to instead have the Donor purchase other properties (as opposed to the Boykin Millpond and Downtown Boykin properties), a situation the Donor has a strong desire to avoid. If the Court so desires, Petitioner

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has been granted the limited discretion and authority to disclose the Donor's identity to the Court, *in camera*.

WHEREFORE, Petitioner moves the Court for an expedited hearing and a Protective Order limiting the scope of his examination pursuant to Rules 26(c), 30(d), and 30(j)(3) of the South Carolina Rules of Civil Procedure. In support of this Motion, Petitioner relies upon the record in this action, any Memorandum of Law that may be submitted, any oral arguments that the Court may hear, and the laws of the State of South Carolina.

ROSEN, ROSEN & HAGOOD

BY: _____

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Attorneys for Petitioner, Rigdon H. Boykin, sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trust

Charleston, South Carolina

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	CASE NO: 2017-CP-28-831
	)	
IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	)	
	)	
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Petitioner, v. Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin Respondents.	)	**PETITIONER'S MOTION TO ESTABLISH ANNUAL INCOME BENEFICIARY DISTRIBUTION**

Petitioner, Rigdon H. Boykin ("Petitioner"), as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, by and through his undersigned counsel, hereby moves the Court pursuant to S.C. Code Ann. §§ 15-53-50 and 62-7-201(a)(1) for an Order directing that the Co-Trustees of the Lemuel Whitaker Boykin, II Residuary Trusts A and B (hereinafter the "Residuary Trust") pay to the Residuary Trust's income beneficiaries a minimum annual distribution of at least $180,000.00 per year. Petitioner believes this is a reasonable amount based on the minimum agreed-upon value of the Residuary Trust of $22,000,000. This proposed

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distribution is also consistent with generally accepted principles of prudent fiduciary management and promotes fair treatment of all income and remainder beneficiaries. Furthermore, Petitioner believes this minimum distribution can, in theory, be accomplished if the non-trustee beneficiaries each receive $180,000 in cash, while the trustee beneficiaries, who desire to keep underproductive land in the Residuary Trust, would instead receive the in-kind psychic return of retaining the land that is sentimentally valuable to them.

BACKGROUND

The Court is familiar with the protracted and contentious dispute giving rise to this litigation. As the Court is aware, the three Co-Trustees of the Residuary Trust, Petitioner Rigdon H. Boykin, Respondent Mary Deas Wortley ("Wortley"), and Respondent Alice Belger ("Belger"), have been unable to reach a unanimous consensus on significant matters respecting the Residuary Trust and the divergent interests of its beneficiaries, which has given rise to the need for this Court's continued instruction and intervention.

The facts giving rise to this Motion are as follows. On April 12, 2018, the Co-Trustees held a meeting for the purpose of discussing and voting on various trust-related matters. One of the issues to be discussed was a determination for 2018 of the appropriate annual distribution from the Residuary Trust to its four income beneficiaries, Wortley, Belger, and Respondents Whit Boykin, III ("Whit") and May Cantey Boykin ("May"). This agenda item was not reached at the April 12, 2018 meeting, but was voted on by email correspondence the following day. Respondents Wortley and Belger proposed to pay Whit and May $150,000 each and Respondents Wortley and Belger $100,000 each for 2018. In response to this proposal, Petitioner proposed that the income beneficiaries receive equal distributions in the amount of $180,000 per year, and that the Co-Trustees should retroactively "true up" the distributions to that amount, dating back to the

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death of Alice S. Boykin on August 8, 2016. Petitioner noted in his proposal that the true up would amount to approximately an additional $140,000 to each income beneficiary. Furthermore, in keeping with his duties as Co-Trustee, Petitioner expressed concern about and opposition to allowing Respondents Wortley and Belger to accept less in distributions if such a reduction would impose future liability on the Residuary Trust to repay those beneficiaries, and that he would only support such an approach if Respondents Wortley and Belger's reduction was treated as a gift to the Residuary Trust.

Counsel for Respondents Wortley and Belger responded to Petitioner's proposal by stating that they believed $150,000 to each income beneficiary for 2018 was generous, and that they were unwilling to vote in favor of a true up in the amount suggested by Petitioner. Petitioner believes that, based on the total value of the Residuary Trust, annual distributions to the four income beneficiaries in an amount less than $180,000 per year would be imprudent, inappropriate, and in contravention of the fiduciary duties imposed upon him by the South Carolina Trust Code and L.W. Boykin, II's testamentary instrument, and would not serve the best interests of the Residuary Trust or its beneficiaries. Therefore, Petitioner respectfully seeks further instruction and determination from this Court, and requests an Order that the income beneficiaries are entitled to a minimum distribution of $180,000.00 on an annual basis.

ARGUMENT

If a trustee is reasonably in doubt as to his duties and powers, he may, and should, apply to the Court for instructions. *Rodgers v. Herron*, 85, S.E.2d 104, 111, 226 S.C. 317, 332 (1954). Furthermore, for his guidance, under the Uniform Declaratory Judgments Act, "any person interested as or through an executor, administrator, trustee . . . may have a declaration of rights or legal relations in respect thereto: (3) to determine any question arising in the administration of the

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estate or trust, including questions of construction of wills or other writings." S.C. CODE ANN. § 15-53-50.

Although South Carolina law does not clearly establish a required minimum percentage for annual trust distributions to income beneficiaries, the Uniform Trust Code ("UTC") and other authorities provide the Court (and the Co-Trustees) with guidance. For example, S.C. Code Ann. § 62-7-904B, part of the "unitrust" conversion statute, provides that no less than 3% nor more than 5% is a "reasonable current return from the trust." Likewise, other states allow trustees to select a percentage within a 3% to 5% range when dealing with unitrusts. FLA. STAT. ANN. § 738.1041 (West Supp. 2004); 158. SEE DEL. CODE. ANN., TIT. 12, § 3527 (2003). The Internal Revenue Service also recognizes that a state unitrust statute's three-to-five percent payout presumptively apportions receipts between income and remainder beneficiaries in a reasonable manner. 26 CFR § 1.643(b)-1 ("[U]nitrust amount of no less than 3% and no more than 5% of the fair market value of the trust assets, whether determined annually or averaged on a multiple year basis, is a reasonable apportionment of the total return of the trust."). Similarly instructive is the Uniform Principal and Income Act, wherein a number of state statutes allow trustees a 4% to 6% safe harbor amount—much like a unitrust—that will be considered to be prudent when exercising the "power to adjust." *See* N.J. STAT. ANN. § 3B:19B-4 (West 2004); OHIO REV. CODE ANN. § 1340.42(G)(3) (Anderson 2003); MD. CODE ANN., EST. & TRUSTS § 15-502.2(C) (2003).

The 2018 annual distribution proposed by Respondents Wortley and Belger—$150,000 per income beneficiary, $600,000 total—amounts to 2.7% of the Residuary Trust's minimum total value (using the low-end value of $22,000,000). In fact, this proposed distribution is even lower when considered with the fact that Respondents Wortley and Belger have recommended that only Whit and May would receive $150,000 in 2018, while Respondents Wortley and Belger would

take $100,000 each, presumably to be paid back at a later date. This proposed total 2018 distribution of $500,000 is only approximately 2.3% of the Residuary Trust's minimum value.

In contrast, Petitioner's proposed distribution rises above the generally accepted minimum of three percent (3%) on an annual basis. Petitioner's proposed amount of $180,000 per income beneficiary, per year, equates to approximately 3.2% of the Residuary Trust value using a conservative—and agreed upon—overall Residuary Trust value of $22,000,000. Adopting this course of action apportions the overall trust return between income and remainder beneficiaries in a reasonable and impartial manner, balances the disparate interests of the income and remainder beneficiaries, and serves the interests of justice.

In order to pay the income beneficiaries $180,000.00 per year (or even $150,000.00 per year), the Co-Trustees of the Residuary Trust will have to utilize the "power to adjust" from principal to income. Utilizing the power to adjust in this fashion—while *also* adhering to the Respondent Co-Trustees' proposed plan of retaining significant portions of underproductive real estate held by the Residuary Trust—will invariably cause the Residuary Trust's principal to be depleted each year. In other words, the Co-Trustee Respondents' insistence on retaining underproductive Residuary Trust property has created, and will continue to cause, a substantial income bind on the Residuary Trust assets. The Co-Trustee Respondents' solution to that problem appears to be requiring that Whit and May be paid less money than they otherwise would (or should) receive, based on an argument that their "needs" are currently being met. As the Court has previously recognized, the income beneficiaries' right to Residuary Trust assets is not a matter of need, but rather a matter of *entitlement*. As further detailed in Petitioner's Affidavit, which is attached hereto as ***Exhibit A***, the income bind is all the more reason to adopt a more progressive, diversified approach for managing the Residuary Trust assets.

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CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court grant his Motion and enter an Order requiring that the Co-Trustees annually distribute at least $180,000 per year to each of the four income beneficiaries of the Residuary Trust, retroactive to the date of Alice S. Boykin's death on August 8, 2016. This motion is further supported by the Affidavit of Petitioner which is being filed herewith, the laws of the State of South Carolina, and any Memorandum of Law, pleadings or discovery in this case and arguments of counsel as allowed by the Court.

ROSEN, ROSEN & HAGOOD

BY:

Richard S. Rosen
Liam D. Duffy
151 Meeting Street, Suite 400
Charleston, SC 29401
Telephone: (843) 577-6726
Facsimile: (843) 982-0103
rrhlawfirm.com

Attorneys for Petitioner, Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trust

Charleston, South Carolina
April 20, 2018

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EXHIBIT A
(Affidavit of Rigdon H. Boykin)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	CASE NO: 2017-CP-28-831
	)	
IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	)	
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Petitioner, v. Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin Respondents.	)	**AFFIDAVIT OF RIGDON H. BOYKIN**

Rigdon H. Boykin, being first duly sworn, deposes and says as follows:

1. My name is Rigdon H. Boykin. I am a citizen and resident of Boykin, South Carolina. I am over the age of eighteen (18), and I am competent to give the testimony set forth in this Affidavit.

2. I have personal knowledge of the matters contained herein.

3. I am a Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B (the "Trust").

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4. In August of 2016, at one of the first meetings of the Co-Trustees, I quickly realized that the illiquid and underproductive nature of the Trust's assets would most likely yield little or no "net income" for distributions to the income beneficiaries. It was also around this time that I informed my Co-Trustees, Mary Deas Wortley ("Wortley") and Alice Belger ("Belger"), that I was willing to consider having the Trust sell to them property that was important and/or sentimental to them. To that end, I agreed to have the Trust finance up to $1,500,000 to each of them for their purchases. As a result of this proposal, the Co-Trustees collectively began discussing converting 85% of the remaining Trust assets into liquid assets.

5. I suggested that during the period of determining the value of the Trust and converting land into cash to be invested in stocks and bonds, I would be willing to use the power to adjust to distribute $100,000 annually to each income beneficiary. This amount would be adjusted to a percentage of the value of the Trust, retroactive to the date of Alice Boykin's death and going forward, once the Trust value had been determined and the Trust was mostly liquid.

6. Now, after more than 20 months since the death of Alice Boykin, Wortley and Belger have succeeded in frustrating my attempts to diversify the Trust assets and in my opinion have refused to demonstrate a financial plan that would provide the return necessary for the income beneficiaries and remainder persons. In fact, there has been no analysis of the current or future financial status of the Trust whatsoever other than that produced through my efforts, with assistance from Jane Peacock, CPA. Those efforts and analyses appear to have been largely ignored by my Co-Trustees.

7. All three Co-Trustees have agreed that the value of the Trust, after the payment of estate taxes, is between $22,000,000 and $25,000,000. Prior to driving off the prospective purchaser of the Boykin Millpond and 12 acres and buildings at the Boykin crossroads, at the

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Co-Trustee meeting on April 12, 2018, I requested approval to increase the income beneficiary distributions to $180,000 per year retroactive to August 8, 2016, the date of Alice Boykin's death. Wortley and Belger voted against this proposition and voted in favor of a motion to pay income beneficiaries Whit Boykin and May Boykin $150,000 per year going forward, and to pay themselves $100,000 per year as income beneficiaries. I believe the provisions of the Trust require this difference to be made up in the future. This disagreement regarding the appropriate annual distribution to income beneficiaries is further reflected in the April 16, 2018 email exchange between Wortley's counsel and me, attached hereto as **Exhibit 1.**

8. Now that the potential sale of a largely unproductive asset (the Boykin Millpond & Downtown Boykin properties) for over $4,700,000[1] has been driven off by Wortley and Belger,[2] it is evident that a continuation of the Trust in its present posture will result in a rapid depletion of the Trust assets.

9. It was clear to me that my Co-Trustees did not have any conception of the financial consequences of continuing to operate the Trust assets as had been done in the past, and that they had no interest in looking at or implementing a shift in management strategy. Consequently, I undertook with the help of Jane Peacock, a CPA who had been working on the Trust, to develop a comparison of the effects of continuing business as in the past versus diversifying the assets and investing in the stock and bond markets. Attached hereto as **Exhibit**

[1] On April 15, 2018, I was informed by the prospective buyer that they would increase the price 20%, which was confirmed in writing in the email of April 18, 2018 informing Petitioner that they were withdrawing the offer. That email was attached to my counsel's April 18, 2018 letter to the Court. The prospective buyer stated to me: "As discussed on April 15th, I assured you we would satisfy Mr. Bundy's request of an increased price of 20% in lieu of removing a few of the other requests that we would not be able to satisfy due to regulatory restrictions."

[2] Attached hereto as **Exhibit 2** is an April 17, 2018 from the prospective purchaser's counsel to Belger's counsel, which provides the prospective purchaser's explanation for why it was forced to withdraw its offer under the Option Agreement. I received a copy of this letter on April 20, 2018.

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3 is the comparison that was prepared and given to my Co-Trustees on April 2, 2018.[3] Discussion of this comparison was an agenda item at the April 12, 2018 Co-Trustee meeting, but this agenda item was ignored by Wortley and Belger.

10. The critical aspect of the comparison for me is the fact that under the "Business as in the Past" scenario, the Trust asset value will decrease each year by $800,000 to over $1,000,000 per year for the first five years, and then over $1,000,000 per year thereafter. Under the "Land Sale Option" scenario, the asset value would decrease $930,000 in year one, and would turn positive in year four. By year five, the Trust would be generating an increase of $330,000 in asset value. Both comparisons envision a distribution of $180,000 to each income beneficiary per year.[4] My Co-Trustees have agreed to sell a limited amount of property. But, as the analysis in **Exhibit 3** demonstrates, all of the proceeds (and more) will be required to make up cash deficits.

11. Therefore, it appears to me that the only responsible option open to me, so long as the Trust is generating a return of less than 50% of a reasonable average return, is that the Co-Trustee/income beneficiaries should be treated as if the retention of the land is their income distribution. Consequently, for the foreseeable future, I believe Whit Boykin and May Boykin, the non-trustee income beneficiaries, should receive $180,000 per year and Wortley and Belger should receive the psychic return of retaining the land they are refusing to sell.

12. My Co-Trustees have rejected the proposed Option Agreement, and have told the potential buyer under the Option Agreement that if there were an order directing the execution of the Option Agreement, they would appeal all the way to the Supreme Court thereby preventing a

[3] **Exhibit 3** contains four documents: (1) Accountant's Letter; (2) "Business as in the Past" Illustration; (3) "Land Sale Option" Illustration (including backup documentation); and (4) Business as in the Past vs. Land Sale Option – Summary and Comparison.

[4] In the "Land Sale Option" scenario the distributions would increase slightly as the asset value grows over time.

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sale for years. Based on my experience, buyers like this are extremely rare, and the odds of finding another buyer willing to pay $4,700,000 for this asset is probably less than one percent.

13. Attached hereto as **Exhibit 4** is a rough analysis that I gave on March 19, 2018 to my Co-Trustees, which outlines the benefit to the Trust of selling the Boykin Millpond and related buildings. Aside from the fact that it would enable the Trust to avoid the expense of repairing the dam and doing the neglected maintenance on a number of buildings, the sale would generate approximately $150,000 per year more than retaining the property.[5] As with other analyses, my Co-Trustees have ignored this one, as well.

14. I have made a number of attempts to reach a settlement with my Co-Trustees. However, the illiquid nature of the Trust assets makes it very difficult to reach a settlement in the absence of the cash that would be generated by the proposed Option Agreement. As an example, attached hereto as **Exhibit 5** is one such proposed settlement or resolution offer, which I sent to Wortley's counsel on January 29, 2018. This proposal envisioned splitting the Trust into two trusts: one for Whit Boykin and May Boykin that would, over time, sell all of the land assigned to it and invest the proceeds in the market; and one for Belger and Wortley that would keep most of the land they wanted in Kershaw County. I fully realized that the split would result in the combined trusts retaining approximately 50% of underproductive land, but I was willing to consider such a settlement if it were blessed by all the income and remainder beneficiaries, as well as approved by the Court. In addition, I felt the reality of generating no net income would eventually cause a sale of many of the properties.

FURTHER AFFIANT SAYETH NOT.

[5] This rough analysis was drafted prior to the prospective purchaser's increased offer of an additional 20% from the original purchase price.

RIGDON H. BOYKIN

SWORN to before me this
20th day of April, 2018

Notary Public for South Carolina
My commission expires: 9/30/23

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EXHIBIT 1
of Affidavit of Rigdon H. Boykin

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From: Rigdon Boykin <rhboykin@me.com>
Sent: Monday, April 16, 2018 12:24 PM
To: Becker, James
Cc: Mary Deas Wortley; Alice Belger; Alice Belger (alicebbelger@gmail.com); Walter H. Bundy (WHBundy@att.net); Walter H. Bill Bundy (walter@bundymcdonald.com); Jane M. Peacock; wstmail@bellsouth.net; Liam Duffy; Richard Rosen
Subject: Re: Trustee meeting on 4/12/2018; vote on 2018 distributions to income beneficiaries

I understand your position and will seek judicial guidance on this.

Sent from my iPhone
Rigdon H. Boykin
803-546-4274

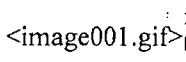
On Apr 16, 2018, at 11:58 AM, Becker, James <jbecker@hsblawfirm.com> wrote:

> They can correct me if I am wrong, but I believe that Mary Deas and Alice believe that $150,000 each is generous for 2018, especially given all the expenses the Trust is incurring at the moment. Also, I don't believe they are willing to vote for any catch-up in the amount you suggest. Since the Trustee vote is 2 to 1 for income distributions in 2018 of $150,000 each to Whit and May and $100,000 each to Mary Deas and Alice, I am copying Jane Peacock on this email.
>
> **James Y. Becker** | Attorney | Haynsworth Sinkler Boyd, P.A.
> 1201 Main Street, 22nd Floor (29201) | Post Office Box 11889 (29211) | Columbia, South Carolina
> Direct: 803.540.7706
>
> ---
>
> **From:** Rigdon Boykin [mailto:rhboykin@me.com]
> **Sent:** Monday, April 16, 2018 10:03 AM
> **To:** Becker, James
> **Cc:** Mary Deas Wortley; Alice Belger; Alice Belger (alicebbelger@gmail.com); Walter H. Bundy (WHBundy@att.net); Walter H. Bill Bundy (walter@bundymcdonald.com)
> **Subject:** Re: Trustee meeting on 4/12/2018; vote on 2018 distributions to income beneficiaries
>
> James, I think the income beneficiaries each should receive $180,000 per year and we need to retroactively true up the distributions since Alice's death to this amount. Through May 8, 2018, the catch up amounts to $140,000 each. If Alice and Mary Deas want to receive less, they can make a gift of the excess that they do not want to take. I do not want the trust to have a future liability to them. Rigdon
>
> Rigdon Boykin
> rhboykin@me.com
> 803-432-5670 (O)
> 803-546-4274 (M)

On Apr 13, 2018, at 6:06 PM, Becker, James <jbecker@hsblawfirm.com> wrote:

The Trustees did not reach this agenda item in the meeting yesterday. Mary Deas and Alice have proposed that for calendar year 2018 the Trust distribute $150K each to Whit and May and $100K each to Mary Deas and Alice.

I suggest that the Trustees vote yes or no on this proposal by reply to this email.



James Y. Becker | Attorney | Haynsworth Sinkler Boyd, P.A.

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Total Control Panel Login

To: lduffy@rrhlawfirm.com Remove this sender from my allow list

From: rhboykin@me.com

You received this message because the sender is on your allow list.

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EXHIBIT 3
of Affidavit of Rigdon H. Boykin

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From: Rigdon Boykin <rhboykin@icloud.com>
Sent: Monday, April 2, 2018 5:01 PM
To: Alice Belger; Alice Belger; mary wortley; Walter H. Bundy (WHBundy@att.net); James Becker
Cc: Liam Duffy; Richard Rosen; Jane M. Peacock
Subject: Investment Comparison
Attachments: ATT00001.htm; DOC040218-013.pdf; ATT00002.htm; DOC040218-011.pdf; ATT00003.htm; DOC040218-008.pdf; ATT00004.htm; DOC040218-012.pdf; ATT00005.htm

Importance: High

The attached files are designed to compare in a rough manner the effect on the asset value of the L.W. Boykin II Trusts over time of:

1. Continuing to manage the assets in the same manner as in the past ("Past Practice Scenario") or

2. Selling over time, 80 to 85 % of the land and investing in a diversified portfolio of equities and fixed income instruments. ("Diversification Scenario")

They have been prepared at my direction by Jane Peacock using assumptions that have been originated by me. Her accounting firm is not responsible for them and her participation has been limited to formatting, helping to make the two scenarios consistent, and calculating in a macro sense trust level tax effects for timber sales, etc. in a vacuum. She has spent innumerable hours working on this project, many of which were at night and on Easter weekend.

The projections used in the preparation of this example are rough estimates and are useful only to demonstrate the order of magnitude between the two investment approaches.

Assumptions used:

Diversification Scenario

1. Real estate sales values are an approximation made by RHB based on the appraisals. RHB has given Jane Peacock the land sale prices net of Capital Gains Taxes – using the estate valuations for Marital Trust B property and estimates of basis for Residual Trust properties.
2. Year One property sales are based on indications of interest already received on these properties. Subsequent year sales are projections based on the valuation estimates of time required to market and other data. For example, I have recently received some interest in Sumter Mountain.

3. The Diversification Scenario will pay the remainder of the Estate Tax no later than November of 2018.
4. It is assumed that the financial assets will have an average return of 6% per year. The trusts that I manage in New Jersey have averaged a gross return of approximately 7.3% for the last 18 years.

Past Practice Scenario

5. The Past Practice Scenario will have to sell properties to pay for deficits. Principal balances have not been reduced to take into account Capital Gains on such sales.
6. Used the Timber cutting estimates contained in Forest Land Management's 15 year projection. The timber which originated in Marital Trust B has a growth factor applied to it of 3% per year in calculating Net Accounting Income. The timber which originated in the Marital Trust B and was transferred to the Residual Trust as part of the 80/20 split transaction is assumed to be 40 % growth from the stand point of calculating net income and capital gains tax. The timber originating in the Residual Trust is assumed to be 80% growth and subject to capital gains tax. There was one deviation from the FLM projection in that the clear cutting on the Swamp tract was omitted due to its effect on the value of the tract.
7. In the Past Practice Scenario, it has been assumed that some of the $200,000 principal repair funds are used to fix up the Church and Rosalee's cottage. We have assumed a rent for them which is included in the commercial rents for the Residuary Trust of $36,000 per year, beginning with Q4 of 2018. We are also including a $13,000/year rent for Ginny's cottage in the residential rents for the Residual Trusts.

It is important to note that the differential in return of approximately $1,300,000 per year will continue in years after 2021 and the Trust principal in the Past Practice Scenario will continue to decline while Trust principal will increase in the Diversification Scenario.

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April 2, 2018

Accountant's Letter

Trustees of the L.W. Boykin II Marital & Residuary Trusts A & B
P. O. Box 632
Camden, South Carolina 29021

Management is responsible for the accompanying projected accounting income worksheets and related statements of the L.W. Boykin II Marital Trusts and the L.W. Boykin II Residuary Trusts. The schedules represent illustrations of projected trust accounting income and changes in principal for the periods 2017 through 2021, based on data and assumptions provided to Sheheen Hancock & Godwin, LLP, by Rigdon H. Boykin, Trustee. The projections are presented on an income tax basis. We did not compile, review or audit the schedules nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management, nor to determine the accuracy of data or reasonableness of the assumptions provided by management. We therefore do not express an opinion, a conclusion, nor any other form of assurance on these projections.

Management has elected to omit substantially all disclosures as a part of these schedules.

We are not independent with respect to the L.W. Boykin II Marital and Residuary Trusts.

Respectfully submitted,

Sheheen, Hancock & Godwin, LLP

Sheheen Hancock & Godwin, LLP
Certified Public Accountants

SHEHEEN, HANCOCK & GODWIN, LLP
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April 2, 2018

Trustees of the L.W. Boykin II Marital & Residuary Trusts A & B
Ms. Mary Deas Wortley, Ms. Alice Boykin Belger and Mr. Rigdon H. Boykin
P. O. Box 632
Camden, South Carolina 29021

RE: Prospective Illustrations of Trust Accounting Income and Principal

Dear Trustees:

We have been engaged to assist you in the formatting and clear presentation of projections of the accounting net income, and the principal increase or decrease, of the combined trusts above, given certain hypothetical assumptions. We undertook this project at the request of the trustees and their counsel. The resulting schedules were prepared from data and assumptions provided to Sheheen Hancock & Godwin, LLP, by Rigdon H. Boykin.

We have not compiled, reviewed or audited these prospective accountings or the data included therein. We express no opinion on this work product or on any conclusions therein, and accept no responsibility for its content.

Respectfully submitted,

Jane M. Peacock

Jane M. Peacock, Partner, for Sheheen Hancock & Godwin, LLP

L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Business as in the Past Illustration
Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2017

Combined Schedule of Net Accounting Income for 2017:

	Combined 2017 Net Accounting Income	Combined 2017 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, **Net of 100% of Estate Tax**
Beginning Combined Trust Principal (approximate at FMV)			$ 24,000,000.00
Marital Trust B	$ 128,613.00	$ 28,094.00	
Residuary Tr A, Including Marital Tr. A	72,775.00	(12,041.00)	
	201,388.00	16,053.00	
Less: Reserve for Trustee Commissions	(150,000.00)	(150,000.00)	
Combined Total 2017 Net Return or (Deficit)	51,388.00	(133,947.00)	
Less: Actual Distributions	(400,000.00)	0	
	(348,612.00)	(133,947.00)	
Less: Reserve for Benficiary Catch-up Distribution (at $180k/benef./annum)	(447,124.00)		
Net Combined Decrease for 2017 Only After Ttee Fee Reserve & Actual plus Catch-up Reserve for Distributions to Beneficiaries	**$ (795,736.00)**	**$ (133,947.00)**	(133,947.00)
Transfer from Principal to Net Return under Power to Adjust	795,736.00		(795,736.00)
Balance at 12/31/17	0		$ 23,070,317.00

Disclaimer: These schedules were prepared from data and assumptions provided by Rigdon H. Boykin, Trustee, to Sheheen, Hancock & Godwin, LLP. We express no opinion on this work product or any conclusions therein, and accept no responsibility for its content.

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L.W. BOYKIN MARITAL TRUST B
Accounting Income Worksheet - Historical Base Year
January 1, 2017 - December 31, 2017

	Trust Income		Trust Principal	
	Income Receipts	Disbursements & Costs of Sale	Principal Receipts	Disbursements & Costs of Sale
Receipts:				
Dividends	$ 3,024			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	75,800			
Camden Commercial Real Property Rents	13,600			
Residential Rentals Receipts	15,050			
Hunting Lease Receipts	44,907			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts (2 years)	14,969			
Pinestraw Sale Receipts	1,000			
Net Profit on Sale of Timber and Land:				
Rabbit Pen Tract - timber			$ 564,674	$ 540,000
80% Int. Yellow House Tr thinning			29,120	24,743
80% Int. Dr.Irvin's Tr thinning			10,601	3,833
80% Int. Sale of 6.77ac Cantey Lane			80,586	21,074
Disbursements:				
Lugoff Commercial Rental Exp.		$ 16,404		
Camden Commercial Real Property Exp.		10,306		
Residential Rental Expense		4,408		
Hunting Lease Property Expense		7,600		
Farm-related Expenses		15,314		
State Income Tax Paid in 2017				3,000
Real Property Tax Not Allocated - Rental		3,754		
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases		3,821		
Accounting Fees		12,490		12,490
Appraisals				15,200
Insurance Not Otherwise Allocated		866		2,046
Miscellaneous Expenses				811
	$ 203,576	$ 74,963	$ 684,981	$ 627,599
Net for 2017 Before Ttee Fees & Distributions		**$ 128,613**		
2017 Income Tax Liability Remaining				29,288
Net 2017 Increase Remaining at 12/31/17		0		$ 28,094

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L.W. BOYKIN TRUSTS A
Accounting Income Worksheet - Historical Base Year
January 1 - December 31, 2017

	Trust Income		Trust Principal	
	Income Receipts	Disbursements	Principal Receipts	Disbursements
Receipts:				
Interest Income	$ 4,475			
Improved Property Rental Receipts:				
Residential Rentals	16,800			
Commercial Rentals	35,350			
Hunting Lease Receipts	33,590			
Net Profit on Sale of Timber and Land:				
20% Yellow House Tr thinning			$ 7,913	633
20% Dr.Irvin's Tr thinning			3,132	2,481
GunClub/LaneyTr - thinning			20,208	7,438
20% of 6.77ac Cantey Lane			20,310	922
Disbursements:				
Commercial Real Property Expenses		$ 6,937		
Residential Rental Expenses		14,989		
Hunting Lease Property Expenses		9,527		
Miscellaneous Expenses				$ 36
Real Prop. Taxes Not Allocated-Non-rental				1,621
Accounting Fees		5,771		6,396
DHEC - Required Repairs to Dam				3,172
Workers Comp. Insurance		886		
Insurance Not Otherwise Allocated				2,957
Federal Income Tax Paid				2,000
2016 S.C. Income Tax Paid				600
	$ 90,215	$ 38,110	$ 51,563	$ 16,782
*To remove from principal of Res. Tr. A portion of sold timber/land net proceeds included in estim. trust FMV, but not otherwise deducted as cost basis or NAI.			$ (19,419)	
**Allocation of timber gain to NAI, net of estim. income tax of $8038	20,670		(20,670)	
***Estim. '17 Income Tax Liability Remaining				6,733
Net for 2017 Before Ttee Fees & Distributions		$ 72,775		
Net 2017 Decrease at 12/31/17		0		$ (12,041)

* To adjust principal for value of timber/land sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

**At the direction of Rigdon Boykin, 100% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income.

***Carryover credit for income taxes totalled $750

Disclaimer: These schedules were prepared from data and assumptions provided by Rigdon H. Boykin, Trustee, to Sheheen, Hancock & Godwin, LLP. We express no opinion on this work product or any conclusions therein, and accept no responsibility for its content.

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L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Business as in the Past Illustration
Projected Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2018

Combined Schedule of Projected Net Accounting Income for 2018:

	Combined 2018 Net Accounting Income	Combined 2018 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate
Balance: Combined Trust Principal at 1/1/2018 (approximate at FMV)			$ 23,070,317.00
Marital Trust B	$ 138,322.00	$ 38,981.00	
Residuary Tr A, Including Marital Tr. A	90,292.00	(335,571.00)	
	228,614.00	(296,590.00)	
Less: Planned Trustee Commissions	(150,000.00)	(150,000.00)	
Combined Total 2017 Net Return or (Deficit)	78,614.00	(446,590.00)	
Less: Distributions @ $180k/Benef.	(720,000.00)	0	
	(641,386.00)	(446,590.00)	
Less: Interest on 6166 Estate Tax	(55,000.00)	-	
Net Combined Decrease for 2018 After Deduction of Trustee Fees & Distributions to Beneficiaries	**$ (696,386.00)**	**$ (446,590.00)**	(446,590.00)
Transfer from Principal to Net Return under Power to Adjust	696,386.00		(696,386.00)
Balance at 12/31/18	$ -		$ 21,927,341.00

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L.W. BOYKIN MARITAL TRUST B - Business as in the Past Illustration
Projected Accounting Income Worksheet
January 1, 2018 - December 31, 2018

	Trust Income		Trust Principal	
	Income Receipts	Disbursements & Costs of Sale	Principal Receipts	Disbursements & Costs of Sale
Receipts:				
Dividends	$ 3,024			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	70,000			
Camden Commercial Real Property Rents	13,600			
Residential Rentals	18,000			
Hunting Lease Receipts	44,907			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts	1,500			
Net Profit on Timber Sales:				
Trust B Timber Sales			$ 319,000	
Tr. B 80% of Timber Sales			769,600	
Less: Cost Basis of Timber Sold (estim. 80% of net)			(870,880)	
Reforestation Expense Reserve				$ 1,000
Amortization of Reforestation Expense				
Disbursements:				
Misc Repairs to Commercial Properties		$ 20,000		$ 50,000
Lugoff Commercial Rental Exp.		$ 16,404		
Camden Commercial Real Property Exp.		10,306		
Residential Rental Expense		4,408		
Hunting Lease Property Expense		7,600		
Farm-related Expenses		15,314		
Real Property Tax Not Allocated - Rental		3,754		
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases		3,821		
Accounting Fees		12,490		12,490
Insurance Not Otherwise Allocated		866		2,046
Miscellaneous Expenses				811
Income tax expense of 28% on Timber Gain				60,962
	$ 186,257	$ 94,963	$ 217,720	$ 131,711
Allocation of timber gain to : 6% of net proceeds, net of 28% CG/NI income tax	47,028		(47,028)	
Net for 2018 Before TteeFees/Distrib		**$ 138,322**		**$ 38,981**

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L.W. BOYKIN TRUSTS A - Business as in the Past Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2018

	Trust Income		Trust Principal	
	Income Receipts	Disbursements	Principal Receipts	Disbursements
Receipts:				
Interest Income	$ 4,475			
Improved Property Rental Receipts:				
Residential Rentals	18,600			
Commercial Rentals	43,000			
Hunting Lease Receipts	33,590			
Net Profit on Timber Sales:				
Mar. Tr A Timber Sales			$ 77,000	
Res. Tr A Timber Sales			$	
Res. Tr. A 20% of Timber Sales			192,400	
Less: Cost Basis of Timber Sold (Mar.A)			(61,600)	0
Less: Cost Basis of Timber Sold (Res.A)				0
Disbursements:				
Boykin Properties Maintenance & Repairs		$ 30,000		200,000
Commercial Real Property Expenses		$ 6,937		
Residential Rental Expenses		14,989		
Hunting Lease Property Expenses		9,527		
Miscellaneous Expenses				$ 36
Real Prop. Taxes Not Allocated-Non-rental				1,621
Accounting Fees		5,771		6,396
DHEC - Required Repairs to Dam				100,000
Workers Comp. Insurance		886		
Insurance Not Otherwise Allocated				2,957
	$ 99,665	$ 68,110	$ 207,800	$ 311,010
*To remove from principal of Res. Tr. A portion of sold timber/land net proceeds included in estim. trust FMV, but not otherwise deducted as cost basis or NAI.			$ (115,440)	
**Marital A: Allocation of timber *proceeds* to net income: 6% of proceeds, net of 28% CG/NI income tax	$ 3,326		$ (3,326)	
**Allocation of timber gain to NAI (gain is net of 28% CG/NIIT tax)	55,411		(55,411)	
Estim. '18 Income Tax Liability				58,184
Net for 2018 Before TteeFees/Distributions		**$ 90,292**		**$ (335,571)**

* To adjust principal for value of timber/land sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

** For Marital Tr A, growth factor to allocate increases by 3points per year.
6% x net proceeds for 2018.

**Res. Tr. A: At the direction of Rigdon Boykin, 80% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 100% owned properties.

**Res. Tr. A: At direction of Rigdon Boykin, 40% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 20% owned properties.

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L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Business as In the Past Illustration
Projected Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2019

Combined Schedule of Projected Net Accounting Income for 2019:

	Combined 2019 Net Accounting Income	Combined 2019 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate Tax
Balance: Combined Trust Principal at 1/1/2019 (approximate at FMV)			$ 21,927,341.00
Marital Trust B	$ 116,940.00	$ 26,042.00	
Residuary Tr A, Including Marital Tr. A	92,045.00	(21,804.00)	
	208,985.00	4,238.00	
Less: Planned Trustee Commissions	(150,000.00)	(150,000.00)	
Combined Total 2019 Net Return/(Deficit)	58,985.00	(145,762.00)	
Less: Distributions @ $180k/Benef.	(720,000.00)	0	
	(661,015.00)	(145,762.00)	
Less: Interest on 6166 Estate Tax	(57,500.00)	-	
Net Combined Decrease for 2019 After Deduction of Trustee Fees & Distributions to Beneficiaries	**$ (718,515.00)**	**$ (145,762.00)**	(145,762.00)
Transfer from Principal to Net Return under Power to Adjust	718,515.00		(718,515.00)
Balance at 12/31/19	$ -		$ 21,063,064.00

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L.W. BOYKIN MARITAL TRUST B - Business as in the Past Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2019

	Trust Income		Trust Principal	
	Income Receipts	Disbursements & Costs of Sale	Principal Receipts	Disbursements & Costs of Sale
Receipts:				
Dividends	$ 3,024			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	70,000			
Camden Commercial Real Property Rents	13,600			
Residential Rentals	18,000			
Hunting Lease Receipts	44,907			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts	1,500			
Net Profit on Timber Sales:				
Trust B Timber Sales			$ 409,000	
Tr. B 80% Int. R.E.- Timber Sales			338,400	
Less: Cost Basis of Timber Sold (estim. 80% of net)			(597,920)	
Reforestation Expense Reserve				$ 2,000
Amortization of Reforestation Expense		$ 286	286	
Disbursements:				
Maintenance of Commercial Properties		$ 30,000		$ -
Lugoff Commercial Rental Exp.		$ 16,404		
Camden Commercial Real Property Exp.		10,306		
Residential Rental Expense		4,408		
Hunting Lease Property Expense		7,600		
Farm-related Expenses		15,314		
Real Property Tax Not Allocated - Rental		3,754		
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases		3,821		
Accounting Fees		12,490		12,490
Insurance Not Otherwise Allocated		866		2,046
Miscellaneous Exp. - RHB estimate		12500		12,500
Income tax expense of 28% on Timber Gain				41,854
	$ 186,257	$ 117,749	$ 149,766	$ 75,292
Allocation of timber *proceeds* to net income: 9% of net gain, net of 28% CG/NI income tax	48,432		(48,432)	
Net for 2019 Before TteeFees/Distrib		$ 116,940		$ 26,042

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L.W. BOYKIN TRUSTS A - Business as in the Past Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2019

	Trust Income		Trust Principal	
	Income Receipts	Disbursements	Principal Receipts	Disbursements
Receipts:				
Interest Income	$ 4,475			
Improved Property Rental Receipts:				
Residential Rentals	25,200			
Commercial Rentals	72,000			
Hunting Lease Receipts	33,590			
Net Profit on Timber Sales:				
Mar. Tr A Timber Sales,.			$ 201,000	
Res. Tr A Timber Sales			$ -	
Res. Tr. A 20% Int. of Timber Sales			84,600	
Less: Cost Basis of Timber Sold (Mar.A)			(160,800)	0
Less: Cost Basis of Timber Sold (Res.A)				0
Reforestation Expense Reserve				-
Amortization of Reforestation Expense		0	0	
Disbursements:				
Miscellaneous expenses - RHB estim.		$ 12,500		12,500
Maintenance of Commercial Properties		$ 30,000		
Commercial Real Property Expenses		$ 6,937		
Residential Rental Expenses		14,989		
Hunting Lease Property Expenses		9,527		
Miscellaneous Expenses				$ 36
Real Prop. Taxes Not Allocated-Non-rental				1,621
Accounting Fees		5,771		6,396
DHEC - Required Repairs to Dam				
Workers Comp. Insurance		886		
Insurance Not Otherwise Allocated				2,957
	$ 135,265	$ 80,610	$ 124,800	$ 23,510
* To adjust principal for value of timber/land sold and replaced with cash, but not deducted as cost basis or allocated to NAI.			$ (50,760)	
**Marital A: Allocation of timber *proceeds* to net income: 9% of proceeds, net of 28% CG/NI income tax	13,025		(13,025)	
***Allocation of timber gain to NAI, net of tax	24,365		(24,365)	
Estim. '19 Income Tax Liability				34,944
Net for 2019 Before TteeFees/Distributions		**$ 92,045**		**$ (21,804)**

* To adjust principal for value of timber/land sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

** For Marital Tr A, growth factor to allocate increases by 3points per year.
9% x net proceeds for 2019.

***At the direction of Rigdon Boykin, 80% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 100% owned properties.

***At direction of Rigdon Boykin, 40% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 20% owned properties.

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L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Business as In the Past Illustration
Projected Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2020

Combined Schedule of Projected Net Accounting Income for 2020:

	Combined 2020 Net Accounting Income	Combined 2020 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate
Balance: Combined Trust Principal at 1/1/2020 (approximate at FMV)			$ 21,063,064.00
Marital Trust B	$ 97,126.00	$ (57,997.00)	
Residuary Tr A, Including Marital Tr. A	251,984.00	(57,623.00)	
	349,110.00	(115,620.00)	
Less: Planned Trustee Commissions	(150,000.00)	(150,000.00)	
Combined Total 2020 Net Return / (Deficit)	199,110.00	(265,620.00)	
Less: Distributions @ $180k/Benef.	(720,000.00)	0	
	(520,890.00)	(265,620.00)	
Less: Interest on 6166 Estate Tax	(60,000.00)	-	
Net Combined Decrease for 2020 After Deduction of Trustee Fees & Distributions to Beneficiaries	**$ (580,890.00)**	**$ (265,620.00)**	(265,620.00)
Transfer from Principal to Net Return under Power to Adjust	580,890.00		(580,890.00)
Balance at 12/31/20	$ -		$ 20,216,554.00

Disclaimer: These schedules were prepared from data and assumptions provided by Rigdon H. Boykin, Trustee, to Sheheen, Hancock & Godwin, LLP. We express no opinion on this work product or any conclusions therein, and accept no responsibility for its content.

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L.W. BOYKIN MARITAL TRUST B - Business as in the Past Illustration
Projected Accounting Income Worksheet
January 1- December 31, 2020

	Trust Income		Trust Principal	
	Income Receipts	Disbursements & Costs of Sale	Principal Receipts	Disbursements & Costs of Sale
Receipts:				
Dividends	$ 3,024			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	70,000			
Camden Commercial Real Property Rents	13,600			
Residential Rentals	18,000			
Hunting Lease Receipts	44,907			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts	1,500			
Net Profit on Timber Sales:				
Trust B Timber Sales			$ 233,000	
Tr. B 80% Int. R.E.- Timber Sales			143,200	
Less: Cost Basis of Timber Sold (estim. 80% of net)			(300,960)	
Reforestation Expense Reserve				$ 52,400
Amortization of Reforestation Expense		$ 4,172	4,172	
Disbursements:				
Maintenance of Commercial Properties		$ 30,000		$
Lugoff Commercial Rental Exp.		$ 16,404		
Camden Commercial Real Property Exp.		10,306		
Residential Rental Expense		4,408		
Hunting Lease Property Expense		7,600		
Farm-related Expenses		15,314		
Real Property Tax Not Allocated - Rental		3,754		
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases		3,821		
Accounting Fees		12,490		12,490
Insurance Not Otherwise Allocated		866		2,046
Miscellaneous Exp. - RHB estimate		12500		12,500
Income tax expense of 28% on Timber Gain				21,067
	$ 186,257	$ 121,635	$ 79,412	$ 104,905
Allocation of timber *proceeds* to net income: 12% of net proceeds, net of 28% CG/NI income tax	32,504		(32,504)	
Net for 2020 Before TteeFees/Distrib		**$ 97,126**		**$ (57,997)**

Disclaimer: These schedules were prepared from data and assumptions provided by Rigdon H. Boykin, Trustee, to Sheheen, Hancock & Godwin, LLP. We express no opinion on this work product or any conclusions therein, and accept no responsibility for its content.

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L.W. BOYKIN TRUSTS A - Business as in the Past Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2020

	Trust Income		Trust Principal	
	Income Receipts	Disbursements	Principal Receipts	Disbursements
Receipts:				
Interest Income	$ 4,475			
Improved Property Rental Receipts:				
Residential Rentals	25,200			
Commercial Rentals	72,000			
Hunting Lease Receipts	33,590			
Net Profit on Timber Sales:				
Mar. Tr A Timber Sales,.			$ -	
Res. Tr A Timber Sales			$ 326,000	
Res. Tr. A 20% Int. of Timber Sales			35,800	
Less: Cost Basis of Timber Sold (Mar.A)			-	0
Less: Cost Basis of Timber Sold (Res.A)				0
Reforestation Expense Reserve				10,600
Amortization of Reforestation Expense		757	757	
Disbursements:				
Miscellaneous expenses - RHB estim.		$ 12,500		12,500
Maintenance of commercial properties		$ 30,000		
Commercial Real Property Expenses		$ 6,937		
Residential Rental Expenses		14,989		
Hunting Lease Property Expenses		9,527		
Miscellaneous Expenses				$ 36
Real Prop. Taxes Not Allocated-Non-rental				1,621
Accounting Fees		5,771		6,396
DHEC - Required Repairs to Dam				-
Workers Comp. Insurance		886		
Insurance Not Otherwise Allocated				2,957
	$ 135,265	$ 81,367	$ 362,557	$ 34,110
*To remove from principal of Res. Tr. A portion of sold timber net proceeds included in estim. trust FMV, but not otherwise deducted as cost basis or NAI.			$ (86,680)	
**Allocation of timber *proceeds* to net income: 12% of net gain, net of 28% CG/NI income tax				
***Allocation of timber gain to NAI, net of tax	-		(198,086)	
Estim. '20 Income Tax Liability	198,086			101,304
Net for 2020 Before TteeFees/Distributions		**$ 251,984**		**$ (57,623)**

* To adjust principal for value of timber sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

** For Marital Tr A, growth factor to allocate increases by 3points per year.
12% x net proceeds for 2020.

***At the direction of Rigdon Boykin, 80% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 100% owned properties.

***At direction of Rigdon Boykin, 40% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 20% owned properties.

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L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Business as in the Past Illustration
Projected Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2021

Combined Schedule of Projected Net Accounting Income for 2021:

	Combined 2021 Net Accounting Income	Combined 2021 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate Tax
Balance: Combined Trust Principal at 1/1/2021 (approximate at FMV)			$ 20,216,554.00
Marital Trust B	$ 84,774.00	$ (91,559.00)	
Residuary Tr A, Including Marital Tr. A	75,194.00	(39,977.00)	
	159,968.00	(131,536.00)	
Less: Planned Trustee Commissions	(150,000.00)	(150,000.00)	
Combined Total 2021 Net Return/(Deficit)	9,968.00	(281,536.00)	
Less: Distributions @ $180k/Benef.	(720,000.00)	0	
	(710,032.00)	(281,536.00)	
Less: Interest on 6166 Estate Tax	(62,500.00)	-	
Net Combined Decrease for 2021 After Deduction of Trustee Fees & Distributions to Beneficiaries	**$ (772,532.00)**	**$ (281,536.00)**	(281,536.00)
Transfer from Principal to Net Return under Power to Adjust	772,532.00		(772,532.00)
Balance at 12/31/21	$ -		$ 19,162,486.00

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L.W. BOYKIN MARITAL TRUST B - Business as in the Past Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2021

	Trust Income		Trust Principal	
	Income Receipts	Disbursements & Costs of Sale	Principal Receipts	Disbursements & Costs of Sale
Receipts:				
Dividends	$ 3,024			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	70,000			
Camden Commercial Real Property Rents	13,600			
Residential Rentals	18,000			
Hunting Lease Receipts	44,907			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts	1,500			
Net Profit on Timber Sales:				
Trust B Timber Sales			$ 52,000	
Tr. B 80% Int. R.E.- Timber Sales			224,800	
Less: *Cost Basis of Timber Sold (estim. 80% of net)			(221,440)	
Reforestation Expense Reserve				$ 84,000
Amortization of Reforestation Expense		$ 13,914	13,914	
Disbursements:				
Maintenance of Commercial Properties		$ 30,000		$
Lugoff Commercial Rental Exp.		$ 16,404		
Camden Commercial Real Property Exp.		10,306		
Residential Rental Expense		4,408		
Hunting Lease Property Expense		7,600		
Farm-related Expenses		15,314		
Real Property Tax Not Allocated - Rental		3,754		
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases		3,821		
Accounting Fees		12,490		12,490
Insurance Not Otherwise Allocated		866		2,046
Miscellaneous Exp. - RHB estimate		12500		12,500
Income tax expense of 28% on Timber Gain				15,501
	$ 186,257	$ 131,377	$ 69,274	$ 130,939
Allocation of timber *proceeds* : 15% of net proceeds, net of 28% CG/NI income tax	29,894		(29,894)	
Net for 2021 Before TteeFees/Distrib		**$ 84,774**		**$ (91,559)**

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L.W. BOYKIN TRUSTS A - Business as in the Past Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2021

	Trust Income		Trust Principal	
	Income		Principal	
	Receipts	Disbursements	Receipts	Disbursements
Receipts:				
Interest Income	$ 4,475			
Improved Property Rental Receipts:				
Residential Rentals	25,200			
Commercial Rentals	72,000			
Hunting Lease Receipts	33,590			
Net Profit on Timber Sales:				
Mar. Tr A Timber Sales,.			$ 62,000	
Res. Tr A Timber Sales			$ -	
Res. Tr. A 20% Int. of Timber Sales			56,200	
Less: Cost Basis of Timber Sold (Mar.A)			(49,600)	0
Less: Cost Basis of Timber Sold (Res.A)				0
Reforestation Expense Reserve				11,600
Amortization of Reforestation Expense		2343	2343	
Disbursements:				
Miscellaneous expenses - RHB estim.		$ 12,500		12,500
Maintenance of Commercial Property		$ 30,000		
Commercial Real Property Expenses		$ 6,937		
Residential Rental Expenses		14,989		
Hunting Lease Property Expenses		9,527		
Miscellaneous Expenses				$ 36
Real Prop. Taxes Not Allocated-Non-rental				1,621
Accounting Fees		5,771		6,396
Workers Comp. Insurance		886		
Insurance Not Otherwise Allocated				2,957
	$ 135,265	$ 82,953	$ 70,943	$ 35,110
*To remove from principal of Res. Tr. A portion of sold timber net proceeds included in estim. trust FMV, but not otherwise deducted as cost basis or NAI.			$ (33,720)	
**Allocation of timber *proceeds* to net income: 15% of net gain, net of 28% CG/NI income tax	6,696		(6,696)	
***Allocation of timber gain to NAI, net of tax	16,186		(16,186)	
Estim. '21 Income Tax Liability				19,208
Net for 2021 Before TteeFees/Distributions		**$ 75,194**		**$ (39,977)**

* To adjust principal for value of timber sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

** For Marital Tr A, growth factor to allocate increases by 3points per year.
15% x net proceeds for 2021.

***At the direction of Rigdon Boykin, 80% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 100% owned properties.

***At direction of Rigdon Boykin, 40% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 20% owned properties.

Disclaimer: These schedules were prepared from data and assumptions provided by Rigdon H. Boykin, Trustee, to Sheheen, Hancock & Godwin, LLP. We express no opinion on this work product or any conclusions therein, and accept no responsibility for its content.

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April 2, 2018

Trustees of the L.W. Boykin II Marital & Residuary Trusts A & B
Ms. Mary Deas Wortley, Ms. Alice Boykin Belger and Mr. Rigdon H. Boykin
P. O. Box 632
Camden, South Carolina 29021

RE: Prospective Illustrations of Trust Accounting Income and Principal

Dear Trustees:

We have been engaged to assist you in the formatting and clear presentation of projections of the accounting net income, and the principal increase or decrease, of the combined trusts above, given certain hypothetical assumptions. We undertook this project at the request of the trustees and their counsel. The resulting schedules were prepared from data and assumptions provided to Sheheen Hancock & Godwin, LLP, by Rigdon H. Boykin.

We have not compiled, reviewed or audited these prospective accountings or the data included therein. We express no opinion on this work product or on any conclusions therein, and accept no responsibility for its content.

Respectfully submitted,

Jane M. Peacock

Jane M. Peacock, Partner, for Sheheen Hancock & Godwin, LLP

ELECTRONICALLY FILED - 2018 Apr 20 4:45 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Land Sale Option Illustration
Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2017

Combined Schedule of Net Accounting Income for 2017:

	Combined 2017 Net Accounting Income	Combined 2017 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, **Net of 100% of Estate Tax**
Beginning Combined Trust Principal (approximate at FMV)			$ 24,000,000.00
Marital Trust B	$ 128,613.00	$ 28,094.00	
Residuary Tr A, Including Marital Tr. A	72,775.00	(12,041.00)	
	201,388.00	16,053.00	
Less: Reserve for Trustee Commissions	(150,000.00)	(150,000.00)	
Combined Total 2017 Net Return/ (Deficit)	51,388.00	(133,947.00)	
Less: Actual Distributions	(400,000.00)	0	
	(348,612.00)	(133,947.00)	
Less: Reserve for Benficiary Catch-up Distribution (at $180k/benef./annum)	(447,124.00)		
Net Combined Decrease for 2017 Only After Ttee Fee Reserve & Actual plus Catch-up Reserve for Distributions to Beneficiaries	**$ (795,736.00)**	$ **(133,947.00)**	(133,947.00)
Transfer from Principal to Net Return under Power to Adjust	795,736.00		(795,736.00)
Balance at 12/31/17	0		$ 23,070,317.00

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L.W. BOYKIN MARITAL TRUST B
Accounting Income Worksheet - Historical Base Year
January 1, 2017 - December 31, 2017

	Trust Income		Trust Principal	
	Income Receipts	Disbursements & Costs of Sale	Principal Receipts	Disbursements & Costs of Sale
Receipts:				
Dividends	$ 3,024			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	75,800			
Camden Commercial Real Property Rents	13,600			
Residential Rentals Receipts	15,050			
Hunting Lease Receipts	44,907			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts (2 years)	14,969			
Pinestraw Sale Receipts	1,000			
Net Profit on Sale of Timber and Land:				
Rabbit Pen Tract - timber			$ 564,674	540,000
80% Int. Yellow House Tr thinning			29,120	24,743
80% Int. Dr.Irvin's Tr thinning			10,601	3,833
80% Int. Sale of 6.77ac Cantey Lane			80,586	21,074
Disbursements:				
Lugoff Commercial Rental Exp.		$ 16,404		
Camden Commercial Real Property Exp.		10,306		
Residential Rental Expense		4,408		
Hunting Lease Property Expense		7,600		
Farm-related Expenses		15,314		
State Income Tax Paid In 2017				3,000
Real Property Tax Not Allocated - Rental		3,754		
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases		3,821		
Accounting Fees		12,490		12,490
Appraisals				15,200
Insurance Not Otherwise Allocated		866		2,046
Miscellaneous Expenses				811
	$ 203,576	$ 74,963	$ 684,981	$ 627,599
Net for 2017 Before Ttee Fees & Distributions		**$ 128,613**		
2017 Income Tax Liability Remaining				29,288
Net 2017 Increase Remaining at 12/31/17		0		$ 28,094

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L.W. BOYKIN TRUSTS A
Accounting Income Worksheet - Historical Base Year
January 1 - December 31, 2017

	Trust Income		Trust Principal	
	Income Receipts	Disbursements	Principal Receipts	Disbursements
Receipts:				
Interest Income	$ 4,475			
Improved Property Rental Receipts:				
Residential Rentals	16,800			
Commercial Rentals	35,350			
Hunting Lease Receipts	33,590			
Net Profit on Sale of Timber and Land:				
20% Yellow House Tr thinning			$ 7,913	633
20% Dr.Irvin's Tr thinning			3,132	2,481
GunClub/LaneyTr - thinning			20,208	7,438
20% of 6.77ac Cantey Lane			20,310	922
Disbursements:				
Commercial Real Property Expenses		$ 6,937		
Residential Rental Expenses		14,989		
Hunting Lease Property Expenses		9,527		
Miscellaneous Expenses				$ 36
Real Prop. Taxes Not Allocated-Non-rental				1,621
Accounting Fees		5,771		6,396
DHEC - Required Repairs to Dam				3,172
Workers Comp. Insurance		886		
Insurance Not Otherwise Allocated				2,957
Federal Income Tax Paid				2,000
2016 S.C. Income Tax Paid				600
	$ 90,215	$ 38,110	$ 51,563	$ 16,782
*To remove from principal of Res. Tr. A portion of sold timber/land net proceeds included in estim. trust FMV, but not otherwise deducted as cost basis or NAI.			$ (19,419)	
**Allocation of timber gain to NAI, net of estim. income tax of $8038	20,670		(20,670)	
***Estim. '17 Income Tax Liability Remaining				6,733
Net for 2017 Before Ttee Fees & Distributions		**$ 72,775**		**$ (12,041)**
Net 2017 Decrease at 12/31/17		0		

* To adjust principal for value of timber/land sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

**At the direction of Rigdon Boykin, 100% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income.

***Carryover credit for income taxes totalled $750

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L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Land Sale Option Illustration
Projected Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2018

Combined Schedule of Projected Net Accounting Income for 2018:

	Combined 2018 Net Accounting Income	Combined 2018 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate
Balance: Combined Trust Principal at 1/1/2018 (approximate at FMV)			$ 23,070,317.00
Marital Trust B	$ 150,402.00	$ 44,812.00	
Residuary Tr A, including Marital Tr. A	116,625.00	(38,327.00)	
	267,027.00	6,485.00	
Less: Planned Trustee Commissions	(150,000.00)	(150,000.00)	
Combined Total 2017 Net Return (Deficit)	117,027.00	(143,515.00)	
Less: Distributions @ $180k/Benef.	(720,000.00)	0	
	(602,973.00)	(143,515.00)	
Less: Int. on 6166 Estate Tax thru Nov. '18	(83,750.00)	-	
Net Combined Decrease for 2018 After Deduction of Trustee Fees & Distributions to Beneficiaries	**$ (686,723.00)**	**$ (143,515.00)**	(143,515.00)
Transfer from Principal to Net Return under Power to Adjust	686,723.00		(686,723.00)
Balance at 12/31/18	$ -		$ 22,240,079.00

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L.W. BOYKIN MARITAL TRUST B - Land Sale Option Illustration
Projected Accounting Income Worksheet
January 1, 2018 - December 31, 2018

	Trust Income		Trust Principal	
	Income Receipts	Disbursements & Costs of Sale	Principal Receipts	Disbursements & Costs of Sale
Receipts:				
6% return on inv in Stock Mkt.- 3mos.x55%	$ 66,545			
1st Palmetto Dividends	$ 3,024			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Comm. Real Prop. Rents - 6 mos	35,000			
Camden Comm. Real Prop. Rents- 6 mos	6,800			
Residential Rentals Receipts	15,050			
Hunting Lease Receipts - 80% of 2017	35,926			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts	1,500			
Net Profit on Timber Sales:			$ -	
Trust B Timber Sales			650,400	
Tr. B 80% of Timber Sales			(520,320)	
Less: Cost Basis of Timber Sold (estim. 80% of net)				$ 1,000
Reforestation Expense Reserve			4,790,000	
Sales of Land & Options to Purchase Land- net of CG tax			(4,790,000)	
Less: Cost Basis of Land Sold				
Disbursements:				$ -
Misc Repairs to Comm. Properties - 50%		$ 10,000		
Lugoff Commercial Rental Exp.		$ 12,303		
Camden Commercial Real Property Exp.		7,730		
Residential Rental Expense		4,408		
Hunting Lease Property Exp. - 80% of previous		6,080		
Farm-related Expenses		15,314		
Real Property Tax Not Allocated - Rental		3,754		
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases		3,821		
Accounting Fees		12,490		12,490
Insurance Not Otherwise Allocated		866		2,046
Miscellaneous Expenses				811
Income tax expense of 28% on Timber Gain				36,422
	$ 199,071	$ 76,766	$ 130,080	$ 57,171
Allocation of timber gain to : 6% of net proceeds, net of 28% CG/NI income tax	28,097		(28,097)	
Net for 2018 Before TteeFees/Distrib		$ 150,402		$ 44,812

36422 TIMBER

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L.W. BOYKIN TRUSTS A - Land Sale Option Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2018

	Trust Income		Trust Principal	
	Income Receipts	Disbursements	Principal Receipts	Disbursements
Receipts:				
6% return on inv in Stock Mkt.- 3mos.x45%	$ 54,445			
Interest Income	$ 4,475			
Improved Property Rental Receipts:				
Residential Rentals	16,800			
Commercial Rentals x 50% of 2017	16,675			
Hunting Lease Receipts x 80% of 2017	26,872			
Net Profit on Timber Sales:				
Mar. Tr A Timber Sales			$ -	
Res. Tr A Timber Sales			$ 162,600	
Res. Tr. A 20% of Timber Sales			-	0
Less: Cost Basis of Timber Sold (Mar.A)				0
Less: Cost Basis of Timber Sold (Res.A)			3,276,000	
Sales of Land & Options to Purchase Land- net of CG tax			(400,000)	
Less: Cost Basis of Land Sold				
Disbursements:				
Boykin Prop Maint & Repairs - 50% of 2017		$ 15,000		
Commercial Real Property Exp - 75% of 2017		$ 5,203		
Residential Rental Expenses		14,989		
Hunting Lease Property Exp- 80% of 2017		7,622		
Miscellaneous Expenses				$ 36
Real Prop. Taxes Not Allocated-Non-rental				1,621
Accounting Fees		5,771		6,396
DHEC - Required Repairs to Dam				
Workers Comp. Insurance		886		
Insurance Not Otherwise Allocated				2,957
	$ 119,267	$ 49,471	$ 3,038,600	$ 11,010
*To remove from principal of Res. Tr. A portion of sold timber/land net proceeds included in estim. trust FMV, but not otherwise deducted as cost basis or NAI.			#########	
**Marital A: Allocation of timber *proceeds* to net income: 6% of proceeds, net of 28% CG/NI income tax	$ -		$ -	
**Allocation of timber gain to NAI (gain is net of 28% CG/NIIT tax)	46,829		(46,829)	45,528
Estim. '18 Income Tax Liability				
Net for 2018 Before TteeFees/Distributions		$ 116,625		$ (38,327)

* To adjust principal for value of timber/land sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

** For Marital Tr A, growth factor to allocate increases by 3points per year.
6% x net proceeds for 2018.

**Res. Tr. A: At the direction of Rigdon Boykin, 80% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 100% owned properties.

**Res. Tr. A: At direction of Rigdon Boykin, 40% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 20% owned properties.

Disclaimer: These schedules were prepared from data and assumptions provided by Rigdon H. Boykin, Trustee, to Sheheen, Hancock & Godwin, LLP. We express no opinion on this work product or any conclusions therein, and accept no responsibility for its content.

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L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Land Sale Option Illustration
Projected Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2019

Combined Schedule of Projected Net Accounting Income for 2019:

	Combined 2019 Net Accounting Income	Combined 2019 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate Tax
Balance: Combined Trust Principal at 1/1/2019 (approximate at FMV)			$ 22,240,079.00
Marital Trust B	$ 496,954.00	$ (25,543.00)	
Residuary Tr A, Including Marital Tr. A	401,689.00	(26,500.00)	
	898,643.00	(52,043.00)	
Less: Planned Trustee Commissions	(150,000.00)	(150,000.00)	
Combined Total 2019 Net Return/(Deficit)	748,643.00	(202,043.00)	
Less: Distributions @ $180k/Benef.	(720,000.00)	0	
	28,643.00	(202,043.00)	
Less: Interest on 6166 Estate Tax	-	-	
Net Combined Increase/(Decrease) for 2019 After Deduction of Trustee Fees & Distributions to Beneficiaries	**$ 28,643.00**	**$ (202,043.00)**	(202,043.00)
Transfer to Principal from Net Return under Power to Adjust	(28,643.00)		28,643.00
Balance at 12/31/19	$ -		$ 22,066,679.00

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ELECTRONICALLY FILED - 2018 Apr 20 4:45 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

L.W. BOYKIN MARITAL TRUST B - Land Sale Option Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2019

	Trust Income		Trust Principal	
	Income Receipts	Disbursements & Costs of Sale	Principal Receipts	Disbursements & Costs of Sale
Receipts:				
6% return on inv in Stock Mkt.-x55%	$ 480,678			
Dividends	$ 3,024			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	-			
Camden Commercial Real Property Rents	-			
Resid. Rentals Receipts	-			
Hunting Lease Receipts at 60% of 2017	26,944			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts	1,500			
Net Profit on Timber Sales:			$ -	
Trust B Timber Sales			71,200	
Tr. B 80% Int. R.E.- Timber Sales			(56,960)	
Less: Cost Basis of Timber Sold (estim. 80% of net)				$ -
Reforestation Expense Reserve		$ 256	256	
Amortization of Reforestation Expense			3,800,000	
Sales of Land & Options to Purchase Land- net of CG tax			(3,800,000)	
Less: Cost Basis of Land Sold				
Disbursements:				
Maintenance of Commercial Properties		$ -		$ -
Lugoff Commercial Rental Exp.		$ -		
Camden Commercial Real Property Exp.		-		
Residential Rental Expense		-		
Hunting Lease Property Expense - 60%		7,560		
Farm-related Expenses		15,314		
Real Property Tax Not Allocated - Rental		3,754		
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases - 60%		2,292		
Accounting Fees		12,490		12,490
Insurance Not Otherwise Allocated		866		2,046
Miscellaneous Exp. - RHB estimate		12500		12,500
Income tax expense of 28% on Timber Gain				3,987
	$ 547,372	$ 55,032	$ 14,496	$ 35,425
Allocation of timber *proceeds* to net income: 9% of net gain, net of 28% CG/NI income tax	4,614		(4,614)	
Net for 2019 Before TteeFees/Distrib		$ 496,954		$ (25,543)

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ELECTRONICALLY FILED - 2018 Apr 20 4:45 PM - KERSHAW - COMMON PLEAS - CASE#2017CP280831

L.W. BOYKIN TRUSTS A - Land Sale Option Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2019

	Trust Income		Trust Principal	
	Income Receipts	Disbursements	Principal Receipts	Disbursements
Receipts:				
Interest Income	$ -			
6% return on inv in Stock Mkt.-x45%	$ 393,282			
Improved Property Rental Receipts:				
Residential Rentals- ABB only	12,000			
Commercial Rentals	-			
Hunting Lease Receipts - 60% of '17	20,154			
Net Profit on Timber Sales:				
Mar. Tr A Timber Sales,.			$ -	
Res. Tr A Timber Sales			$ -	
Res. Tr. A 20% Int. of Timber Sales			17,800	
Less: Cost Basis of Timber Sold (Mar.A)			-	0
Less: Cost Basis of Timber Sold (Res.A)				0
Reforestation Expense Reserve				-
Amortization of Reforestation Expense		0	0	
Sales of Land & Options to Purchase Land- net of CG tax			2,700,000	
Less: Cost Basis of Land Sold			(295,000)	
Disbursements:				
Miscellaneous expenses - RHB estim.		$ 12,500		12,500
Maintenance of Commercial Properties		$ -		
Commercial Real Property Expenses		$ -		
Residential Rental Expenses		4,000		
Hunting Lease Property Exp at 60% of '17		5,716		
Miscellaneous Expenses				$ 36
Real Prop. Taxes Not Allocated-Non-rental				1,621
Accounting Fees		5,771		6,396
DHEC - Required Repairs to Dam				-
Workers Comp. Insurance		886		
Insurance Not Otherwise Allocated				2,957
	$ 425,436	$ 28,873	$ 2,422,800	$ 23,510
* To adjust principal for value of timber/land sold and replaced with cash, but not deducted as cost basis or allocated to NAI.			$ (2,415,680)	
**Marital A: Allocation of timber *proceeds* to net income: 9% of proceeds, net of 28% CG/NI income tax	-		-	
***Allocation of timber gain to NAI, net of tax	5,126		(5,126)	
Estim. '19 Income Tax Liability - Timber				4,984
Net for 2019 Before TteeFees/Distributions		**$ 401,689**		**$ (26,500)**

* To adjust principal for value of timber/land sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

** For Marital Tr A, growth factor to allocate increases by 3points per year.
9% x net proceeds for 2019.

***At the direction of Rigdon Boykin, 80% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 100% owned properties.

***At direction of Rigdon Boykin, 40% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 20% owned properties.

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L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Land Sale Option Illustration
Projected Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2020

Combined Schedule of Projected Net Accounting Income for 2020:

	Combined 2020 Net Accounting Income	Combined 2020 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate
Balance: Combined Trust Principal at 1/1/2020 (approximate at FMV)			$ 22,066,679.00
Marital Trust B	$ 619,716.00	$ (55,094.00)	
Residuary Tr A, Including Marital Tr. A	501,149.00	(30,567.00)	
	1,120,865.00	(85,661.00)	
Less: Planned Trustee Commissions	(150,000.00)	(150,000.00)	
Combined Total 2020 Net Return/(Deficit)	970,865.00	(235,661.00)	
Less: Distributions @ $180k/Benef.	(720,000.00)	0	
	250,865.00	(235,661.00)	
Less: Interest on 6166 Estate Tax		-	
Net Combined Increase/ (Decrease) for 2020 After Deduction of Trustee Fees & Distributions to Beneficiaries	**$ 250,865.00**	**$ (235,661.00)**	(235,661.00)
Transfer to Principal from Net Return under Power to Adjust	(250,865.00)		250,865.00
Balance at 12/31/20	$ -		$ 22,081,883.00

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L.W. BOYKIN MARITAL TRUST B - Land Sale Option Illustration
Projected Accounting Income Worksheet
January 1- December 31, 2020

	Trust Income		Trust Principal	
	Income Receipts	Disbursements & Costs of Sale	Principal Receipts	Disbursements & Costs of Sale
Receipts:				
Dividends	$ 3,024			
6% return on inv in Stock Mkt.-x55%	$ 615,978			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	-			
Camden Commercial Real Property Rents	-			
Residential Rentals Receipts	-			
Hunting Lease Receipts - 30% of 2017	13,472			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts	-			
Net Profit on Timber Sales:				
Trust B Timber Sales			$ -	
Tr. B 80% Int. R.E.- Timber Sales			21,600	
Less: Cost Basis of Timber Sold (estim. 80% of net)			(17,280)	
Reforestation Expense Reserve			-	$ 26,400
Amortization of Reforestation Expense		$ 1,500	1,500	
Sales of Land & Options to Purchase Land- net of CG tax			3,400,000	
Less: Cost Basis of Land Sold			(3,400,000)	
Disbursements:				
Maintenance of Commercial Properties		$ -		$ -
Lugoff Commercial Rental Exp.		$ -		
Camden Commercial Real Property Exp.		-		
Residential Rental Expense		-		
Hunting Lease Property Exp at 30% of '17		2,280		
Farm-related Expenses		15,314		
Real Property Tax Not Allocated - Rental		3,754		
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases at 30%		1,146		
Accounting Fees		12,490		12,490
Insurance Not Otherwise Allocated		866		2,046
Miscellaneous Exp. - RHB estimate		12500		12,500
Income tax expense of 28% on Timber Gain				1,210
	$ 667,700	$ 49,850	$ 5,820	$ 59,048
Allocation of timber *proceeds* to net income: 12% of net proceeds, net of 28% CG/NI income tax	1,866		(1,866)	
Net for 2020 Before TteeFees/Distrib		**$ 619,716**		**$ (55,094)**

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ELECTRONICALLY FILED - 2018 Apr 20 4:45 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

L.W. BOYKIN TRUSTS A - Land Sale Option Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2020

	Trust Income		Trust Principal	
	Income Receipts	Disbursements	Principal Receipts	Disbursements
Receipts:				
Interest Income	$ -		$ -	
6% return on inv in Stock Mkt.-x45%	503,982		$ -	
Improved Property Rental Receipts:				
Residential Rentals - ABB only	12,000		5,400	
Commercial Rentals	-		-	0
Hunting Lease Receipts - 30% of 2017	10,077			0
Net Profit on Timber Sales:				
Mar. Tr A Timber Sales,.			-	6,600
Res. Tr A Timber Sales				
Res. Tr. A 20% Int. of Timber Sales			450	
Less: Cost Basis of Timber Sold (Mar.A)			700,000	
Less: Cost Basis of Timber Sold (Res.A)				
Reforestation Expense Reserve				
Amortization of Reforestation Expense		450		
Sales of Land & Options to Purchase Land- net of CG tax				
Less: Cost Basis of Land Sold				
Disbursements:				
Miscellaneous expenses - RHB estim.		$ 12,500		12,500
Maintenance of commercial properties		$ -		
Commercial Real Property Expenses		$ -		
Residential Rental Expenses		4,000		
Hunting Lease Property Expenses at 30% of 2017		2,858		
Miscellaneous Expenses				$ 36
Real Prop. Taxes Not Allocated-Non-rental				1,621
Accounting Fees		5,771		6,386
DHEC - Required Repairs to Dam				
Workers Comp. Insurance		886		
Insurance Not Otherwise Allocated				2,957
	$ 526,059	$ 26,465	$ 705,850	$ 30,110
*To remove from principal of Res. Tr. A portion of sold timber net proceeds included in estim. trust FMV, but not otherwise deducted as cost basis or NAI.			$ (703,240)	
**Allocation of timber *proceeds* to net income: 12% of net gain, net of 28% CG/NI income tax	-		-	
***Allocation of timber gain to NAI, net of tax	1,555		(1,555)	
Estim. '20 Income Tax Liability - Timber				1,512
Net for 2020 Before TteeFees/Distributions		**$ 501,149**		**$ (30,567)**

* To adjust principal for value of timber sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

** For Marital Tr A, growth factor to allocate increases by 3points per year.
12% x net proceeds for 2020.

***At the direction of Rigdon Boykin, 80% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 100% owned properties.

***At direction of Rigdon Boykin, 40% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 20% owned properties.

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L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Land Sale Option Illustration
Projected Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2021

Combined Schedule of Projected Net Accounting Income for 2021:

	Combined 2021 Net Accounting Income	Combined 2021 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate Tax
Balance: Combined Trust Principal at 1/1/2021 (approximate at FMV)			$ 22,081,883.00
Marital Trust B	$ 711,817.00	$ (50,608.00)	
Residuary Tr A, Including Marital Tr. A	576,659.00	(35,809.00)	
	1,288,476.00	(86,417.00)	
Less: Trustee Commissions, as Reduced	(75,000.00)	(75,000.00)	
Combined Total 2021 Net Return/(Deficit)	1,213,476.00	(161,417.00)	
Less: Distributions @ $180k/Benef.	(720,000.00)	0	
	493,476.00	(161,417.00)	
Less: Interest on 6166 Estate Tax	-	-	
Net Combined Increase/(Decrease) for 2021 After Deduction of Trustee Fees & Distributions to Beneficiaries	**$ 493,476.00**	**$ (161,417.00)**	(161,417.00)
Transfer to Principal from Net Return under Power to Adjust	(493,476.00)		493,476.00
Balance at 12/31/21	$ -		$ 22,413,942.00

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L.W. BOYKIN MARITAL TRUST B - Land Sale Option Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2021

	Trust Income		Trust Principal	
	Income Receipts	Disbursements & Costs of Sale	Principal Receipts	Disbursements & Costs of Sale
Receipts:				
Dividends	$ 3,024			
6% return on inv in Stock Mkt.-x55%	$ 698,478			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	-			
Camden Commercial Real Property Rents	-			
Residential Rentals Receipts	-			
Hunting Lease Receipts	13,472			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts	-			
Net Profit on Timber Sales:				
Trust B Timber Sales			$ -	
Tr. B 80% Int. R.E.- Timber Sales			147,200	
Less: Cost Basis of Timber Sold (estim. 80% of net)			(117,760)	
Reforestation Expense Reserve			-	$ 30,400
Amortization of Reforestation Expense		$ 5,931	5,931	
Sales of Land & Options to Purchase Land- net of CG tax			2,500,000	
Less: Cost Basis of Land Sold			(2,500,000)	
Disbursements:				
Maintenance of Commercial Properties		$ -		$ -
Lugoff Commercial Rental Exp.		$ -		
Camden Commercial Real Property Exp.		-		
Residential Rental Expense		-		
Hunting Lease Property Expense		2,280		
Farm-related Expenses		15,314		
Real Property Tax Not Allocated - Rental		3,754		
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases		1,146		
Accounting Fees		12,490		12,490
Insurance Not Otherwise Allocated		866		2,046
Miscellaneous Exp. - RHB estimate		12500		12,500
Income tax expense of 28% on Timber Gain				8,243
	$ 750,200	$ 54,281	$ 35,371	$ 70,081
Allocation of timber *proceeds* : 15% of net proceeds, net of 28% CG/NI income tax	15,898		(15,898)	
Net for 2021 Before TteeFees/Distrib		**$ 711,817**		**$ (50,608)**

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L.W. BOYKIN TRUSTS A - Land Sale Option Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2021

	Trust Income		Trust Principal	
	Income		Principal	
	Receipts	Disbursements	Receipts	Disbursements
Receipts:				
Interest Income	$ -			
6% return on Inv In Stock Mkt.-x45%	$ 571,482			
Improved Property Rental Receipts:				
Residential Rentals	12,000			
Commercial Rentals	-			
Hunting Lease Receipts	10,077			
Net Profit on Timber Sales:				
Mar. Tr A Timber Sales,.			$ -	
Res. Tr A Timber Sales			$ -	
Res. Tr. A 20% Int. of Timber Sales			36,800	
Less: Cost Basis of Timber Sold (Mar.A)				0
Less: Cost Basis of Timber Sold (Res.A)				0
Reforestation Expense Reserve				7,600
Sales of Land & Options to Purchase Land- net of CG tax				
Less: Cost Basis of Land Sold				
Amortization of Reforestation Expense		1483	1483	
Disbursements:				
Miscellaneous expenses - RHB estim.		$ 12,500		12,500
Maintenance of Commercial Property		$ -		
Commercial Real Property Expenses		$ -		
Residential Rental Expenses		4,000		
Hunting Lease Property Expenses		2,858		
Miscellaneous Expenses				$ 36
Real Prop. Taxes Not Allocated-Non-rental				1,621
Accounting Fees		5,771		6,396
Workers Comp. Insurance		886		
Insurance Not Otherwise Allocated				2,957
	$ 593,559	$ 27,498	$ 38,283	$ 31,110
*To remove from principal of Res. Tr. A portion of sold timber net proceeds included in estim. trust FMV, but not otherwise deducted as cost basis or NAI.			$ (22,080)	
**Allocation of timber *proceeds* to net income: 15% of net gain, net of 28% CG/NI income tax	-			
***Allocation of timber gain to NAI, net of tax	10,598		(10,598)	
Estim. '21 Income Tax Liability				10,304
Net for 2021 Before TteeFees/Distributions		**$ 576,659**		**$ (35,809)**

* To adjust principal for value of timber sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

** For Marital Tr A, growth factor to allocate increases by 3points per year.
15% x net proceeds for 2021.

***At the direction of Rigdon Boykin, 80% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 100% owned properties.

***At direction of Rigdon Boykin, 40% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 20% owned properties.

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Sales of Land in Year One*

Option	$ 3,276,000
T Laney	340,000
James Dennis	500,000
Hawthorne, Leo's, Whisky store	800,000
Saint James	280,000
Yates	300,000
Lancaster Co.	120,000
Molly Creek	400,000
Warehouse	85,000
Commerce Ally	165,000
Peckwoods	600,000
Rabbit Pen	700,000
Misc.	500,000
	$8,066,000

Invested in the Stock Market at 6% return	$ 483,960	per Year
At 7.3%	$ 596,884	per Year

*I have deducted estimated Capital Gains taxes on each sale

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Sales of Land in Year Two*

Sumter Mountain	$2,500,000
Swamp	2,000,000
Whitaker	1,000,000
Misc.	1,000,000
	$6,500,000
Year One Sales	8,066,000
Total at end of Year Two	**$14,566,000**
Invested in the Stock Market at a 6% Return	$873,960
At 7.3%	$1,063,000

Sales of Land in Year Three*

Sumter County	$ 500,000
Peckwoods remainder	100,000
Dr Boykin and other Misc	3,500,000
	$4,100,000
Total at the end of Year Three	**$18,666,000**
Invested in the Stock Market at a 6% Return	$1,119,960
At 7.3%	$1,362,618

*I have deducted estimated Capital Gains taxes on each sale

Sales of Land in Year Four

Misc.	$2,500,000
Total at the end of Year Four	$21,166,000
Invested in the Stock Market at 6% Return	$1,269,960
At 7.3%	$1,545,118
Retained Land	$2,500,000

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April 2, 2018

Trustees of the L.W. Boykin II Marital & Residuary Trusts A & B
Ms. Mary Deas Wortley, Ms. Alice Boykin Belger and Mr. Rigdon H. Boykin
P. O. Box 632
Camden, South Carolina 29021

RE: Prospective Illustrations of Trust Accounting Income and Principal

Dear Trustees:

We have been engaged to assist you in the formatting and clear presentation of projections of the accounting net income, and the principal increase or decrease, of the combined trusts above, given certain hypothetical assumptions. We undertook this project at the request of the trustees and their counsel. The resulting schedules were prepared from data and assumptions provided to Sheheen Hancock & Godwin, LLP, by Rigdon H. Boykin.

We have not compiled, reviewed or audited these prospective accountings or the data included therein. We express no opinion on this work product or on any conclusions therein, and accept no responsibility for its content.

Respectfully submitted,

Jane M. Peacock

Jane M. Peacock, Partner, for Sheheen Hancock & Godwin, LLP

L.W. BOYKIN II MARITAL AND RESIDUARY TRUSTS

Summary of Prospective Illustrations of Trust Activity - Business as in the Past vs. Land Sale Option

Summary Totals - Business as in the Past	By Year	5-year Total Column
2017 Combined Total Net Return or (Deficit)	$ 201,388	
Less: Reserve for Trustee Commissions	(150,000)	
Less: Beneficiary Distributions (Actual)	(400,000)	
Less: Catch up Distributions (assuming $180,000 per beneficiary per annum)	(447,124)	
Net Deficit, Before Principal Net Change	(795,736)	
Principal Net Increase/Decrease	(133,947)	
Transfer from Principal to Cover Deficit	(795,736)	
Total Reduction in Principal 2017	(929,683)	$ (929,683)

Summary Totals - Land Sale Option	By Year	5-year Total Column
2017 Combined Total Net Return or (Deficit)	$ 201,388	
Less: Reserve for Trustee Commissions	(150,000)	
Less: Beneficiary Distributions (Actual)	(400,000)	
Less: Catch up Distributions (assuming $180,000 per beneficiary per annum)	(447,124)	
Net Deficit, Before Principal Net Change	(795,736)	
Principal Net Increase/Decrease	(133,947)	
Transfer from Principal to Cover Deficit	(795,736)	
Total Reduction in Principal 2017	(929,683)	$ (929,683)

2018 Combined Total Net Return or (Deficit)	$ 228,614	
Less: Planned Trustee Commissions	(150,000)	
Less: Beneficiary Distributions (assuming $180,000 per beneficiary per annum)	(720,000)	
Less: Interest on 6166 Estate Tax Deferral	(55,000)	
Net Deficit, Before Principal Net Change	(696,386)	
Principal Net Increase/Decrease	(446,590)	
Transfer from Principal to Cover Deficit	(696,386)	
Total Reduction in Principal 2018	(1,142,976)	(1,142,976)

2018 Combined Total Net Return or (Deficit)	$ 267,027	
Less: Planned Trustee Commissions	(150,000)	
Less: Beneficiary Distributions (assuming $180,000 per beneficiary per annum)	(720,000)	
Less: Interest on 6166 Estate Tax Deferral (May & Final Pmt. in Nov.)	(83,750)	
Net Deficit, Before Principal Net Change	(686,723)	
Principal Net Increase/Decrease	(143,515)	
Transfer from Principal to Cover Deficit	(686,723)	
Total Reduction in Principal 2018	(830,238)	(830,238)

Disclaimer: Schedules were prepared from data and assumptions provided by Rigdon H. Boykin, Trustee, to Sheheen, Hancock & Godwin, LLP. We express no opinion on this work product or any conclusions therein, and accept no responsibility for its content.

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L.W. BOYKIN II MARITAL AND RESIDUARY TRUSTS

Summary of Prospective Illustrations of Trust Activity - Business as in the Past vs. Land Sale Option

Summary Totals - Business as in the Past

2019 Combined Total Net Return or (Deficit)	$ 208,985	
Less: Planned Trustee Commissions	(150,000)	
Less: Beneficiary Distributions (assuming $180,000 per beneficiary per annum)	(720,000)	
Less: Interest on 6166 Estate Tax Deferral	(57,500)	
Net Deficit, Before Principal Net Change	(718,515)	
Principal Net Increase/Decrease	(145,762)	
Transfer from Principal to Cover Deficit	(718,515)	
Total Reduction in Principal 2019	(864,277)	*(864,277)*

2020 Combined Total Net Return or (Deficit)	$ 349,110	
Less: Planned Trustee Commissions	(150,000)	
Less: Beneficiary Distributions (assuming $180,000 per beneficiary per annum)	(720,000)	
Less: Interest on 6166 Estate Tax Deferral	(60,000)	
Net Deficit, Before Principal Net Change	(580,890)	
Principal Net Increase/Decrease	(265,620)	
Transfer from Principal to Cover Deficit	(580,890)	
Total Reduction in Principal 2020	(846,510)	*(846,510)*

Summary Totals - Land Sale Option

2019 Combined Total Net Return or (Deficit)	$ 898,643	
Less: Planned Trustee Commissions	(150,000)	
Less: Beneficiary Distributions (assuming $180,000 per beneficiary per annum)	(720,000)	
Less: Interest on 6166 Estate Tax Deferral	-	
Net Increase, Before Principal Net Change	28,643	
Principal Net Increase/Decrease	(202,043)	
Transfer to Principal from Net Return	28,643	
Total Reduction in Principal 2019	(173,400)	*(173,400)*

2020 Combined Total Net Return or (Deficit)	$ 1,120,865	
Less: Planned Trustee Commissions	(150,000)	
Less: Beneficiary Distributions (assuming $180,000 per beneficiary per annum)	(720,000)	
Less: Interest on 6166 Estate Tax Deferral	-	
Net Increase, Before Principal Net Change	250,865	
Principal Net Increase/Decrease	(235,661)	
Transfer to Principal from Net Return	250,865	
Total Increase in Principal 2020	15,204	*15,204*

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L.W. BOYKIN II MARITAL AND RESIDUARY TRUSTS

Summary of Prospective Illustrations of Trust Activity - Business as in the Past vs. Land Sale Option

Summary Totals - Business as in the Past

	By Year	
2021 Combined Total Net Return or (Deficit)	$ 159,968	
Less: Planned Trustee Commissions	(150,000)	
Less: Beneficiary Distributions (assuming $180,000 per beneficiary per annum)	(720,000)	
Less: Interest on 6166 Estate Tax Deferral	(62,500)	
Net Deficit, Before Principal Net Change	(772,532)	
Principal Net Increase/Decrease	(281,536)	
Transfer from Principal to Cover Deficit	(772,532)	
Total Reduction in Principal 2021	(1,054,068)	*(1,054,068)*
Business as in the Past - Cumulative 5-year Reduction in Principal		*$ (4,837,514)*

Summary Totals - Land Sale Option

	By Year	
2021 Combined Total Net Return or (Deficit)	$ 1,288,476	
Less: Planned Trustee Commissions	(75,000)	
Less: Beneficiary Distributions (assuming $180,000 per beneficiary per annum)	(720,000)	
Less: Interest on 6166 Estate Tax Deferral	-	
Net Increase, Before Principal Net Change	493,476	
Principal Net Increase/Decrease	(161,417)	
Transfer to Principal from Net Return	493,476	
Total Increase in Principal 2021	332,059	*332,059*
Land Sale Option - Cumulative 5-year Reduction in Principal		*$ (1,586,058)*

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EXHIBIT 4
of Affidavit of Rigdon H. Boykin

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Rough Analysis of benefit to the Trust of Selling the Millpond and related buildings

Repairs to correct deferred maintenance

	Minimum if Trust	Donor (estimate)
Steakhouse	$ 50.000	$ 200,000
Broom Store	$ 15,000	$ 75,000
Grits Mill	$ 50,000	$ 250,000
Ginny's Cottage	0	$ 25,000
Rosalee's Cottage	$ 50,000	$ 150,000
Church (Steps, AC, heat, etc. Bathrooms)	$ 20,000	$ 200,000
Dam work	$ 100.000	$ 200.000
	$ 285,000	$1,100,000

Rents

Store	$ 12,000
Millpond Steakhouse $500 increase	$ 30,000
Broom Store	$ 6,000
Ginny's Cottage	$ 12,000
Rosalee's and Church rent	$ 24,000
Pond hunting lease	$ 10.000
	$ 94,000
Taxes, expenses, maintenance	$ 30.000
Cash (no depreciation deduct etc.)*	$ 64,000

$3,960,148 value (per offer) plus repairs = $4,245,148
This Asset divided into the Cash return
yields a return of 1.51% per year

If the trust were to invest the money received from the donor and the minimum expenditure for repairs minus a capital gains tax and the investment income tax of approximately $968,187** equaling $3,276,961 in the stock market the return generated each year assuming a long term average trust portfolio return of 6.5 % would be equal to $213,002 instead of $64,000 if the Trust kept the property.
Most important of all, it would insure that the Millpond and downtown Boykin would be preserved long after the expiration of the Trust.

* Does not take into account depreciation which would make the results even worse
** Assumes Capital Gain of $3,500,000

EXHIBIT 5
of Affidavit of Rigdon H. Boykin

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Trust for Whit and May

Sumter Mountain 1,035 Acres @3,300	$3,415,500
Grant Hill 188A $261,974 Timber + dirt @ $1,250	$496,974
Log Cabin 1 + 2 43 A Timber $73,774 + dirt@ $1,300/A	$129,674
Peach Orchard 90A $125,210 Timber + dirt @ $1,300/A	$242,210
Black River 42A Timber $ 71,450 dirt@ $1,300/A	$126,050
So. Sumter Mtn. 55A Timber $47,406 dirt@ $1,500/A	$129,906
New Hope Church 62A – 7acres gift = 55A Timber $58,457 Dirt@ 1,500	$141,047
Charlie Grant 39A Timber $82,773 dirt @1500/A	$141,273
Hattie Alston Tract 42A Timber $31,344 dirt@1,500	$94,344
Hines Road 149.8 Timber 187,411 dirt @ 1,500	$412,111
Cimmeron Road 50A $44,854 Timber + dirt @ $1,200	$104,854
Live Oak 97A $160,786 Timber + dirt @ $1,300	$286,000
Molly Creek 215A Timber $131,869 dirt @ $1,500	$454,369
Alice's 7 acre tract in Lee Co. land locked	$12,000
Rembert 40 A Timber $40,785 dirt@ $1,500	$100,785

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Lancaster County 45.4A Timber $88,633 + Dirt @$1,500		$156,733
Turkey Creek 124A @ $1,300/A		$161,200
Saint James Road 130A $196,000 Timber + Dirt @ $1,500		$391,000
Peckwoods #1 39.88A @10,000/A		$398,800
Peckwoods #2 9.80A @13,000/A		$127,400
Peckwoods 10 Lots @$20,000/lot		$200,000
Cash from remainder assets		$684,508
		$8,406,738
Option Exercise		$3,960,148
	Total	$12,366,886

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Trust for Alice and Mary Deas

Racetrack 190A Rounded down to $6,000/A	$1,140,000
Millway 134 A Rounded down to $6,000/A	$804,000
+ House +Barn +Outbuildings $500K	$500,000
Gun Club 45.4A shed and cabin $6,500/acre	$295,200
Dr. Boykin Tract 190 A with $433,285 Timber dirt @ $2,300	$870,285
Capeheart Do not know precise acreage assume	$1,000,000
Carter Hill 154.23A @ $5,800	$894,534
Yellow House 387.17A - 15A to May = 372.17 @ $6,500/A	$2,419,105
Swamp Tract 416A + pond + $566,775k Timber @ $6,000/A	$2,496,000
Whitaker 173A at $6,000 / A plus Whit House @ $150,000	$1,188,000
Burnett Tract 48A $4,500/A	$216,000
Billy Field Tract 106.44A $201,535 Timber all @ $5,000	$532,200
Cash from remainder assets	$100,000
Total	$12,455,324

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Remainder Assets

Cash, Stocks and Bonds	$2,825,210
Hawthorne, lot, Leo's and Wateree Enterprise	$ 800,000
Pawn shop	$ 150,000
Commerce Alley	$ 220,000
Geico Building	$ 80,000
Yates 131A Timber $175,880 Dirt at 1,200	$ 333,080
Rabbit Pen 553 Timber remaining $135,000 dirt @1,300/A	$ 853,900
Total	$5,262,190

Tax due	$2,777,679
Legal Fees Rosen, Hardin, and Tetterton	$ 300,000
Whit Comfort	$ 300,000
May Comfort	$ 300,000
Distribution for December and January	$ 66,668
Distribution catch up based on $175,000/Year times 4	$ 450,000
Two months distribution @$14,583.33/month X 4	$ 116,667
Miscellaneous Bills	$ 100,000
Total	$4,477,682

Remainder $784,508

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	CASE NO: 2017-CP-28-831
	)	
IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	)	
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Petitioner, v. Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin Respondents.	)	**AMENDED PETITION FOR ATTORNEY'S FEES, TRUSTEE FEES, DECLARATORY JUDGMENT, MODIFICATION AND TRUSTEE REMOVAL**

Rigdon H. Boykin ("Petitioner"), as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, hereby petitions the Court, pursuant to S.C. Code Ann. 62-7-201, and the Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-50, for an Order determining various questions arising from the administration of the Lemuel Whitaker Boykin II Residuary Trusts A and B, and further instructing the Co-Trustees in discharging their fiduciary duties. Specifically, Petitioner respectfully requests that the Court enter an Order which provides for the payment from trust assets of Petitioner's attorney's fees and trustee fees, which have been

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and will be necessarily incurred to carry out his fiduciary duties as sole, disinterested Co-Trustee acting in the best interests of all beneficiaries and remainder persons. Petitioner further requests that the Court order that, as sole disinterested, non-beneficiary Co-Trustee of the Residuary Trust, Petitioner is entitled to exercise preeminent authority among the three Co-Trustees of the Residuary Trust (including the authority to appoint trust counsel), or otherwise be appointed as a "special fiduciary" under S.C. Code § 62-7-1001(b)(5). **Finally, Petitioner seeks an Order declaring that the precatory language in Decedent's Will is not a prohibitive mandate against the sale of any Residuary Trust property, that the Prudent Investor Rule must be followed by Co-Trustees, and that Respondents Belger and Wortley be removed as Co-Trustees of the Residuary Trust.**

The grounds for this Petition are as follows:

BACKGROUND AND PARTIES

1. Lemuel Whitaker Boykin, II ("Decedent"), was a resident and citizen of Kershaw County, South Carolina, at the time of his death on December 19, 1989.

2. Decedent's Last Will and Testament (the "Will") was duly executed on June 2, 1989, and provided for the creation of two separate trusts: The Lemuel Whitaker Boykin, II Marital Deduction Trust and the Lemuel Whitaker Boykin, II Residuary Trust. A true and correct copy of Decedent's Will is attached hereto as Exhibit A.

3. Pursuant to an Order entered by the Probate Court for Kershaw County, South Carolina on March 19, 1991, the Marital Deduction Trust was split into two trusts, Marital Deduction Trust A and Marital Deduction Trust B (hereinafter collectively the "Marital Deduction

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Trust"), and the Residuary Trust was likewise split into two trusts, Residuary Trust A and Residuary Trust B (hereinafter collectively the "Residuary Trust").

4. Decedent was survived by his four children and his spouse, Alice Shoolbred Boykin ("Alice Boykin"), who was also a resident and citizen of Kershaw County, South Carolina. Alice Boykin died on August 8, 2016.

5. Upon the death of Alice Boykin, the remaining assets of the Marital Deduction Trust were transferred as a matter of law into the Residuary Trust pursuant to Item VII of Decedent's Will. The present controversy involves the management and disposition of estate assets which are held in the Residuary Trust.

6. The current income beneficiaries of the Residuary Trust are as follows:

a. Mary Deas Wortley ("Wortley"), Decedent's eldest daughter from his prior marriage. Wortley is a resident and citizen of the State of Ohio and has three (3) children and six (6) grandchildren, none of whom live in South Carolina. Wortley is seventy four (74) years of age.

b. Alice B. Belger ("Belger"), Decedent's and Alice Boykin's daughter. Belger is a citizen and resident of Kershaw County, South Carolina and has one (1) daughter with her husband, Wayne Belger. Alice Belger is fifty six (56) years of age.

c. Lemuel Whitaker Boykin, III ("Whit III"), Decedent's and Alice Boykin's only son. Whit III is a citizen and resident of Kershaw County, South Carolina and has no spouse and no children. Whit III is fifty five (55) years of age.

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d. May Cantey Boykin ("May") is Decedent's and Alice Boykin's youngest daughter. May is a citizen and resident of the State of New York and has no children. May is fifty four (54) years of age.

7. The Co-Trustees of the Residuary Trust are Respondent Belger (as successor trustee to Alice Boykin), Respondent Wortley, and Petitioner, who is Decedent's cousin and the only disinterested, non-beneficiary Trustee of the Residuary Trust (collectively, "Co-Trustees"). (Item XII(b)).

8. This Court has jurisdiction over this action pursuant to S.C. Code Ann. § 62-7-201(a) ("[T]he probate court has exclusive jurisdiction of proceedings initiated by interested parties concerning the internal affairs of trusts."); S.C. Code Ann. § 62-7-201(d) ("The probate court has concurrent jurisdiction with the circuit courts of this State over attorney's fees."); S.C. Code Ann. § 62-7-708 – Compensation of Trustees.

THE RESIDUARY TRUST

9. The terms of the Residuary Trust provide that the Co-Trustees shall pay, for the benefit of Wortley, Belger, Whit III and May, "during their lifetimes the net income from this trust in convenient installments at least annually and in such shares and proportions as the Trustees in their sole discretion shall determine . . . primarily for the medical care, comfortable maintenance, welfare and education of my said beneficiaries . . . ." (Item VII(1)).

10. The Residuary Trust further provides that the Co-Trustees may, in their sole discretion, for the medical care, education, support and maintenance and reasonable comfort of the income beneficiaries, distribute sums from principal of the Residuary Trust to Decedent's children during their lifetime. (Item VII(2)).

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11. Importantly, the Residuary Trust requires that the trust be terminated upon the death of Decedent's last surviving child, at which point the Residuary Trust is to be distributed by dividing the assets into separate shares for each of Decedent's deceased children who shall leave living issue. (Item VIII (3)).

12. The only children of Decedent who currently have living issue who could receive the assets of the Residuary Trust upon their death, are Respondents Belger and Wortley. This creates a conflict of interest for Respondents Belger and Wortley. They are acting in their own personal interests to the detriment of the other income beneficiaries and remainder persons. Pursuant to S.C. Code 62-7-802, a transaction involving the management or investment of trust assets "which is otherwise affected by a conflict between the trustee's fiduciary and personal interests is **voidable by a beneficiary affected by the transaction**." (emphasis added).

13. Decedent states in the Residuary Trust: "It is my desire, **but I do not direct**, that certain tracts or parcels of real property located in the State of South Carolina . . . shall to the fullest extent possible be preserved for the benefit of or transferred to my children or their issue." However, the Residuary Trust then provides an order of preference for the sale of those tracts or parcels, in the event that they are sold by the Co-Trustees. (Item X) (emphasis added). Clearly Decedent contemplated that circumstances could arise where the prudent exercise of trustee judgment would involve the sale of the parcels of real property identified in Item X of his Will.

14. Under the express terms of the Residuary Trust, the Co-Trustees are entitled to "reasonable compensation" for their services as Co-Trustees. (Item XII(b)).

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15. Particularly relevant to the present controversy, Item XIV of the Residuary Trust requires unanimous vote among the Co-Trustees to sell or otherwise act with respect to any real property held by the Residuary Trust.

16. The Co-Trustees must "invest and reinvest the property of the estate or trust in such manner as men of prudence exercise in the management of their own affairs." (Item XIV(c)).

17. Decedent also unambiguously provided that the Co-Trustees have the power (among others) to "employ and compensate, **out of the principal or the income or both** as to the Personal Representative or trustee shall seem proper, agents, accountants, brokers, attorneys-in-fact, **attorneys at law** . . . deemed needful for the proper management, handling and administration of the estate or trust . . . ." (Item XIV(j) (emphasis added)).

18. Petitioner and Respondents Belger and Wortley, as Co-Trustees of the Residuary Trust, also owe a number of fiduciary duties to the Residuary Trust beneficiaries and remainder persons under the South Carolina Trust Code, including but not limited to: the Duty of Prudent Investment – S.C. Code Ann. §§ 62-7-804, 62-7-933; the Duty to Diversify – S.C. Code Ann. § 62-7-933; the Duty of Loyalty/Conflict of Interest – S.C. Code Ann. § 62-7-802; the Duty of Impartiality – S.C. Code Ann. § 62-7-803; the Duty to Administer Trust in Good Faith – S.C. Code Ann. §§ 62-7-105, 62-7-801; and the Duty to Prevent/Redress Co-Trustee's Breach of Trust – S.C. Code Ann. §§ 62-7-703(g), 62-7-104(24).

19. To date, Respondents Belger and Wortley have been unwilling to act in a manner which is in the best interests of all beneficiaries and remainder persons.

DISPUTE AS TO MANAGEMENT OF RESIDUARY TRUST ASSETS

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20. From the time of Alice Boykin's death on August 8, 2016 until now, there has been considerable disagreement between Petitioner and the other Co-Trustees as to the proper administration, distribution, management, and investment strategy as it relates to the assets of the Residuary Trust.

21. At the time he died, Decedent's estate primarily consisted of a few commercial properties, a liquor store and a substantial amount of farm and timberland. Decedent wanted to leave most of the land around Boykin, South Carolina to Whit III to farm and enjoy, however, he realized his son was not going to be a farmer, timber logger or timber broker. Consequently, Decedent decided to leave his estate in a trust which might be able to keep a portion of the land intact in the event Whit III had a son who could inherit the land and farm it. See Decedent's Will, Item X (expressing Decedent's desire that Trustees arrange for certain tracts of land to be passed to the oldest male child of Whit III, if possible). At the time Decedent died, the value of the farm and timber land was commensurate with its use for farming and growing trees.

22. From 1989 until August 8, 2016, Respondent Wortley and Alice Boykin were Co-Trustees of the Marital Deduction Trust. (Item VII; Item XI). Throughout that time, the assets of the Marital Deduction Trust—which included approximately 5,400 acres of timberland—were grossly mismanaged by Respondent Wortley and Alice Boykin in violation of the duties imposed on trustees by the South Carolina Trust Code, as well as under Decedent's Will. Specifically, Respondent Wortley and Alice Boykin failed to properly manage the Marital Deduction Trust's timberland assets, in that trees were not thinned or cut at appropriate times, severely undermining the continuity of normal timber revenues.

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23. On information and belief, the Residuary Trust, after the settlement of Alice Boykin's estate and the payment of taxes, will have approximately 6,000 acres of land in Kershaw County, Sumter County, and Fairfield County, South Carolina worth between $24,000,000 and $27,000,000 and approximately $1,000,000 in commercial land and liquid assets. The land represents over 90% of the value of the Residuary Trust.

24. Respondents Belger and Wortley, who are Co-Trustees *and* income beneficiaries, have consistently indicated that they want to keep in the Residuary Trust over 80% (in value) of the Residuary Trust's farm and timber land, which will produce minimal income and growth. In fact, the mismanagement of the Marital Deduction Trust assets by Alice Boykin and Wortley has resulted in a situation where the timberland will produce much less income over the next 15-20 years than a properly managed timber property of an equal number of acres.

25. The other two income beneficiaries, Whit III and May, are not Trustees, do not have any children, and believe the Co-Trustees must act as responsible fiduciaries. Whit III and May believe that the relationship between the value of the land and its historical use as timber land and farm land is substantially different today, 27 years after the inception of the Residuary Trust. Whit III and May believe most of the land should be sold and the assets of the Residuary Trust should be invested in accordance with the standards for prudent investors. See S.C. Code Ann. §§ 62-7-804, 62-7-933 (prudence requires the exercise of "reasonable care, skill and caution"); Decedent's Will, Item XIV(c).

26. It is in the best interest of all the income beneficiaries and remainder persons to reduce risk and diversify the Residuary Trust assets, especially when the current value of over half of the land held in Residuary Trust is substantially above what a reasonable investor would hold

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as a farm or timber land investment. The Boykin family history has numerous ancestors who lost all of their land and/or a substantial part of their assets due to recessions, depressions and natural disasters. For example, just before he died, Decedent lost over half of his net worth from the destruction of timber during Hurricane Hugo. His grandfather lost most of his land during the depression.

27. Recognizing the significant divide among the Co-Trustees and income beneficiaries, Petitioner proposed a partial solution to the impasse in late 2016.

28. Petitioner offered to support a sale of the two most sentimental pieces of the land to Respondents Belger and Wortley, and the Residuary Trust would finance up to $1,500,000 each for the land that they desired. At that time, Respondent Belger said she was interested in buying the "Millway" house and land around it and Respondent Wortley said she wanted to buy the Boykin Mill Pond, a buffer area around it, and the half interest the Residuary Trust owned in the cottage (in which Wortley already owned the other half interest). It was also agreed that Respondents Belger or Wortley could use personal funds—in addition to the amount that the Residuary Trust would finance—to increase the amount of land they could buy from the Residuary Trust.[1] Respondent Belger in particular was interested in this option.

29. Pursuant to this offer, Respondents Belger and Wortley agreed that the Residuary Trust would hire an appraiser to determine the fair market value of the two potential purchases. Given Respondent Belger's interest in possibly buying more than $1,500,000 worth of land, the appraiser was instructed to appraise Millway and the land around it (excluding the pond and buffer

[1] S.C. Code Ann. § 62-7-904C(B)(3)(a) evidences the South Carolina General Assembly's approval of trustees who act as prudent investors by coming up with a "written policy" of investment—like the solution proposed here by Petitioner.

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area) as one parcel and the land adjacent to Millway on the South side of Boykin Mill Road as a separate parcel. Petitioner spent a substantial amount of time working with the Charleston Appraisal Service, Inc., Lindler Surveying, Inc. and Respondents Belger and Wortley to divide the land they were interested in buying into parcels that would enable them to decide how much they wanted to purchase. The Residuary Trust paid approximately $30,000 for this appraisal work.

30. After the appraisals for Millway and the Boykin Mill Pond were received, Respondent Wortley stated she wanted to move forward with the purchase, but Respondent Belger stated that she wanted to study it more before making a decision. During this time, Respondent Belger also withdrew her previous consent to allow the Residuary Trust to sell a number of smaller parcels of timber land, including the "Swamp Tract", the tract behind the Boykin Fire Station, and Sumter Mountain.

31. Ultimately, at a meeting of the Co-Trustees on March 23, 2017, Respondent Belger announced that she did not want to buy Millway or any Residuary Trust land and that she would oppose the sale of any land to other income beneficiaries. This decision has effectively destroyed efforts to achieve a compromise that would leave Millway and the Boykin Mill Pond in the hands of the income beneficiaries who had children who could inherit it. The sale of these lands also would enable the Residuary Trust to potentially keep another 15% of the land as a responsible trust investment.

32. The Residuary Trust must be managed in a reasonably prudent manner for the benefit of both the income beneficiaries and the ultimate remainder persons. The income beneficiaries, in the aggregate, each year should receive a minimum of 3% of the value of the Residuary Trust's assets. See S.C. Code Ann. § 62-7-904E(B) (stating that no less than 3% nor

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more than 5% is a "reasonable current return from the trust"). In addition, the Residuary Trust should grow in size for the remainder persons.

33. On information and belief, the Residuary Trust will have a minimum value of $25,000,000. Three percent (3%) of this amount equals $750,000, one fourth of which is the minimum distribution each income beneficiary should receive each year. In addition, the Residuary Trust must pay taxes, fees, and expenses which could total $250,000 or more per year. Also, the Residuary Trust on average should grow in size which will provide increased distributions for the income beneficiaries and a larger corpus for the ultimate benefit of the remainder persons, currently the children of Respondents Belger and Wortley.

34. Respondents Belger and Wortley have stated that periodic sales of timber on the Estate property, the leasing of land for hunting and fishing rights, and the sale of extraneous real property parcels will generate between $400,000 and $600,000 per year on average for the income beneficiaries of the Trust. Even if Respondents Belger and Wortley's gross revenue figures are correct, such a calculation does not account for the expenses of the Residuary Trust, which include but are not limited to attorney's fees, taxes, advisor fees, maintenance expenses, and commissions. Therefore, the amount of revenue generated by that strategy will be insufficient to provide for the income beneficiaries and growth in the Residuary Trust assets for the remainder persons.

35. Furthermore, the strategy proposed by Respondents Belger and Wortley is troubling and imprudent because it concentrates the Residuary Trust's assets in one very narrow category, land used for farming and timber production. From a risk management perspective, this concentration of assets in one category subjects the Residuary Trust corpus to a dangerous and imprudent investment scheme, and is inconsistent with the duties of the Co-Trustees as fiduciaries

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and is not a strategy consistent with the prudent investor rule, S.C. Code Ann. §§ 62-7-804, 62-7-933, and Item XIV(c) of the Decedent's Will.

36. Petitioner's proposed strategy—of allowing Respondents Belger and Wortley to purchase certain sentimental tracts of land, while selling other Residuary Trust land and to diversify its assets—is more likely to produce a more beneficial result for all beneficiaries and remainder persons. Historically, the stock market has out-performed real estate and can more effectively diversify risk. If, for example, 85 percent of the Residuary Trust assets were invested in the stock market, and had an average return of 6.5 percent per year, the Residuary Trust would generate from those assets alone $1,381,250, pay $750,000 to the income beneficiaries, pay expenses (estimated to be $300,000 per year), and grow the Residuary Trust corpus by $331,000 annually.

37. It is more prudent to invest the Residuary Trust assets in a diversified portfolio, while still retaining a portion of the Residuary Trust's existing real estate assets.[2]

38. In addition to disagreeing about strategy for investment and management of Residuary Trust property, Respondents Belger and Wortley have also improperly instructed counsel for the Residuary Trust not to release to Petitioner certain memoranda regarding potential tax strategies for the Residuary Trust under IRC § 6166. These memoranda are property of the Residuary Trust, for which Petitioner has been billed (as Co-Trustee) by the Residuary Trust's counsel, and he is therefore entitled to review such documents without interference by

[2] The Prudent Investor Act, as adopted by the South Carolina legislature, requires that a trustee acting as a prudent investor "shall" consider the following factors among others: "(a) general economic conditions; (b) the possible effect of inflation or deflation; . . . (e) the expected total return from income and the appreciation of capital; . . . (g) needs for liquidity, regularity of income, and preservation or appreciation of capital." In this instance, compliance with the Prudent Investor Act requires a departure from the status quo "investment strategy" of retaining timberland and farmland which has been urged by Respondents Belger and Wortley.

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Respondents Belger and Wortley.

39. Respondents Belger and Wortley have consistently created obstacles to the efficient administration and management of the Residuary Trust. This includes, but is not limited to, creating unnecessary delay in making critical decisions for the proper administration of the Residuary Trust; reversing votes on previously agreed upon matters; agreeing to submit alternative plans for investing Residuary Trust assets, yet failing to produce any such alternatives; and postponing Co-Trustee meetings without explanation.

FOR A FIRST CAUSE OF ACTION
(Attorney's Fees – S.C. Code Ann. § 62-7-1004)

40. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth herein verbatim.

41. S.C. Code Ann. § 62-7-1004 grants the Court the power to award costs and expenses, including reasonable attorney's fees and costs, to be paid from assets of the Residuary Trust, which is the subject of the present justiciable controversy.

42. On information and belief, further Court involvement will be necessary to determine the fiduciary duties and obligations of the Co-Trustees and to determine what actions or inactions in managing the Residuary Trust are in the best interests of the beneficiaries and remainder persons.

43. On information and belief, resolution of the dispute between and amongst the Co-Trustees regarding management, administration, distribution, and/or investment of the Residuary Trust assets will require Petitioner to employ and compensate legal counsel and/or advisors to represent Petitioner in his capacity as disinterested, non-beneficiary Co-Trustee.

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44. Because Petitioner is not a beneficiary of the Residuary Trust, he requests that the Court enter an Order requiring his reasonable attorney's fees to be paid from the Residuary Trust assets because Petitioner's employment of attorneys and/or other professional agents is necessary and proper for the benefit of the Residuary Trust and its beneficiaries and remainder persons.

FOR A SECOND CAUSE OF ACTION
(Trustee Fees – S.C. Code Ann. § 62-7-708)

45. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth herein verbatim.

46. Petitioner is a duly appointed Trustee of the Residuary Trust pursuant to Item XII(b) of Decedent's Will.

47. Petitioner has expended considerable time and effort in serving as the sole, disinterested Co-Trustee of the Residuary Trust, including but not limited to: (i) coordinating real estate appraisals; (ii) communicating with attorneys and other agents and advisors of the Estate of Alice Boykin regarding trust issues; (iii) arranging for the listing and sale of certain Residuary Trust assets; and (iv) other substantial efforts to increase the productivity of the Residuary Trust assets. In addition, Petitioner has expended a considerable amount of time explaining to the other Co-Trustees that trust assets have to be transferred at fair market, especially if to a beneficiary or trustee, and explaining the responsibility of the Co-Trustees to act as prudent investors.

48. Pursuant to S.C. Code Ann. § 62-7-708 and in accordance with the express terms of Item XII(b) of Decedent's Will, Petitioner is entitled to reasonable compensation for his services as Co-Trustee of the Residuary Trust.

49. A determination of what constitutes "reasonable compensation" for Petitioner's services as Co-Trustee should include consideration of the various efforts set out herein above.

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50. Standard fees charged by professional trustees for their services can range from 1.00 to 1.50% on the first $2,000,000 of trust assets; 0.80 to 0.90% on the next $3,000,000; 0.60 to 0.70% on the next $5,000,000; and 0.45% on the balance over $10,000,000. Also, there usually is a very large additional surcharge when a trust holds substantial real estate assets.

FOR A THIRD CAUSE OF ACTION
(Declaratory Judgment – S.C. Code Ann. §§ 15-53-50, 62-7-201)

51. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth herein verbatim.

52. A substantial and ongoing dispute exists between Petitioner and Respondents Belger and Wortley as to the proper administration, management, and disposition of the Residuary Trust property.

53. As the only disinterested, non-beneficiary Co-Trustee of the Residuary Trust, Petitioner owes fiduciary duties and undivided loyalty to all beneficiaries and remainder persons.

54. In attempting to faithfully discharge his fiduciary duties in managing the Residuary Trust, Petitioner has incurred, and will continue to incur, attorney's fees which are necessary and proper for the benefit of the Residuary Trust and its beneficiaries and remainder persons. These fees include engaging attorneys and/or other agents or advisors to provide Petitioner with guidance and counsel in connection with the discharging of his fiduciary duties as Co-Trustee.

55. Decedent's Will expressly provides that Petitioner has the power to employ and compensate, out of trust assets, attorneys and other professional agents to the extent necessary for the proper management, handling and administration of the Residuary Trust.

56. Petitioner requests that the Court enter an Order declaring that his reasonable attorney's fees, or fees of other agents or advisors, be paid out of the principal or income (or both)

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of the Residuary Trust in accordance with Decedent's express wishes under Item XIV(j) of his Will.

57. Due to the facts, conditions, and circumstances as set forth in this Petition, an actual and justiciable controversy has arisen and now exists between Petitioner Rigdon Boykin and Respondents Belger and Wortley regarding the obligations and fiduciary duties of the Co-Trustees of the Residuary Trust. Declaratory relief is necessary to adjudicate the rights of the parties.

58. S.C. Code Ann. § 62-7-201 authorizes the Court to instruct Petitioner in the exercise of his fiduciary duties, to resolve questions arising from the administration or distribution of the Residuary Trust (including questions of construction), and to determine the fiduciary duties and obligations of the Co-Trustees of the Residuary Trust.

59. Petitioner is entitled to a declaratory judgment declaring the rights of the parties and, more specifically:

a. Declaring that Petitioner is entitled to employ and compensate, from Residuary Trust assets, attorneys and/or other agents and advisors who are necessary to assist him with the discharge of his fiduciary duties as Co-Trustee of the Residuary Trust, including past and future fees;

b. Declaring that Petitioner is entitled to an award of Trustee fees in an amount to be determined by the Court for his services as sole disinterested Co-Trustee of the Residuary Trust;

c. Declaring that, as sole disinterested, non-beneficiary Co-Trustee of the Residuary Trust, Petitioner is entitled to exercise preeminent authority among the three Co-Trustees of the Residuary Trust (including the authority to appoint trust counsel),

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or otherwise be appointed as a "special fiduciary" under S.C. Code § 62-7-1001(b)(5)[3]; and

d. Further instructing Petitioner in the exercise of his fiduciary duties with regard questions arising from the administration, management, and distribution of the Residuary Trust.

FOR A FOURTH CAUSE OF ACTION

(Equitable Deviation/Modification of Trust – S.C. Code Ann. §§ 62-7-412, 62-7-413)

60. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth herein verbatim.

61. This Court has the authority to modify the administrative or dispositive terms of the Residuary Trust due to circumstances not anticipated by the settlor, such that modification or termination will further the purposes of the trust.

62. Furthermore, the Court may modify the administrative terms of the Residuary Trust where continuation of the trust on its existing terms would be impracticable, wasteful, or would impair the Residuary Trust's administration.

63. The principle that the Residuary Trust have a purpose which is for the benefit of its income and remainder beneficiaries precludes unreasonable restrictions on the use of

[3] The S.C. Trust Code clearly contemplates that disinterested trustees should be granted a heightened level of authority and discretion with respect to trusts, beyond that which is given to trustees who are *also* beneficiaries of a trust. See S.C. Code Ann. § 62-7-904(A) (the "power to adjust" between trust income and principal under subsection (A) may only be exercised by a non-beneficiary trustee, such as Petitioner); S.C. Code Ann. § 62-7-904C ("A trustee, **other than an interested trustee** . . . may: (1) convert an income trust to a total return unitrust; (2) reconvert a total return unitrust to an income trust; or (3) change the percentage used to calculate the unitrust amount or the method used to determine the fair market value of the trust . . . .") (emphasis added); S.C. Code Ann. § 62-7-816A (giving disinterested trustee the power of "decanting," but barring interested trustees from exercising the same).

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Residuary Trust property, and attempts to impose unreasonable restrictions on the use of Residuary Trust property must fail.

64. As noted in Paragraph 13 above, the testamentary instrument in this case contains precatory language which states: "It is my desire, but I do not direct, that certain tracts or parcels of real property located in the State of South Carolina . . . shall to the fullest extent possible be preserved for the benefit of or transferred to my children or their issue."

65. The Settlor did not anticipate that the highest and best use of the Residuary Trust's real estate in lower Kershaw County around Boykin, South Carolina—primarily timberland and farmland—would drastically change, such that its fair market value would rise to 2-3 times that which a rational investor would pay for growing timber or row crops. This Boykin area land composes close to 50% of the total value of the Residuary Trust.

66. At the time the Settlor died, the value of the Boykin area farmland and timberland was commensurate with its use for farming and growing trees. Neither did the settlor anticipate that his eldest and only son, L.W. Boykin, III would not have any male issue who would inherit the Residuary Trust's land for the purpose of farming it and growing timber. He also could not have anticipated that, just six months after he drafted his Will, Hurricane Hugo would decimate his timber holdings and substantially reduce the value of the assets held in trust.

67. In light of the nature of the Residuary Trust and the disparate interests of the various income and remainder beneficiaries, Petitioner desires that the administrative and dispositive provisions of the Residuary Trust be amended.

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68. Specifically, Petitioner seeks an determination from the Court that the precatory language contained in Item X of the Decedent's Last Will and Testament is not binding or otherwise controlling on the Co-Trustees, that such language is not a prohibition on the sale of any Residuary Trust property, and that the Co-Trustees must instead be guided by the mandates of the Prudent Investor Rule, S.C. Code Ann. §§ 62-7-804, 62-7-933, and Item XIV(c) of the Decedent's Will, which would require the sale of significant trust property to achieve diversification, income generation, and principal growth.

69. Modification which places adherence to the Prudent Investor Rule above adherence to mere precatory language will further the purposes of the Residuary Trust by ensuring that there is sufficient income generation, principal growth, and risk mitigation with respect to the assets held in the Residuary Trust.

FOR A FIFTH CAUSE OF ACTION
(Removal of Trustees – S.C. Code Ann. § 62-7-706)

70. Petitioner realleges and incorporates the preceding paragraphs as if fully set forth herein verbatim.

71. As demonstrated above, lack of cooperation and responsible action from the Respondents Belger and Wortley as Co-Trustees has substantially impaired the administration of the Residuary Trust.

72. Furthermore, Respondents Belger and Wortley have manifestly failed to carry out their duties as Co-Trustees of the Residuary Trust in the following ways (among others):

a. Failing to devise any comprehensive budget for the Residuary Trust which accounts for all expenses, income beneficiary distributions and the need for growth for the remainder persons;

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b. Failing to perform any financial analysis of the ability of the Residuary Trust assets to generate the return necessary to meet the Residuary Trust's obligations; and

c. Refusing to conduct regular Trustee meetings; and

d. Unreasonably extinguishing the proposed Option Agreement to purchase the Boykin Millpond and several Downtown Boykin properties, which to date has presented the only viable option for converting the Residuary Trust's largest financial drain into substantial revenue while also preserving the land for future generations.

73. The Respondent Co-Trustees are unfit to serve as Co-Trustees of the Residuary Trust, and due to their persistent failure to administer the Residuary Trust effectively, their removal as Co-Trustees would serve the best interests of the income and remainder beneficiaries. In particular, the Respondent Co-Trustees do not possess the temperament, education, or experience to serve as the equivalent of executive officers of a $25,000,000 business or to delegate functions to appropriate personnel, as management of the Residuary Trust requires.

74. The Respondent Co-Trustees do not possess sufficient understanding of the financial concepts necessary to administer the Residuary Trust—which is essentially a $25,000,000 business with a need for financial planning, budgets, analyses, and forecasts. In fact, despite repeated requests for over twelve (12) months, and despite promises to do so, the Respondent Co-Trustees have failed to provide a cogent explanation of how administering the Residuary Trust as has been done in the past is going to provide the return necessary to meet the Residuary Trust's obligations.

75. During Alice Boykin's lifetime (and while she served as trustee over these same trust assets) she was able to grow the trust corpus only because she made sure to generate

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from the assets only the amounts needed to pay taxes, fund minor maintenance, and supplement other income. Upon information and belief, Mrs. Boykin's use of trust assets generated proceeds, on average, of less than $150,000.00 per year. Despite the Respondent Co-Trustee's beliefs, the Residuary Trust cannot continue to operate as it was during Mrs. Boykin's lifetime, because the demands on the Residuary Trust are now a multiple of what they once were.

76. There has been a substantial change of circumstances such that removal of Respondents Belger and Wortley as Co-Trustees serves the best interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust. Petitioner is a suitable Co-Trustee to serve alongside any successor Co-Trustee(s) of the Court's choosing.

77. Petitioner therefore seeks an Order removing Respondents Belger and Wortley as Co-Trustees, and appointing one or more successor Co-Trustees as the Court deems necessary.

WHEREFORE, by reason of the foregoing, Petitioner respectfully prays for an Order and judgment of the Court as follows:

(a) For an order declaring that:

a. Petitioner is entitled to employ and compensate, from Residuary Trust assets, attorneys and/or other agents and advisors who are necessary to assist him with properly discharging his fiduciary duties as Co-Trustee of the Residuary Trust, including past and future fees;

b. Petitioner is entitled to an award of Trustee fees in an amount to be determined by the Court for his services as sole disinterested Co-Trustee of the Residuary Trust;

c. Petitioner shall be entitled to submit, as necessary, any supplemental petitions for trustee fees and/or attorney's fees (and fees of other agents and advisors) for the reasons set forth above; and

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d. As sole disinterested, non-beneficiary Co-Trustee of the Residuary Trust, Petitioner is entitled to exercise preeminent authority among the three Co-Trustees of the Residuary Trust (including the authority to appoint trust counsel), or otherwise be appointed as a "special fiduciary" charged with administering the Residuary Trust.

e. **The terms of Residuary Trust be modified in furtherance of the beneficial purposes of the Residuary Trust by declaring that the precatory language in Item X of the Decedent's Will is not a prohibitive mandate against the sale of any Residuary Trust property, and declaring instead that the Prudent Investor Rule must be followed by Co-Trustees.**

f. Respondents Belger and Wortley be removed as Co-Trustees of the Residuary Trust.

(b) For such other and further relief as the Court deems just and proper.

ROSEN, ROSEN & HAGOOD

BY: s/Richard S. Rosen

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Attorneys for Petitioner, Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trust

Charleston, South Carolina

May 7, 2018

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Exhibit A

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STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

LAST WILL AND TESTAMENT

I, Lemuel Whitaker Boykin, II, a resident of and domiciled in the State of South Carolina, County of Kershaw, being of sound and disposing mind and memory, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

ITEM I: I direct that all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), or on any insurance upon my life or on any property held jointly by me with another or on any transfer made by me during my lifetime or on any other property or interest in property included in my estate for such tax purposes be paid out of my residuary estate and shall not be charged to or against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

ITEM II: I give and bequeath my family portrait to my son, L.W. Boykin, V, if he shall survive me. If my said son shall not survive me, then said item shall pass under Item III herein.

/AGE, BOYALL,
HEEN & BYARS
CHURCH STREET
..., S.C. 29020

ITEM III: I give and bequeath all of the rest of my personal effects of every kind, including but not limited to, pictures, books, jewelry, wearing apparel, boats, automobiles and other vehicles, and all policies of fire, burglary, property damage and other insurance on or in connection with the use of this property, to my beloved wife, Alice S. Boykin, if she shall survive me. If my said wife shall not survive me, I give and bequeath all of said property to my children, Mary Deas Wagner, Alice Shoolbred Boykin, L.W. Boykin, V and May Cantey Boykin, in approximately equal shares, provided, however, the issue of a deceased child surviving me shall take, per stirpes, the share his or her parent would have taken had he or she survived me; and provided further that, if any child of mine predeceases me without leaving a child surviving him or her, then such share as would have been acquired by my deceased child shall be divided equally among my surviving children. If my named beneficiaries do not agree to the division of the said property among themselves, my Personal Representatives shall make such division among them, the decision of my Personal Representatives to be in all respects binding upon my issue. If any beneficiary hereunder is a minor, my Personal Representatives may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representatives.

SAVAGE, ROYALL, DEHEEN & BYARS
1 CHURCH STREET
CAMDEN, S.C. 29020

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ITEM IV: I give and bequeath the following general legacies:

(1) The sum of Three Thousand Five Hundred and 00/100 ($3,500.00) Dollars to James Moore, if he shall survive me, or if he shall not survive me, to his wife, Bina Moore, if she shall survive me.

(2) The sum of Two Thousand and 00/100 ($2,000.00) Dollars to Helen Stradford, if she shall survive me, or if she shall not survive me, to her husband, Singleton Stradford, if he shall survive me.

ITEM V: I give and devise all my right, title and interest in and to the easternmost three (3) acres of a certain (6) acre parcel of real property located in Sumter County, South Carolina, and acquired by me from Helen Boykin Moses, together with all of the improvements thereon and appurtenances thereto, to James Moore, if he shall survive me, or if he shall not survive me, to his wife, Bina Moore, if she shall survive me. I also give and devise unto James Moore a tract of land in Sumter County containing four (4) acres, more or less, adjoining the four (4) acre parcel which I have previously deeded to him to begin at the northeast corner of the parcel previously given him and to be adjacent to the tract which I have already given him. I direct this be surveyed under the direction of my Personal Representatives and a deed of distribution delivered to him for the said parcel. If he fails to survive me, then unto his wife, Bina Moore, if she survives me.

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ITEM VI: I give and devise all my right, title and interest in and to the westernmost three (3) acres of a certain six (6) acre parcel of real property located in Sumter County, South Carolina, and acquired by me from Helen Boykin Moses, together with all of the improvements thereon and appurtenances thereto, to Helen Stradford, if she shall survive me, or if she shall not survive me, to her husband, Singleton Stradford, if he shall survive me.

ITEM VII: If my wife, Alice S. Boykin, shall survive me, I give, devise and bequeath to my Trustee hereinafter named, cash, securities or other property of my estate (undiminished by any estate, inheritance, succession, death or similar taxes) having a value equal to the maximum marital deduction as finally determined in my federal estate tax proceedings, less the aggregate amount of marital deductions, if any, allowed for such tax purposes by reason of property or interests in property passing or which have passed to my said wife otherwise than pursuant to the provisions of this Item; provided, however, the amount of this devise or bequest shall be reduced by the amount, if any, needed to increase my taxable estate (for federal estate tax purposes) to the largest amount that, after allowing for the unified credit against the federal estate tax, and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state), will not result in a federal estate tax being imposed on my estate. The

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term "maximum marital deduction" shall not be construed as a direction by me to exercise any election respecting the deduction of estate administration expenses, the determination of the estate tax valuation date, or any other tax election which may be available under any tax laws, only in such manner as will result in a larger allowable estate tax marital deduction than if the contrary election had been made. My Personal Representatives shall have the sole discretion to select the assets which shall constitute this devise or bequest. In no event, however, shall there be included in this devise or bequest any asset or the proceeds of any asset which will not qualify for the federal estate tax marital deduction, and this devise or bequest shall be reduced to the extent that it cannot be created with such qualifying assets. My Personal Representatives shall value any asset selected by my Personal Representatives for distribution asset at the date of distribution of such asset.

I direct my Personal Representatives to elect as provided in Internal Revenue Code Section 2056(b)(7)(B)(v) to cause the property distributed to the Trustees of this trust to be treated on the federal estate tax return of my estate as qualified terminable interest property.

This trust shall be held, administered and distributed as follows:

(1) Commencing with the date of my death, my Trustees shall pay to or apply for the benefit of my said wife during her

ROYALL

lifetime all the net income from this trust in convenient installments, but no less frequently than quarter-annually. Any accrued and undistributed income at the death of my wife shall be paid to her Personal Representatives.

(2) In addition, my Trustees may pay to or apply for the benefit of my said wife such sums from the principal of this trust as in their sole discretion shall be necessary or advisable from time to time for the medical care, support, maintenance and reasonable comfort of my said wife, taking into consideration to the extent my Trustees deem advisable, any other income or resources of my said wife known to my Trustees.

(3) My said wife may, at any time by written notice, require my Trustees either to make any nonproductive property of this trust productive or to convert such nonproductive property to productive property within a reasonable time.

(4) Unless my wife's will specifically provides that the estate, succession, death or similar taxes assessed with respect to the assets of this trust be paid otherwise, my Trustees shall pay to the Personal Representatives and administrators of the estate of my wife for the purposes of paying such taxes, the amount by which such taxes assessed by reason of my wife's death shall be increased as a result of the inclusion of the assets of this trust in her estate for such tax purposes.

(5) Upon the death of my said wife, the entire remaining principal of this trust shall be added to and become a part of the Residuary Trust set forth in Item VIII herein and

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shall be held and administered or distributed in whole or in part as if it had been an original part of Residuary Trust set forth in Item VIII herein.

ITEM VIII: I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this will, to my Trustees hereinafter named. This trust shall be known as the "Residuary Trust" and shall be held, administered and distributed as follows:

(1) Commencing with the date of my death, my Trustees shall pay to or apply for the benefit of my children, Mary Deas Wagner, Alice Shoolbred Boykin, L.W. Boykin, V., and May Cantey Boykin during their lifetimes the net income from this trust in convenient installments at least annually and in such shares and proportions as the Trustees in their sole discretion shall determine providing to each a reasonably equal division of income as the need arises primarily for the medical care, comfortable maintenance, welfare and education of my said beneficiaries, taking into consideration to the extent my Trustees deem advisable, any other income or resources of my said beneficiaries known to my Trustees. In addition, my Trustees shall pay to or apply for the benefit of any one or more of the issue of a deceased child such of the net income of this trust as my Trustees shall determine for the medical care and support of such issue, taking into consideration to the

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extent my Trustees deem advisable, any other income or resources of such issue known to my Trustees.

(2) My Trustees may pay to or apply for the benefit of any one or more of my said children such sums from the principal of this trust in such shares and proportions as in their sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance and reasonable comfort of my said children, taking into consideration to the extent my Trustees deem advisable, any other income or resources of my said children known to my Trustees. In addition, my Trustees may, if my Trustees deem advisable, pay to or apply for the benefit of any one or more of the issue of a deceased child such of the principal of this trust as my Trustees shall determine for the medical care and support of such issue, taking into consideration to the extent my Trustees deem advisable, any other income or resources of such issue known to my Trustees. I direct that the distributions shall be kept reasonably equal to each beneficiary over a period of years, however, my Trustees shall have final and complete authority to determine the fairness thereof.

(3) This trust shall terminate upon the death of the last to survive of my said children.

(a) My Trustees at that time shall divide this trust as then constituted into separate shares so as to provide one (1) share for each deceased child of mine who shall leave issue then living.

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(b) My Trustees shall transfer and pay over the then remaining trust principal, if any, and any accrued and undistributed income on hand, to the child or children of my issue who shall be then surviving, per stirpes.

(c) In the event that no children of mine shall survive me, I give, devise and bequeath my residuary estate to the issue of my child or children, per - stirpes.

ITEM IX: The determination of my Personal Representatives or my Trustees, as the case may be, with respect to the identification of any property passing under this, my Last Will and Testament, including any tract or parcel of real property, shall be binding and conclusive upon all persons interested in my estate or any trust hereby created.

ITEM X: It is my desire, but I do not direct, that certain tracts or parcels of real property located in the State of South Carolina and presently owned by me or by corporations the stock of which is owned in whole or in part by me, namely Millway Plantation (consisting of approximately 884 acres), the "Laney Tract" (consisting of 101 acres), Broadview Plantation (consisting of approximately 324½ acres), the "Swamp Tract" (acquired from my mother and consisting of approximately 416 acres), the "Cantey Tract" (consisting of approximately 140 acres), and the "Gillis Tract" (consisting of approximately 112 acres), shall to the fullest extent possible be preserved for

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the benefit of or transferred to my children or their issue. However, if any or all of these parcels must be sold, they should be sold in the following order:

(1) Swamp Tract

(2) Broadview Plantation, Cantey Tract, Gillis Tract

(3) Millway Plantation and Laney Tract

Any sale or mortgage of these parcels (exclusive of timber rights) must be by unanimous consent of the Trustees after consultation with and approval of a majority of the four (4) named beneficiaries of this trust unless any be not sui juris in which event approval is waived. I direct that my trustees may cut and remove timber which shall be treated as a crop. It is my further desire, but I do not direct, that my son, L.W. Boykin, V, be employed by the farm with suitable salary and other operating arrangements for my said son, to the extent that my Trustees, in whom I have complete confidence, shall determine the same to be advisable and in the best interest of my said son. It is my further desire, but I do not direct, that at any time and from time to time during the continuance of the trust created under Item VIII of this, my Last Will and Testament, or upon the termination of said trust, my Trustees shall arrange to distribute Broadview Plantation, the "Swamp Tract", the "Cantey Tract" and the "Gillis Tract", or such of said parcels, if any, as shall from time to time be held by my Trustees, to the oldest male child of my son, L.W. Boykin, V, who shall be living at the

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time of any such distribution. In exercising the discretionary powers granted to my Trustees under Items VII and VIII and all other powers granted to my Personal Representatives and Trustees under this, my Last Will and Testament, it is my hope that my Personal Representatives and Trustees will be mindful of my intentions. My Trustees shall be free from all liability or responsibility in making any determination from time to time to exercise or to not exercise any of the powers granted to them hereunder, but shall attempt to be as nearly equitable as possible among beneficiaries of my estate or any trust hereby created, regardless of the tax or other effects thereof, and any such determination shall be binding and conclusive upon all persons interested in my estate or any trust hereby created.

ITEM XI: I hereby nominate, constitute and appoint as Personal Representatives of this my Last Will and Testament, my beloved wife, Alice S. Boykin, and my daughter, Mary Deas Wagner, and direct that they shall each serve without bond. If either one of them is unable or unwilling to serve or continue to serve, then I hereby nominate, constitute and appoint as substitute or successor Personal Representative, Rigdon H. Boykin, and direct that he shall also serve without bond. If any two (2) are unable to serve or cease to serve, then the third above named shall serve as sole Personal Representative, without bond.

ITEM XII:

(a) I hereby nominate, constitute and appoint as Trustees of the trusts created under Item VII of this my Last

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Will and Testament, my daughter, Mary Deas Wagner, and my wife, Alice Shoolbred Boykin, and direct that they shall serve without bond. Should Mary Deas Wagner be unable to serve or cease to serve for any reason, then I nominate and appoint Rigdon H. Boykin to serve in her place and stead, also without bond.

(b) I hereby nominate, constitute and appoint as Trustees of the trust created in Item VIII of this, my Last Will and Testament, my cousin, Rigdon H. Boykin, my daughter, Mary Deas Wagner, and my wife, Alice Shoolbred Boykin, and direct that they shall serve without bond. I further grant unto my wife, Alice Shoolbred Boykin, the right to designate by a written instrument filed in the office of the Judge of Probate, her successor trustee to serve either upon her resignation, incapacity to serve or death. I further grant unto my Trustees the authority to nominate one (1) additional family member to serve with them as co-trustee should any one of the other two (2) Trustees fail to qualify or cease to serve for any reason. This designation shall be by instrument filed in office of the Judge of Probate for Kershaw County. I also grant unto my Trustees the authority to select a trust department of a bank or a trust company to assist them in the administration of the trust if they deem the same to be necessary and I further direct that they may name a trust department of a bank or a trust company managing assets of at least One Hundred Million and 00/100 ($100,000,000.00) Dollars to serve as co-trustee with them should they determine the same to be necessary, either at

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that time or in the future. The appointment of any corporate trustee shall be accomplished by the filing of an instrument signed by the Trustees with the Probate Court of Kershaw County. The appointment of such Trustee shall neither increase nor decrease the liabilities and responsibilities of my Trustees acting hereunder, and I expressly confirm and ratify the appointment of any such additional trustees. For their services as Trustees, my individual Trustees and/or corporate Trustees shall be entitled to reasonable compensation for the services provided for the trust under Item VII or under Item VIII as the case may be. Such compensation shall not exceed the amount provided by law.

ITEM XIII: Whenever the words "Personal Representative" and/or the word "Trustee", or any modifying or substituted pronouns therefor are used in this my Will, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative and/or Trustee named herein and to any successor or substitute Personal Representative and/or Trustee acting hereunder, and such successor or substitute Personal Representative and/or Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon my Personal Representative and/or Trustee originally named herein.

ITEM XIV: My Personal Representatives and Trustees, respectively, are authorized in their absolute discretion

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with respect to any real property, by unanimous vote, or personal property, by majority vote, at anytime held under any provision of this Will and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Will or by statute or general rule of law:

A. To sell, transfer and convey the whole or part of the property, whether real or personal, constituting this estate or trust, at such time or times, in such manner, upon such terms and conditions, and for such price, as to the Personal Representative or trustee shall seem best, together with the power to make, execute and deliver such instruments as shall be necessary to effectuate such sale or sales without an order of the Court, but I direct that two (2) independent appraisals be made on each such sale of real estate.

B. To retain any of the original property constituting the estate or trust, regardless of the character of such property or whether it is such as then would be authorized by law for investment by Personal Representatives or trustees or whether it leaves a disproportionately large part of the estate or trust invested in one type of property, for such time as to the Personal Representative or trustee shall seem best, and to dispose of such property by sale, exchange or otherwise as and when they shall deem advisable.

C. To invest and reinvest the property of the estate or trust in such manner as men of prudence exer-

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cise in the management of their own affairs. At any time, and from time to time, to keep all or any portion of the estate or trust in cash and uninvested for such period or periods of time, as he may deem advisable, without liability for any loss in income by reason thereof. In addition, the "under productive property rule" of the Revised Uniform Principal and Income Act shall not be applicable.

D. To vote in person or by special, limited or general proxy with power of substitution, all stocks and other securities held by them and to exercise in their sole discretion any option or privilege to exchange such stocks or other securities held by them in any corporation for other stocks or securities at such time and upon such terms and conditions as they shall deem proper, and to exercise all conversions, subscription and other rights of whatsoever nature pertaining thereto or to sell such rights; to consent to and participate in any plan of reorganization, consolidation, merger, combination, or other similar plan, and to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to such plan, and to exchange the securities held by them for the securities issued in connection therewith, and to deposit any such securities with protective, reorganization or similar committee, to delegate discretionary power thereto, and to pay part of their expense and compensation as assessments levied with respect to such securities, as the Personal Representative or trustee may deem expedient for the

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protection of their interest as holder of any stocks, bonds or other securities of any corporation, and generally to exercise in regard to all stocks, bonds or other investments held by the Personal Representative or trustee all such rights, powers and privileges as are, or may be lawfully exercised by any person owning similar property in his own right.

E. To extend the time of payment of any obligation held by them and to compromise, settle, and submit to arbitration upon such terms as to them may seem proper, or to release any claim in favor of or against the estate or trust property, and the right in their sole discretion when deemed advisable to abandon any property. To lease real estate, including the right to lease for terms that may extend beyond the date of the termination of the estate and trust, for fixed or contingent rent or both; to improve and remodel real estate and to borrow money for the purpose, to secure the borrowing by mortgage of the real estate or pledge of the lease or leases, or both.

F. To carry such insurance against such hazards including public liability, and in such amounts in either stock companies or mutual companies as to the Personal Representatives and/or trustees shall seem advisable.

G. To determine, irrespective of statute or rule of law, how all receipts and disbursements of this estate or trust or any share thereof, including the executor's or trustee's compensation, shall be credited, charged or

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apportioned as between income and principal, and the decision of the Personal Representative or trustee shall be final and not subject to any question by any beneficiary thereof.

H. To charge or not charge against income depreciation on any asset of the estate or trust as the Personal Representative or trustee in their sole discretion shall determine and to establish or not establish depreciation reserves as the Personal Representative or trustee in their sole discretion shall determine.

I. To amortize or not amortize the premiums paid in connection with the purchase of any securities. Discounts may be disregarded.

J. To employ and compensate, out of the principal or the income or both as to the Personal Representative or trustee shall seem proper, agents, accountants, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors and other assistants, advisors and a manager of the assets, which manager may also be one of the Trustees, deemed needful for the proper management, handling and administration of the estate or trust, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided he was selected and retained with reasonable care.

K. To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as to them shall seem advisable, includ-

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ing the power to borrow from the Personal Representative or trustee and to mortgage or pledge such portion of the estate or trust as may be required to secure such loans; and as maker or endorser to renew existing loans.

L. To value and appraise the assets hereof in any division or distribution of the estate or trust and to distribute the same in kind at such appraised value, which shall be conclusive against all persons interested hereunder.

M. To retain, buy, sell or otherwise deal with stock and securities of the Personal Representative and trustee as the Personal Representative or trustee shall deem best.

N. In addition to the powers, authority and discretion herein conferred or conferred by law, the Personal Representative or trustee shall have the authority to do all things and the right to exercise all powers reasonably necessary or incidental to the proper management of the estate or trust and the Personal Representative or trustee shall not be liable for any loss to the estate or trust occasioned by his acts in good faith, nor for honest errors in judgment.

O. Notwithstanding any other provisions hereof, the trustees, by unanimous consent, may in their discretion elect to dedicate any portion of the real property to a conservation easement or family managed non-profit foundation primarily for the purpose of protecting wildlife habitat.

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ITEM XV: In the event for any reason there is liquidation and/or sale and/or exchange of real properties included in my estate or held by corporations in which I own stock, tracts and/or parcels other than those listed in Item X should be liquidated, sold and/or exchanged first. Further, I shall endeavor to leave a suggested list of the order of liquidation, attached to this Will, which list shall not be controlling, but shall be used as a guide for my Personal Representatives and/or Trustees. The powers and discretion of my Personal Representatives and Trustees under this Will shall not be superceded by this Item XV.

ITEM XVI: My Personal Representatives shall have absolute discretion, but shall not be required, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Personal Representatives believe has had the effect, directly or indirectly, of preferring one (1) beneficiary or group of beneficiaries over others. In determining the federal estate and income tax liabilities of my estate, my Personal Representatives shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as federal estate tax deductions or as federal income tax deductions and shall have the discretion to file a joint income tax return with my spouse.

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ITEM XVII: It is expressly provided that the grant of rights, powers, privileges and authority to my Personal Representatives and Trustees in connection with the imposition of duties upon my Personal Representatives and Trustees by any provision of this my Will or any statute relating thereto shall not be effective if and to the extent that the same, if effective, would disqualify the marital deduction as established in the Marital Trust hereof. It is my intention that my said wife, under the provisions of the Marital Trust, have substantially that degree of beneficial enjoyment of the Trust Estate during her lifetime which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust and my Personal Representatives and Trustees shall not exercise their discretion in a manner which is not in accord with this expressed intention. My Personal Representatives and Trustees shall invest the Trust Estate so that it will produce for my said wife during her lifetime an income or use which is consistent with the value of the Trust Estate and with its preservation. It is expressly provided that my Personal Representatives and Trustees shall not in the exercise of their discretion make any determination inconsistent with the foregoing, especially in regard to and including, but not limited to, the powers granted in Paragraphs (1), (2), (5), (13), (22), (23), (24), (26) and (39) of Item XIV hereof and by any statute granting powers to a trustee.

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ITEM XVIII: For purposes of this Will, "children" means the lawful blood descendants of the first degree of the parent designated, including all of my children by my previous marriage; and "issue" and "descendants" means the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his issue shall be considered as issue of the adopting parent or parents and if anyone who is by blood or adoption an ancestor of the adopted parent or either of the adopting parents.

ITEM XVIV: Notwithstanding anything herein to the contrary, the Trusts created under this my Will shall terminate no later than twenty-one (21) years after the death of the last survivor of my children's issue living on the date of my death, when my Trustee shall distribute each remaining trust hereunder to the beneficiary or beneficiaries of the current income thereof, and if there is more than one beneficiary, in the proportion in which they are beneficiaries.

ITEM XX: If any share hereunder become distributable to a beneficiary who has not attained the age of twenty-one (21) years, then such share shall immediately vest in such beneficiary, but notwithstanding the provisions herein, my Trustees shall retain possession of such share in trust for such beneficiary until such beneficiary attains the age of Twenty-one (21) years, using so much of the net income and principal of

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such share as my Trustees deem necessary to provide for the proper support, medical care and education of such beneficiary, taking into consideration to the extent my Trustees deem advisable any other income or resources of such beneficiary or his or her parents known to my Trustee. Such beneficiary's share shall be paid over and distributed to such beneficiary upon attaining age twenty-one (21), or if he or she shall sooner die, to his or her personal representatives or administrators. My Trustees shall have, with respect to each share so retained, all the powers and discretions had with respect to the trust created herein generally.

ITEM XXI: In case the income or principal payment under any trust created hereunder or any share thereof shall become payable to a person under the age of twenty-one (21), or to a person under legal disability, or to a person not adjudicated incompetent, but who, by reason of illness or mental or physical disability, is, in the opinion of my Trustee unable properly to administer such amounts, then such amounts shall be paid out by my Trustee in such of the following ways as my Trustee deems best: (1) directly to such beneficiary; (2) to the legally appointed guardian of such beneficiary; (3) to some relative or friend for the care, support and education of such beneficiary; (4) by my Trustee using such amounts directly for such beneficiary's care, support and education.

ITEM XXII: If any beneficiary and I should die under such circumstances as would render it doubtful whether the

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beneficiary or I died first, then it shall be conclusively presumed for the purposes of this my Will that said beneficiary predeceased me; provided, however, that if my beloved wife, Alice S. Boykin, shall die with me as aforesaid, I direct that my said wife shall be conclusively presumed to have survived me.

ITEM XXIII: If at any time Trust B created hereunder has a fair market value as determined by my Trustee of Fifteen Thousand and 00/100 ($15,000.00) Dollars or less, my Trustees, in their absolute discretion if they determine that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one (1) income beneficiary, my Trustees shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if not proportion is designated, in equal shares to such beneficiaries.

ITEM XXIV: On the death of any person entitled to income or support from Trust B hereunder, my Trustees shall be authorized to pay the funeral expenses and the expenses of the last illness of such person from the corpus of the Trust from which such person was entitled to income or support.

ITEM XXV: Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject o anticipation, assignment, pledge, sale or transfer in

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any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of my Personal Representatives or Trustees, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this 2 day of June, 1989.

Lemuel Whitaker Boykin (SEAL)
Lemuel Whitaker Boykin, II

I, Lemuel Whitaker Boykin, II, the testator, sign my name to this instrument this 2 day of June, 1989, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Lemuel Whitaker Boykin, II
Lemuel Whitaker Boykin, II
Testator

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We, Lynn N. Robinson, and Julie D. Johnson, the witnesses, sign our names to this instrument, and at least one of us being first duly sworn, does hereby declare, generally and to the undersigned authority that the testator signs and executes this instrument as his Last Will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our knowledge the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Lynn N. Robinson
Witness

Julie D. Johnson
Witness

STATE OF SOUTH CAROLINA)
)
COUNTY OF KERSHAW)

Subscribed, sworn to and acknowledged before me by Lemuel Whitaker Boykin, II, the testator, and subscribed and sworn to before me by Lynn N. Robinson, witness, this 2nd day of June, 1989.

Julie D. Johnson
Notary Public of South Carolina
My commission expires: 4/15/96

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	CASE NO: 2017-CP-28-831
	)	
IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	)	
	)	
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B,	)	**PETITIONER'S RESPONSE AND MEMORANDUM IN OPPOSITION TO RESPONDENTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**
Petitioner,	)	
	)	
v.	)	
	)	
Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin	)	
	)	
Respondents.	)	

TO: ALL COUNSEL OF RECORD

Petitioner, Rigdon H. Boykin ("Petitioner"), as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B (collectively the "Residuary Trust"), by and through his undersigned counsel, hereby responds to the Motion for Partial Summary Judgment filed on June 6, 2018 by Respondent Mary Deas Wortley ("Respondent").

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BACKGROUND

This case was filed by Petitioner as an action for instruction from the Court in the face of an unworkable impasse among the three Co-Trustees of the Residuary Trust—Petitioner, Respondent, and Alice Belger ("Belger")—regarding the trust's management and administration. The initial Petition also included a request from Petitioner as to whether he should be entitled to a trustee fee, and entitled to reasonable attorney's fees in connection with bringing this matter before the Court for resolution. Respondent and Belger agree as to the first issue, Belger & Wortley Ans. and Counterclaim ¶ 31, and the second issue was addressed and decided by this Court in its February 16, 2018 Order. However, Petitioner also sought—and continues to seek—much needed guidance from the Court in the form of a declaratory judgment as to the effect of the precatory language contained in the June 2, 1989 Last Will and Testament (the "Will") of L.W. Boykin, II ("Decedent") in the face of substantially changed circumstances and the daunting economic status of the Residuary Trust. Am. Compl. ¶¶ 60–69 (Petitioner's Fourth Cause of Action). As part of his request for judicial intervention, Petitioner asked this Court to declare that, based on the impasse and his status as the only non-beneficiary trustee, he be appointed as a "special fiduciary" with preeminent authority with regard to certain trust matters. Am. Compl., ¶ 59 (Petitioner's Third Cause of Action).

From the time of Alice Boykin's death on August 8, 2016, Petitioner has repeatedly endeavored to engage his Co-Trustees in discussions about creative solutions in an effort to avoid or break the current deadlock. His first proposal was to allow Respondent and Belger to identify and purchase from the Residuary Trust the lands they desired to keep, with the Residuary Trust financing up to $1,500,000 for each of them. **Ex. 1**, 4/20/18 Aff. of Rigdon Boykin, ¶ 7; **Ex. 2**, 1/16/18 Aff. of Rigdon Boykin, ¶ 7. Respondent and Belger were initially interested in this

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proposal, until the land appraisals revealed that the fair market value of the desired properties was much higher than they had initially thought. See **Ex. 3,** 8/16/16 Email from Wortley to Peacock ("I am going to try to use whatever [money] I inherit to buy the Millpond and some surrounding land to protect it."); **Ex. 4**, 9/27/16 Email from Wortley to Peacock ("I figure some of these endless appraisals will be done by then, and there will be plenty of hard decisions to make about selling properties."); **Ex. 5**, 1/2/17 Email from Wortley to Peacock ("And I am just wondering, for L Alice and myself, since we aim to buy our houses, could our rents be applied toward the eventual purchase? . . . That might wind up making a significant difference, if the appraisal process continues to drag on and on . . . .").

Another one of Petitioner's offered solutions, which was based upon an influx of liquidity as a result of the proposed Option Agreement (described more fully in Petitioner's January 26, 2018 Motion to Authorize the Sale of Trust Property), was that the Co-Trustees split the Residuary Trust into two trusts: "one for Whit Boykin and May Boykin that would, over time, sell all of the land assigned to it and invest the proceeds in the market; and one for Belger and Wortley that would keep most of the land they wanted in Kershaw County." See **Ex. 1**, 4/20/18 Aff. of Rigdon Boykin ¶ 14. This idea of trust splitting, or "decanting" under S.C. Code Ann. § 62-7-816A, appeared to Petitioner to be the only way forward, given the clearly disparate interests of Respondent and Belger (who have living issue) and the non-trustee beneficiaries, Whit Boykin and May Boykin. While Petitioner has not specifically requested in his Amended Petition that the Court order a decanting of the Residuary Trust, he has, as part of his third cause of action, asked the Court to "[f]urther instruct[] Petitioner in the exercise of his fiduciary duties with regard to questions arising from the administration, management, and distribution of the Residuary Trust," and decanting is certainly one option available.

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With respect to the Option Agreement, Belger testified repeatedly that one of the reasons for her unwillingness to exercise the Option Agreement was that her sister, Respondent, would not sign it. See **Exhibit 6**, 2/26/18 Belger Dep., pp. 136–37, 151–52. However, the evidence in the record clearly contradicts this statement, and calls into question Belger's motives in denying this invaluable and irreplaceable opportunity for the Residuary Trust. For example, on November 9, 2017, Respondent emailed Jane Peacock, the Residuary Trust's accountant, stating: "There is a big issue concerning the Millpond and downtown Boykin brought up by Rigdon which L Alice doesn't want to consider but I do—I hope we can eventually get her to consider it. I'll tell you about it when I see you." See **Ex. 7**, 11/9/17 Email from Wortley to Peacock. Ms. Peacock responded to Respondent, "Rigdon has spoken with me some about the Millpond property opportunity (with no names attached to the conversation). I have tried to throw in as many hints to Alice as I dare about the good aspects of that opportunity and how important it is to look at long-term goals and how it may accomplish them . . . could not speak directly on point because it is not really my place. Unfortunately opportunities like that could go away overnight. I know someone must have come away from that meeting very frustrated from that result today." Id. In a similar exchange in January of 2018, after the assignment of this case to the Hon. Jean H. Toal, the Respondent again wrote to Ms. Peacock that "I think the hearing was basically a good thing because it let us all know in no uncertain terms that we have to work out a compromise. I didn't realize the extent of the compromise required, and Little Alice did not believe in any compromise at all. Period. Now she does." See **Ex. 8**, 1/27/18 Email from Wortley to Peacock.

Respondent has now asked this Court to grant summary judgment with respect to Petitioner's third and fourth causes of action, asserting that there are no genuine issues of material fact with respect to Petitioner's requests for declaratory judgment and judicial instruction.

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Respondent has not moved for summary judgment on Petitioner's fifth cause of action for removal of Respondent and Belger as Co-Trustees of the Residuary Trust.

LEGAL STANDARD

Summary judgment is appropriate only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP; see also Tupper v. Dorchester County, 326 S.C. 318, 487 S.E.2d 187 (1997). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 365 S.E.2d 24 (1988). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the appellant, the non-moving party below. Williams v. Chesterfield Lumber Co., 267 S.C. 607, 230 S.E.2d 447 (1976). "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence." Turner v. Milliman, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011).

ARGUMENT

Respondent's Motion seeks summary judgment with respect to Petitioner's Third Cause of Action—for appointment of Petitioner as a "special fiduciary"—and Petitioner's Fourth Cause of Action, seeking a declaration regarding the effect of the precatory language contained in the Last Will and Testament of Mr. L.W. Boykin, II ("Decedent"). Respondent's Motion should be denied for two reasons: (1) Respondent and Belger have breached their duties as Co-Trustees of

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the Residuary Trust and (2) there has been a substantial change in circumstances in the Boykin area since Decedent's Will was drafted on June 2, 1989 and since his death six months later.

I. Respondent's Motion for Summary Judgment on Petitioner's third cause of action should be denied because Respondent and Belger have breached their duties as Co-Trustees of the Residuary Trust.

Petitioner's third cause of action seeks an Order from this Court which (1) declares that, as the sole non-beneficiary Co-Trustee of the Residuary Trust, Petitioner is entitled to exercise preeminent authority among the three Co-Trustees of the Residuary Trust, or that he otherwise be appointed as a "special fiduciary" under S.C. Code Ann. § 62-7-1001(b)(5); and (2) further instructs Petitioner in the exercise of his fiduciary duties with regard to questions arising from the administration, management, and distribution of the Residuary Trust. Petitioner's third cause of action is asserted under S.C. Code Ann. 62-7-201, which provides in relevant part:

> Proceedings that may be maintained pursuant to this section are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of other matters involving trustees and beneficiaries of trusts. These include, but are not limited to, proceedings to:
>
> (1) ascertain beneficiaries, *determine a question arising in the administration or distribution of a trust including questions of construction of trust instruments, instruct trustees*, and determine the existence or nonexistence of any immunity, power, privilege, duty, or right;

S.C. Code Ann. § 62-7-201(a)(1) (emphasis added).

In South Carolina, as most other states, "[t]he enforcement and administration of trusts has long been peculiarly within the jurisdiction of courts of equity which are jealous of the right of *cesuis que trustent* [those for whose benefit the trust was created—i.e. the beneficiaries.]" Weston v. Weston, 210 S.C. 1, 11, 41 S.E.2d 372, 276 (1947). "[A] court of equity has the inherent power to exercise jurisdiction over the trust estates, to supervise their administration, and to make *all orders* necessary for their preservation and conservation[.]" Floyd v. Floyd, 365 S.C. 56, 94, 615

S.E.2d 465, 485 (Ct. App. 2005) (citation omitted). In addition to the Court's broad equity powers with respect to trusts, it is clear under the South Carolina Trust Code that the Court has at its disposal a number of tools to "remedy a breach of trust that has occurred or may occur," including the power to remove a trustee, to "compel the trustee to redress a breach of trust by paying money, restoring property, or other means," *or to appoint a "special fiduciary."* S.C. Code Ann. § 62-7-1001.

Contrary to Respondent's assertion, there is authority for the proposition that Petitioner, as the only non-beneficiary trustee of the Residuary Trust, is entitled to exercise preeminent authority. The South Carolina Trust Code clearly expresses the General Assembly's skepticism of the motives of trustees who are themselves beneficiaries. For example, the decanting statute, S.C. Code Ann. § 62-7-816A, provides one available remedy in circumstances such as this one, wherein the assets in the Residuary Trust could be decanted into a second trust (as Petitioner has proposed). Only a disinterested trustee such as Petitioner can undertake a decanting. Even if the beneficiary trustees object, the Court can still order the decanting. Furthermore, the Reporter's comment to the decanting statute provides the following: "[S]ome examples of how decanting authority might be used by a trustee include: modifying the administrative or substantive provisions of a trust to account for a change in law, combining trusts to reduce administrative costs, *limiting the authority of interested trustees*, correcting scrivener's errors, and conforming the distribution provisions of the trust to the requirements of a special needs trust." (Emphasis added). By noting that decanting can be used to "limit the authority of interested trustees," the General Assembly virtually invites a disinterested, non-beneficiary trustee to make changes to a trust so as to make the influence of interested trustees less pervasive.

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In addition to decanting, the following remedies are available to the Court but can only be initiated by a disinterested trustee: (a) converting the trust to a statutory unitrust under S.C. Code Ann. §§ 62-7-904B through P; (b) adjusting between income and principal so as to convert principal into income in order to increase beneficiary distributions under S.C. Code Ann. § 62-7-904. As is the case with a decanting, if Respondent and Belger object to a unitrust conversion or an adjustment from principal to income, the Court may still order it over their objections if it serves the interests of the trust and its beneficiaries.

Respondent correctly acknowledges that a special fiduciary may be appointed where (1) such an appointment is necessary for the future administration of the trust, or (2) as a form of relief to remedy a trustee's breach of trust which has occurred or may occur. Resp.'s Mot. for Partial Sum. J., p. 7. Such a determination is inextricably intertwined with the Court's ultimate finding on Petitioner's fifth cause of action (for removal of Respondent and Belger as Co-Trustees). Respondent is not entitled to summary judgment on Petitioner's request to be appointed as a special fiduciary, as the Court has yet to make a factual finding as to whether or not Respondent and Alice Belger have committed (or may commit) a breach of trust through their conduct as Co-Trustees of the Residuary Trust. In fact, the record is replete with evidence to support the conclusion that Respondent and Alice Belger have *already* breached their duties as Co-Trustees, including in the following ways (among others):

- Refusing to conduct regular Trustee meetings for extended periods of time in 2017 (See **Ex. 2,** 1/16/18 Aff. of Rigdon Boykin ¶15);

- Refusing to execute the proposed Option Agreement to purchase the Boykin Millpond and several of the downtown Boykin properties for over $4.5 million, which to date has presented the only viable option for converting the Residuary Trust's largest financially draining asset into substantial revenue while also preserving the land for future generations (See **Ex. 1**, 4/20/18 Aff. of Rigdon Boykin ¶¶ 8, 12);

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- Failing to honor and act in accordance with the duty of impartiality imposed upon them as trustees by S.C. Code Ann. § 62-7-803 by administering the trust for the sole benefit of themselves and their heirs, to the detriment of Whit Boykin and May Boykin (See **Ex. 6**, 2/26/18 Belger Dep., pp. 134–35 (stating her desire to retain the Boykin Millpond for her children and Wortley's);

- Failing to honor and act in accordance with the duties of prudent investment and diversification imposed upon them as trustees by S.C. Code Ann. §§ 62-7-803, 62-7-933 by demonstrating a complete unwillingness to sell Residuary Trusts assets, including even certain tracts of land which are not subject to the precatory language of Decedent's Will (See, e.g., **Ex. 9** 1/24/17 Email from Belger to K. Thomas (refusing to sell trust property despite previous agreement); **Ex. 8**, 1/27/18 Email from Wortley to Peacock (regarding Belger's complete unwillingness to compromise); **Ex. 10**, 2/24/18 Email from Wortley to Peacock ("Little Alice is the immovable object . . . ."); and

- Failing to effectively administer the Residuary Trust in such a way as to provide sufficient income generation for reasonable beneficiary distributions, growth in the Residuary Trust corpus, or risk mitigation in the interests of all beneficiaries (See, e.g., **Ex. 11**, 3/15/18 Wortley Dep., pp. 133–34 (stating her belief that the *maximum* annual net income generated by the Residuary Trust and distributed to the current beneficiaries should be three percent (3%)).

The foregoing examples demonstrate that Respondent and Belger have committed breaches of trust, or at a minimum that they have failed to effectively administer the Residuary Trust, such that the Court should appoint Petitioner as a special fiduciary. Therefore, Respondent's Motion for Partial Summary Judgment should be denied as to Petitioner's third cause of action.

II. Respondent's Motion for Summary Judgment on Petitioner's fourth cause of action should be denied because there has been a substantial change of circumstances unanticipated by Decedent and continuation of the Residuary Trust in its current state is wasteful and impracticable.

Respondent concedes that Item X of Decedent's Will—which contains merely precatory language concerning Decedent's preference to maintain certain land owned by the Residuary Trust (if possible)—does not prohibit the sale of any Residuary Trust property. Resp.'s Mot. for Partial Sum. J., p. 9. She also concedes that the Co-Trustees "must be guided by the Prudent Investor

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Rule[.]" Id. at p. 10. However, Respondent refers to certain "treasured tracts," (a phrase which is absent from Decedent's Will) and claims that any sale of these lands at the present time would run counter to Decedent's clear intentions. Therefore, according to Respondent, the Court should not modify the terms of the Residuary Trust to protect the beneficiaries.

Respondent ignores the unavoidable conclusion based on the evidence in this case. The primary purpose of the Residuary Trust is to provide for, protect, and support the beneficiaries. Decedent's Will, Item VIII (income and principal shall be used for the medical care, welfare, support and maintenance, education, and reasonable comfort of Decedent's children). The facts of the present case are much like those in Ex Parte Guaranty Bank & Trust Co., 255 S.C. 106, 177 S.E.2d 358 (1970). In that case, there was language in the trust stating that the trustees should "hold under said trust the said [several hundred acres of farmland] for and during the term of the natural life of the said beneficiaries[.]" Ex Parte Guaranty Bank & Trust Co. at 110, 177 S.E.2d at 359. Despite that expression by the settlor, the court permitted the sale of what Respondent might call the "treasured" land under the settlor's trust where a lucrative option agreement was offered for the purchase of the otherwise underproductive land. Id. The court wrote:

> A review of the facts, abundantly established by the evidence, will reveal that this property as farm land has had, in recent years, a very low monetary yield . . . The fact that this property can now be sold for commercial purposes and used for industrial development brings about somewhat of a bonanza or a windfall. No landowner with complete control of this property, and in his right mind, would continue to use this land for agricultural purposes.
>
> It should be noted that the will of [the settlor] did not authorize the trustee to convey his real estate. At the same time sale was not specifically prohibited. Under such facts a sale will not be authorized merely because it would benefit the trust. The court will approve a power of sale only where the circumstances are such that the real purposes of the trust would be defeated or seriously impaired unless the trustee be permitted to sell the property and convert the same to cash.

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> In Wingard v. Hennessee, 206 S.C. 159, 33 S.E. (2d) 390 (1942) this court held that a court of equity could provide for sale of land "in the case of reasonable necessity." An absolute necessity need not be shown. It is sufficient that a reasonable necessity be proven, such to be determined from the whole of the evidence . . . .

Id. at 111–12, 177 S.E.2d at 359. In the present controversy, the record supports a finding that a similar "bonanza or a windfall" exists with respect to the Residuary Trust property. See, e.g., **Ex.12**, 3/19/18 Boykin Dep, pp. 67–71; 212–13; **Ex. 13**, 10/13/17 Trust Meeting Summary; .

Just as in this case, the court in Ex Parte Guaranty Bank & Trust Co. found that "[t]he real intent of the settlor of the trust was to provide for the beneficiaries[,]" and that "[f]ailure to grant the relief sought in this action would defeat the overall purpose of the trust to provide for the beneficiaries and would be to their detriment." Id. at 112, 177 S.E.2d at 360–61. Petitioner, like the Court in that case, believes that the "[s]ale of the [Residuary Trust] property merely changes the form of the body of the trust. The beneficiaries will enjoy the income from the money and the ultimate distribution instead of enjoying the income from the land and its ultimate distribution." Id.

Numerous cases support the proposition that a court may deviate from the terms of a trust if, due to changed circumstances, the purpose of the trust is compromised. Davison v. Duke Univ., 282 N.C. 676, 194 S.E.2d 761 (1973) ("We are convinced that this perceptive and shrewd businessman, were he alive today, would direct the [trustees] to take immediate action to prevent erosion of the corpus of the trust in order to preserve the dominant purposes of the [trust]: to serve the needs and pay the expenses of its charitable beneficiaries."); See also Furman Univ. v. McLeod, 238 S.C. 475, 489, 120 S.E.2d 865, 872 (1961) ("It would be unfair to consider [the settlors] so short sighted that they never envisioned further growth, development and expansion."); Cutter v. Am. Tr. Co., 213 N.C. 686, 197 S.E. 542, 549 (1938) ("[I]n a case where the income of

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the trust property is insufficient . . . and the body if the [trust] is in danger of being lost entirely, the court will . . . preserve it as far as possible. . . . The directions of the settlor as to *methods of management* are of secondary importance. The primary consideration is the end which he had in mind, the benefits and advantages which he desired to confer upon the beneficiaries named.").

The authorities cited above, coupled with the evidence in the record cited herein, establishes that the Court should exercise its equity powers and those further outlined by the South Carolina Trust Code to require the Co-Trustees to take necessary steps to preserve and protect the Residuary Trust from waste and mismanagement. At a minimum, the Court should deny Respondent's motion for summary judgment as to Petitioner's fourth cause of action because the Court has yet to make a factual determination regarding the nature and extent of the changed circumstances impacting the Residuary Trust.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that Respondent Mary Deas Wortley's Motion for Partial Summary Judgment be denied.

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Charleston, South Carolina

June 15, 2018

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Exhibit 1
(4/20/18 Affidavit of Rigdon Boykin)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF KERSHAW	)	CASE NO: 2017-CP-28-831
IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	)	
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Petitioner, v. Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin Respondents.	)	**AFFIDAVIT OF RIGDON H. BOYKIN**

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Rigdon H. Boykin, being first duly sworn, deposes and says as follows:

1. My name is Rigdon H. Boykin. I am a citizen and resident of Boykin, South Carolina. I am over the age of eighteen (18), and I am competent to give the testimony set forth in this Affidavit.

2. I have personal knowledge of the matters contained herein.

3. I am a Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B (the "Trust").

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4. In August of 2016, at one of the first meetings of the Co-Trustees, I quickly realized that the illiquid and underproductive nature of the Trust's assets would most likely yield little or no "net income" for distributions to the income beneficiaries. It was also around this time that I informed my Co-Trustees, Mary Deas Wortley ("Wortley") and Alice Belger ("Belger"), that I was willing to consider having the Trust sell to them property that was important and/or sentimental to them. To that end, I agreed to have the Trust finance up to $1,500,000 to each of them for their purchases. As a result of this proposal, the Co-Trustees collectively began discussing converting 85% of the remaining Trust assets into liquid assets.

5. I suggested that during the period of determining the value of the Trust and converting land into cash to be invested in stocks and bonds, I would be willing to use the power to adjust to distribute $100,000 annually to each income beneficiary. This amount would be adjusted to a percentage of the value of the Trust, retroactive to the date of Alice Boykin's death and going forward, once the Trust value had been determined and the Trust was mostly liquid.

6. Now, after more than 20 months since the death of Alice Boykin, Wortley and Belger have succeeded in frustrating my attempts to diversify the Trust assets and in my opinion have refused to demonstrate a financial plan that would provide the return necessary for the income beneficiaries and remainder persons. In fact, there has been no analysis of the current or future financial status of the Trust whatsoever other than that produced through my efforts, with assistance from Jane Peacock, CPA. Those efforts and analyses appear to have been largely ignored by my Co-Trustees.

7. All three Co-Trustees have agreed that the value of the Trust, after the payment of estate taxes, is between $22,000,000 and $25,000,000. Prior to driving off the prospective purchaser of the Boykin Millpond and 12 acres and buildings at the Boykin crossroads, at the

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Co-Trustee meeting on April 12, 2018, I requested approval to increase the income beneficiary distributions to $180,000 per year retroactive to August 8, 2016, the date of Alice Boykin's death. Wortley and Belger voted against this proposition and voted in favor of a motion to pay income beneficiaries Whit Boykin and May Boykin $150,000 per year going forward, and to pay themselves $100,000 per year as income beneficiaries. I believe the provisions of the Trust require this difference to be made up in the future. This disagreement regarding the appropriate annual distribution to income beneficiaries is further reflected in the April 16, 2018 email exchange between Wortley's counsel and me, attached hereto as **Exhibit 1.**

8. Now that the potential sale of a largely unproductive asset (the Boykin Millpond & Downtown Boykin properties) for over $4,700,000[1] has been driven off by Wortley and Belger,[2] it is evident that a continuation of the Trust in its present posture will result in a rapid depletion of the Trust assets.

9. It was clear to me that my Co-Trustees did not have any conception of the financial consequences of continuing to operate the Trust assets as had been done in the past, and that they had no interest in looking at or implementing a shift in management strategy. Consequently, I undertook with the help of Jane Peacock, a CPA who had been working on the Trust, to develop a comparison of the effects of continuing business as in the past versus diversifying the assets and investing in the stock and bond markets. Attached hereto as **Exhibit**

[1] On April 15, 2018, I was informed by the prospective buyer that they would increase the price 20%, which was confirmed in writing in the email of April 18, 2018 informing Petitioner that they were withdrawing the offer. That email was attached to my counsel's April 18, 2018 letter to the Court. The prospective buyer stated to me: "As discussed on April 15th, I assured you we would satisfy Mr. Bundy's request of an increased price of 20% in lieu of removing a few of the other requests that we would not be able to satisfy due to regulatory restrictions."

[2] Attached hereto as **Exhibit 2** is an April 17, 2018 from the prospective purchaser's counsel to Belger's counsel, which provides the prospective purchaser's explanation for why it was forced to withdraw its offer under the Option Agreement. I received a copy of this letter on April 20, 2018.

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3 is the comparison that was prepared and given to my Co-Trustees on April 2, 2018.[3] Discussion of this comparison was an agenda item at the April 12, 2018 Co-Trustee meeting, but this agenda item was ignored by Wortley and Belger.

10. The critical aspect of the comparison for me is the fact that under the "Business as in the Past" scenario, the Trust asset value will decrease each year by $800,000 to over $1,000,000 per year for the first five years, and then over $1,000,000 per year thereafter. Under the "Land Sale Option" scenario, the asset value would decrease $930,000 in year one, and would turn positive in year four. By year five, the Trust would be generating an increase of $330,000 in asset value. Both comparisons envision a distribution of $180,000 to each income beneficiary per year.[4] My Co-Trustees have agreed to sell a limited amount of property. But, as the analysis in **Exhibit 3** demonstrates, all of the proceeds (and more) will be required to make up cash deficits.

11. Therefore, it appears to me that the only responsible option open to me, so long as the Trust is generating a return of less than 50% of a reasonable average return, is that the Co-Trustee/income beneficiaries should be treated as if the retention of the land is their income distribution. Consequently, for the foreseeable future, I believe Whit Boykin and May Boykin, the non-trustee income beneficiaries, should receive $180,000 per year and Wortley and Belger should receive the psychic return of retaining the land they are refusing to sell.

12. My Co-Trustees have rejected the proposed Option Agreement, and have told the potential buyer under the Option Agreement that if there were an order directing the execution of the Option Agreement, they would appeal all the way to the Supreme Court thereby preventing a

[3] **Exhibit 3** contains four documents: (1) Accountant's Letter; (2) "Business as in the Past" Illustration; (3) "Land Sale Option" Illustration; and (4) Business as in the Past vs. Land Sale Option – Summary and Comparison.

[4] In the "Land Sale Option" scenario the distributions would increase slightly as the asset value grows over time.

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sale for years. Based on my experience, buyers like this are extremely rare, and the odds of finding another buyer willing to pay $4,700,000 for this asset is probably less than one percent.

13. Attached hereto as **Exhibit 4** is a rough analysis that I gave on March 19, 2018 to my Co-Trustees, which outlines the benefit to the Trust of selling the Boykin Millpond and related buildings. Aside from the fact that it would enable the Trust to avoid the expense of repairing the dam and doing the neglected maintenance on a number of buildings, the sale would generate approximately $150,000 per year more than retaining the property.[5] As with other analyses, my Co-Trustees have ignored this one, as well.

14. I have made a number of attempts to reach a settlement with my Co-Trustees. However, the illiquid nature of the Trust assets makes it very difficult to reach a settlement in the absence of the cash that would be generated by the proposed Option Agreement. As an example, attached hereto as **Exhibit 5** is one such proposed settlement or resolution offer, which I sent to Wortley's counsel on January 29, 2018. This proposal envisioned splitting the Trust into two trusts: one for Whit Boykin and May Boykin that would, over time, sell all of the land assigned to it and invest the proceeds in the market; and one for Belger and Wortley that would keep most of the land they wanted in Kershaw County. I fully realized that the split would result in the combined trusts retaining approximately 50% of underproductive land, but I was willing to consider such a settlement if it were blessed by all the income and remainder beneficiaries, as well as approved by the Court. In addition, I felt the reality of generating no net income would eventually cause a sale of many of the properties.

FURTHER AFFIANT SAYETH NOT.

[5] This rough analysis was drafted prior to the prospective purchaser's increased offer of an additional 20% from the original purchase price.

RIGDON H. BOYKIN

SWORN to before me this
20th day of April, 2018

Notary Public for South Carolina
My commission expires: 9/30/23

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Exhibit 2
(1/16/18 Affidavit of Rigdon Boykin)

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF KERSHAW	)	CASE NO: 2017-CP-28-831
	)	
IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	)	
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Petitioner, v. Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin Respondents.	)	**AFFIDAVIT OF RIGDON H. BOYKIN**

PERSONALLY APPEARED before me Rigdon H. Boykin, who being duly sworn does state as follows:

1. My name is Rigdon H. Boykin and my address is address is 1626 Sumter Highway, Rembert, South Carolina 29128.

2. I am the only non-beneficiary, disinterested Co-Trustee of the Lemuel Whitaker Boykin, II, Residuary Trust (the "Residuary Trust"), which was created pursuant to Item VIII of

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the Lemuel Whitaker Boykin Last Will and Testament, dated June 2, 1989. The other Co-Trustees are Respondents Alice Belger and Mary Deas Wortley.

3. To assist me in the performance of my duties as Co-Trustee, I have necessarily engaged the services of the attorneys Richard S. Rosen and Liam D. Duffy at Rosen, Rosen & Hagood, LLC of Charleston, South Carolina, who have also engaged James C. Hardin, III of The Law Offices of James C. Hardin, III to advise and assist as an expert consultant in this matter.

4. I am submitting this affidavit in support of the Motion to Authorize Sale of Trust Property simultaneously filed in this matter.

5. At the time of Alice S. Boykin's death in August 2016, it was clear to me that there was the potential for a huge difference of opinion among the Co-Trustees and among the income beneficiaries of the Residuary Trust regarding the need for diversifying the assets held by the Residuary Trust.

6. Respondent Belger for years had made it clear that she wanted to own or control most of the land in Boykin. Respondent Wortley for years had advocated putting the Boykin Millpond into a nature conservancy entity. Respondents Whit Boykin, III ("Whit") and May Cantey Boykin ("May"), who have no issue and are unlikely to have issue only wanted the assets to be diversified to reduce risk, and wanted the Trust to be managed pursuant to the prudent investor rule.

7. In an attempt to avoid a huge fight, at the first or second meeting of the Trustees in August of 2016, I suggested that Respondents Wortley and Belger might want to purchase land from the Trust. I also stated that I was prepared to have the Trust loan each of them up to $1,500,000 to help them finance their purchases. They were also told that since this was a self-dealing transaction, the purchase and loan would have to be approved by all the beneficiaries and

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perhaps also by a Judge. I had already cleared this offer with Respondents Whit and May, the other two income beneficiaries. Everyone was also told that the price would have to be "fair market value" as set by a qualified appraiser.

8. Respondents Wortley and Belger expressed great interest in this proposal. Respondent Wortley said she wanted to buy the Boykin Millpond and a buffer around it and perhaps some of the property and buildings in downtown Boykin. She expressed an interest in donating an easement or the fee of the Boykin Millpond to a conservation organization. Respondent Belger wanted to buy the house L.W. Boykin, II ("Whit Sr.") lived in at the time of his death ("Millway") and as much of the land around it that she could afford.

9. Consequently, I hired Charleston Appraisal Service, Inc. who were experienced in these types of appraisals, to appraise the various parcels that were of interest to Respondents Wortley and Belger.

10. During this period, extending for the first four months after Alice Boykin's death, Trustee meetings went fairly smoothly and included discussions about the need to diversify assets including a vote to sell some of the "Treasured" pieces of land included in the precatory language in Whit Sr.'s will. The Trust did sell a small piece of the treasured land – approximately 6.8 acres for $15,000 per acre.

11. It very quickly became apparent that Respondent Belger did not appreciate the meaning of "fair market value" and thought that she should be able to buy the property at farm tax valuations or less. At one point she said she should be able to buy the land for $1,300 per acre. Much time was spent in very emotional Trustee meetings where Karen Thomas, counsel for the Estate of Alice Boykin, and I tried to explain fair market value and urged Respondent Belger to hire counsel to give her independent advice regarding the concept.

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12. Over time, as Respondent Belger began to understand that she would not be able to buy anywhere close to the amount of land she wanted based on the fair market value, Trustee meetings became more and more contentious and Respondent Belger began changing her previous votes to sell land, including the Treasured pieces that had been previously authorized by unanimous vote.

13. In February of 2017, the appraisers began releasing their reports on the various parcels of interest to Respondents Wortley and Belger and meetings became even more contentious as Respondent Belger studied what she wanted to buy. In the meantime, Wortley accepted the appraisal value and continued to state she would buy the Boykin Millpond and a buffer area around it. Also by that time it was becoming very clear to everyone that we were probably going to have to apply to the Probate Court for direction on whether Trust assets would have to be diversified and voting requirements (for example if there was a unanimous vote to sell something, did that vote stand unless there was a unanimous vote to change it?).

14. After months of study , Respondent Belger at a trustee meeting on March 23, 2017, said she had decided against buying any of the Trust land and would not vote to permit Respondent Wortley to buy the Boykin Millpond land. Respondent Belger hired litigation counsel and began to resist sales of property other than commercial property.

15. Respondent Belger's only plan going forward was to continue keeping the farm land and almost all of the timber land. On May 12, 2017 Respondents Belger and Wortley came to the Trustee meeting without a plan for how they were going to generate the income necessary for reasonable distributions to the income beneficiaries, pay expenses, and grow the corpus for the benefit of the remainder persons. At that meeting they again promised to deliver a plan. However, they then began refusing to schedule Trustee meetings and cancelled meetings for

approximately the next five months. Trustee meetings did not begin again until a Motion to Establish Complex Case Designation was filed on October 3, 2017. On October 13, 2017, a meeting of the Trustees was held after a five month stonewall by Belger and Wortley.

16. During the summer stonewall, I began trying to come up with ways to break the impasse and perhaps reach a settlement. The primary problem in achieving success was that the Treasured pieces of land constituted over 50% of the value of the Trust.

17. In the 1980's, I lived in Bedford Hills, New York and was the founding Chairman of the Westchester Land Trust in Westchester County, New York. That experience taught me about conservation stewardship, as well as land gifts and monetary gifts for the purpose of purchasing land worthy of being preserved in its current condition. Utilizing this experience, I began exploring contacts in the land preservation world to see if there were conservation donors that might be willing to purchase the Boykin Millpond and donate it to a land conservation entity.

18. I found a possible donor in September 2017 that said the existence of the rookery on the Boykin Millpond might be significant enough that it would entertain the proposal. Over the next few weeks, I met with the donor numerous times and was finally able to negotiate the option agreement that is the subject of the Motion to Authorize Sale of Trust Property.

19. This Option has three primary benefits.

a. It will preserve the land for posterity and because of the rookery, public access will be restricted other than a viewing area;

b. It is an above-market price which will give over $4,000,000 to the Trust and the Trust could avoid an expenditure of over a million dollars in dam remediation and repairs to the buildings with no foreseeable possibility of earning a return; and

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c. Most important of all to me, is that it provides the liquidity to enable a potential compromise of the two factions by splitting the Trust into two trusts. One trust would be for the benefit of Respondents Belger and Wortley and would consist of all the remaining Treasured tracts and the rest of the land around the Boykin area that Respondent Belger has indicated she would like to retain. The other trust would be for the benefit of Whit and May and would contain the rest of the land. The cash, including the proceeds from the exercise of the option, would be used to equalize the value of the two trusts. This second trust would sell most of the land and be administered in a prudent fashion. Upon the death of the income beneficiaries, both trusts would be distributed to any remaining issue, per stirpes.

20. Conservation donors are very rare and have thousands of requests for their money. So far, the prospective Donor has been very patient but is now telling me they need to have a final decision by the Trust or they will move on to one of the many of the other projects they have been considering.

21. I hereby respectfully request that the Court review the file herein, together with the other exhibits filed in support of the motion, and enter an Order authorizing the sale of Trust property which is the subject of the Motion to Authorize Sale of Trust Property, and requiring the Co-Trustees to approve the Option Agreement to purchase the Boykin Millpond and/or additional property in downtown Boykin, South Carolina owned by the Trust (or portions thereof).

FURTHER AFFIANT SAYETH NOT.

Rigdon H. Boykin

SWORN to before me this
16th day of January, 2018.

Notary Public
My commission expires: July 26 2023

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Exhibit 3
(8/16/18 Email from Wortley to Peacock)

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ELECTRONICALLY FILED - 2018 Jun 15 6:03 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: Jane M. Peacock
To: mary wortley
Subject: RE: Service today
Date: Tuesday, August 16, 2016 5:37:00 PM

Mary Deas,

That is hard news and a lot of sadness to pile on top of the great loss that you already have. Such hard decisions, but all in the context of taxes and beneficiaries who will be relying on the plan to produce enough income to support them. Hopefully you will be able to acquire what you hope to preserve and 'come home' to. So much of the meaning of a place is the people, however you also have the rich and long history of Millway that you probably feel responsible for. The passage of some time will help you find confidence in whatever decisions you make. You'll continue to be in my thoughts. (Perhaps you could work out some kind of tax-advantaged conservation easement to help offset the burden of the purchase.)

Glad for the discount for the reception. Will pay the bill whenever it gets down here. Talk with you soon.
Jane

Jane M. Peacock, CPA
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From: mary wortley [mailto:marydeas@hotmail.com]
Sent: Tuesday, August 16, 2016 5:08 PM
To: Jane M. Peacock <JPeacock@shgcpa.com>
Subject: Re: Service today

Thank you for your nice note which I just now found. (My emails got neglected in the last day or so.) I'm so glad you went to the service. I knew you would appreciate Marty's eulogy and Bertha's spirituals! I know Alice would have loved them too.

Just between you and me, The trust meeting was a shocker. Basically we are told to sell practically everything to get liquid. Can't keep anything that doesn't produce income. Even Millway. Even my beloved Millpond. I am going to try to use whatever $ I inherit to buy the Millpond and some surrounding land to protect it. Trying to work out how to get everything settled fairly. It's mind-boggling.

Got a bill from Mark Price for the funeral reception. (very fair. He gave us the discount he always gave Alice). I'll bring it by.
MD

Sent from my iPhone

On Aug 13, 2016, at 2:39 PM, Jane M. Peacock <JPeacock@shgcpa.com> wrote:

> Mary Deas and Alice, the service today was so special...best eulogy ever, fascinating homily and wonderful music. Alice would have been pleased!
>
> Regretfully, with the heat and dark clouds, we decided not to ride out for the reception. I was looking forward to meeting more of your family, and told Tom I would come, but I'm just not too good with heat or crowds. Thank you for extending the invitation.
>
> Hope to work on some historical expense info for Rigdon this afternoon and will talk to you both soon. Cherish this time with your family!
>
> Best,
> Jane

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Exhibit 4
(9/27/16 Email from Wortley to Peacock)

ELECTRONICALLY FILED - 2018 Jun 15 6:03 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: mary wortley
To: Jane M. Peacock
Subject: Re: Two attachments
Date: Tuesday, September 27, 2016 9:41:57 AM

Jane you are a wonder. Thank you for taking the time to write that letter to Mackey---it's perfect. Please go ahead and send it. Also thanks for getting the water bill paid in the nick of time. I suppose I should go talk to him when I come back and find out why he hasn't been paying, and ask him to do better (and to reimburse the trust if he hasn't by then)

And thanks for the list of renters for the appraiser (Jimmy Carter---an easy name to remember!)---that's a big help. I'm glad to have that list too---

So happy that you had good family time last weekend. Nothing beats that, does it! I'm gearing up to stay with my 3 grandkids in Ft Wayne while my son and his wife go off to celebrate their 20th anniversary. Can't wait! I'm planning to come back to SC after that---around the end of Oct. I figure some of these endless number of appraisals will be done by then, and there will be plenty of hard decisions to make about selling properties.

Take care---MD

From: Jane M. Peacock <JPeacock@shgcpa.com>
Sent: Monday, September 26, 2016 9:10:13 PM
To: mary wortley
Subject: Two attachments

Mary Deas,

I have tried to pull together the info that you need. The attached Excel schedule may include more than is needed, so let me know how you may want it revised.

Also attached is a letter I propose to send to Mr. Mackey regarding utility bills for the Lark Bldg lot in Lugoff. I called L-E Water Authority today to find out where the water bill stood and found that it was to be cut off today if not paid within 25 minutes. I got that done, but want to make some effort to get those bills reimbursed. Alice said Wayne is not a part of that picture anymore and Rigdon is not a trustee of that trust, so if this letter is something you wish to be sent, please let me know. You may want to wait and handle it when you get back in town. I'm fine either way...and I know sometimes a personal touch gets better results.

We actually want to Johns Island to keep the boys for Friday night. We had a great time...so good to get those little hugs!

Thanks,
Jane

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Exhibit 5
(1/2/17 Email from Wortley to Peacock)

ELECTRONICALLY FILED - 2018 Jun 15 6:03 PM - KERSHAW - COMMON PLEAS - CASE#2017CP280831

From: mary wortley
To: Jane M. Peacock
Subject: question
Date: Monday, January 02, 2017 10:32:03 AM

Hi Jane----Are you working today? It's supposed to be a holiday, and I hope you are at home catching your breath. But I know you, and I suspect, if your gang has gone back home, you'll be working away. In any case, when you have a minute, I have questions about paying rent. (Little Alice, Whit, and myself on our houses) Has Rigdon talked about this with you? And if so, do you know what we each owe? Do we make out our checks to Resid Trust A and send them to you? And I am just wondering, for L Alice and myself, since we aim to buy our houses, could our rents be applied toward the eventual purchase ? (like a sort of rent-to-own deal? That might wind up making a significant difference, if the appraisal process continues to drag on and on, especially in L Alice's case) What do you think?---feasible, or not? Yours is the brain I trust the most!

Happy New Year (one can only hope!)

Love, MD

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Exhibit 6
(2/26/18 Belger Dep., pp. 136-37, 151-52)

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A. Egrets.
Q. Egrets and the ---
A. Ducks.
Q. -- wood storks and ---
A. Ducks. All wildlife.
Q. All the bird and wildlife; right?
A. Yes.
Q. That's a rookery, is it not?
A. I don't know about last year. It was not a rookery last year.
Q. But prior to last year when the dam had some problems and the water level dropped, it was a pretty important rookery, was it not?
A. Yes.
Q. And I believe that rookery was blown in here from the coast during Hugo? Hadn't always been there, had it?
A. It had been there before that.
Q. Okay. Is there -- do you -- do you attach some significance to providing for the preservation of the wildlife in the Boykin Mill Pond; do you put some significance on the importance of doing that?
A. If it benefit all, yes.
Q. All of who?
A. Remaindermen and beneficiaries.
Q. Can you give me an example of how it would not benefit

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everybody including the remaindermen?
A. The remaindermen love the pond.
Q. The remaindermen being the children of Mary Deas and your daughter?
A. Yes.
Q. Okay.
A. And even their children love the pond.
Q. Okay. So, you're saying that's a benefit they would realize from maintaining the pond?
A. It's a benefit of their -- their benefit.
Q. Okay.
A. It benefits Whit. It benefits May. Benefits me. Benefits Mary Deas. And the grandchildren.
Q. In the last several years that you've been co-Trustee, can you tell me how many times Mary Deas' children have visited the pond?
A. I'm not sure how many times.
Q. Less than five?
A. Well, it's about a year and a half.
Q. Since they've been there?
A. Well, about a year and a half, my mother -- since my mother, they have come, but -- they have their own lives; they have children that have to go to school. They have -- they have obligations.
Q. Do you know how old ---

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A. Well, one -- two of them are in Washington, outside of Washington. One is in Indiana. Mary Deas is in Ohio.
Q. The ---
A. And my daughter is in Char -- in Clemson.
Q. The remaindermen would have the right to sell any of the Trust assets if they wanted to, would they not, if they had them?
A. You know, I -- I'm assuming they could.
Q. So, if I understand your testimony, as -- back of -- before Christmas, you were -- the Trustees were presented with the idea of granting an option on -- on the property described in the Option Agreement; is that correct?
A. Yes, but this is an -- absolute -- absolute sale.
Q. Sorry?
A. This is an absolute sale. You're -- you are not -- there's no terms, and I don't believe that my sister would sign over her half of her property.
Q. Okay. You -- looking at Plaintiff's Exhibit Number -- is that Number Three, I think?
A. I think Four.
Q. Number Four. Okay.
A. No, Three.
Q. Looking at Plaintiff's Exhibit Number Three, you're saying that is an absolute sale; is that what you're

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saying?
A. Yeah. It would be out of the family.
Q. All right. Is that an absolute sale or is that an option to purchase it?
A. Supposedly, it's a sale. The reason --
Q. Do you know the difference between an option purchase -- an option to purchase and an absolute sale?
A. It's an option to buy -- buy it, but I don't think my sister will sign this at all.
Q. Have you discussed it with your sister, Mary Deas?
A. Yes.
Q. When did you discuss it with her?
A. A couple weeks -- a couple days ago.
Q. And when you discussed it with her, did you have the Option Agreement with you at that time?
A. Yeah, I think I did.
Q. Okay. Had you had time to review the terms of the Option Agreement before you discussed it with Mary Deas?
A. Yes.
Q. To your knowledge, had she been provided a copy of the Option Agreement to consider signing?
A. I think she had -- I'm not sure what she has.
Q. Back before Christmas, I think you mentioned October,

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you all were presented with the idea of Mr. Boykin trying to get an Option Agreement; is that correct?
A. We discussed it, but we had not went through all avenues of anything.
Q. Did y'all -- did y'all discuss it in a Trustee meeting?
A. Yes, we have. He just provide us what terms we want for -- in option. He did not provide us a letter of -- of disclosure between this individual -- individual or anything.
Q. Well, the only ---
A. He just presented this and said, "This is the Option."
Q. Was this -- was this done in a Trustees meeting in Karen Thomas' office?
A. I think so.
Q. And who all was present when the -- the issue of an option came up?
A. Mary Deas was on the telephone speaker. Jamie ---
Q. Her attorney, Mr. Becker?
A. Mr. Becker was there. Bill Bundy was there.
Q. And you were there?
A. Yeah, and Rigdon.
Q. And Rigdon was there?
A. Yeah.
Q. Had anybody invited input from May or Whit?

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A. No, we were just talking about what we could do. We did not discuss it with anybody.
Q. Had -- has May or Whit every been invited to a Trustee meeting?
A. (Witness shakes head negatively).
Q. That's a yes or no.
A. No.
Q. Okay. What was your understanding as to what Mr. Boykin was presenting at that first Trustee meeting?
A. I actually don't remember all the details.
Q. During that first Trustee meeting when this issue came up, did you at that time tell him under no circumstances you would agree to anybody purchasing either one or two or any of the parcels listed in the Option Agreement?
A. That's right.
Q. You did tell him that at that time?
A. Uh-huh (affirmative response).
Q. You have to say yes. I'm sorry.
A. Yes.
Q. This lady is going to get a switch to us if we don't say verbally. So, -- but what I understand you're telling me, when the issue or the opportunity to discuss an Option to Purchase the optioned property, at that time, you decided you weren't going to

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or after it's been clear-cut?
A. Well, most people that's in Sumter County are very less educated about the timber -- what timber they have on their property, and most of the time, timber -- timberland goes cheap.
Q. And you all own I think the Sumter property has a couple thousand acres in it?
A. I -- the largest tract is about a thou -- over a thousand.
Q. Other than the Lancaster County property, what other property would you consider putting on the market to sell?
A. Molly Creek.
Q. Beg your pardon?
A. Molly Creek.
Q. Molly Creek. How many acres is that?
A. Two hundred and ten (210).
Q. What county is that in?
A. Fairfield.
Q. Is that the only piece of property in Fairfield County?
A. Yes.
Q. And what value do you put on the Molly Creek property?
A. They'll -- there were several individuals bought large tracts for -- for low -- low prices; so, it's probably

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going to be low.
Q. Okay.
A. But the remain -- the remaining timber is probably Seventy Thousand ($70,000), Seventy-five Thousand ($75,000.00) or Seventy-seven Thousand Dollars ($77,000.00) worth of timber.
Q. Is it my understanding that you want to sell or you will consider selling all the land owned by the Trust with the exception of the treasured property mentioned in your daddy's Will?
A. And -- and -- and the surrounding land is not -- it was purchased after my father.
Q. Do you know what the income the Trust generated in 2017 from timberland, including timber sales? Just timberland and timber sales.
A. A little bit over Six Hundred and Thirty-six Thousand Dollars ($636,000.00).
Q. Looking at Jim LaFrage's projections, he projected timber sales, net timber sales, for fifteen (15) years, and it looks like they averaged a little over Four Hundred Thousand Dollars ($400,000.00) a year. Do you want to look at that again if you can find it? Do you want to look at that again? This is not in the actual Exhibit, but -- I've got it right here. Look at that. If I take the total income, net income from

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the projections of Jim LaFrage, I get Six Thousand Nine Hundred ($6,900), Eight Hundred Twenty-two Dollars (822.00); if I divide that by fifteen (15) years, I get Four Hundred and Sixty Thousand Dollars ($460,000.00) a year income generated.
A. We also have hunting rights and farm -- and ---
Q. Farm leases?
A. Farm leases.
Q. Okay. All right. And I don't see where he considered the capital gains taxes on that property. Now, are there some variables in the expenses do you know of such as chemical costs or any management costs, fees that would maybe will go up? Would you agree -- let me actually rephrase that. Would you agree with me that the expenses are predicted but not actually subject to real close predictions; it could change daily?
A. I'd have -- I'd have to ask Jimmy LaFrage.
Q. Yeah. Your husband is a farmer; right?
A. Yes.
Q. And would -- would it be fair to say with your experience and your husband farming that the expenses of farming are variable?
A. It varies.
Q. Beg your pardon?

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A. It varies.
Q. Based on the price of petroleum, mainly; is that right?
A. Yes.
Q. Price of seed?
A. Yes.
Q. All right. So, were there any further discussions after y'all's initial discussion in late 2017 about executing the Option Agreement or you just said -- no sense in bringing it back to me?
A. I -- I think the original option had everything in there.
Q. All right. Because, from what I understand, you're telling me is that they could have brought you an option for a Million Dollars ($1,000,000.00), and you would not have agreed to sell the Mill Pond?
A. This ---
Q. Is that -- is that -- is that an accurate assumption?
A. At the time he presented it to us in the Trustee meeting, at this time, we did not need to -- we did -- we didn't need it.
Q. Do you envision a time that you will ever have to be faced with the possibility of having to sell it?
MR. BUNDY: Object to the form of the question.

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Q. In your investment strategy plan, is there a part of your plan to eventually sell this?
A. No.
Q. Not ever?
A. No.
Q. Do you know -- no, I'm sorry, was Mary Deas a party to y'all's discussion in the Trustee meeting when this first came up?
A. Yes.
Q. I think you said she was on the telephone?
A. Yes.
Q. Is that fair to say?
A. Yes.
Q. Did you have any other discussions after that initial meeting with Mary Deas about whether or not the agreement should be signed?
A. I don't think she understood what easement is. But basically, I think she understands about an easement, but I don't think she realized this; she is -- that this easement would -- is not friendly to the family.
Q. Had this property been appraised prior to you all considering the easement prices?
A. It was appraised by Rigdon Boykin.
Q. Anybody else?
A. By Charleston Appraisals.

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Q. Okay.
A. And he had them chop it up like a piece of pie.
Q. Looking at the Page Ten of the Option Agreement, it indicates that the Boykin Mill Pond which includes half interest in Miss May's cottage is worth Two Million, Eight Hundred Sixty-one Thousand Forty-eight Dollars ($2,861,048.00). Would you consider that a fair price?
A. (This is a chop-up, and I know that my sister would not sign it now, this Option.)
Q. And she represented that to you as late as two days ago?
A. (Yeah. Probably last -- last night. The night before.)
Q. Last night. And is she taking the same position that you are, that under no circumstances, will you sign an agreement to sell the Mill Pond?
A. (I don't think it will benefit the remaindermen if this goes out of the family.)
Q. Isn't it true that it could go out of the family once the remaindermen inherit it?
A. (I don't know. I can't speculate.)
Q. Is there anything that would keep it in the Boykin family in the Will?
A. (Yes.)
Q. Past the remaindermen, past your children, past Many

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(Deas' children?)
A. It could be put in a family endowment. That was put in -- in for the future -- for the future.
Q. And I understand that between now and then, Mary -- I mean, the four beneficiaries for their lifetime will be taken care of by the Trust; is that correct?
A. Yes.
Q. Okay. What is your position about selling the commercial properties located in what we call downtown Boykin; do you take the same position that you never want to sell it?
A. It's in a heritage. It's in -- in preserve for the family.
Q. So, you -- you take the position that you want it to be preserved for the Boykin family and never sold; is that accurately stated?
A. Yes.
Q. Yes. Okay. And once again, to make sure I understand what you're telling me, is that there were no real discussions about selling this property listed in the Option Agreement after the initial Trustee meeting?
A. We have dis -- I have discussed it to Mary Deas. I think Rigdon has brought it up several times in meetings.
Q. Have you been presented with the signed Option

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Agreement to sign?
A. No. Until now.
Q. Are you saying this is the first time you've ever seen that signed Option Agreement?
A. Yes.
Q. No one has provided you a copy of the signed Option Agreement until today?
A. Yes.
Q. That is your testimony?
A. Yes.
Q. Well, what did you discuss with Mary Deas last night? Did you discuss the signed Option Agreement or the unsigned Option Agreement?
A. I discussed that -- that I would not do this because it's robbing the grandchildren of their heritage.
Q. If I understand what you're saying, you aren't going to consider signing the Option Agreement, signed or unsigned; right?
A. Now, what I understand, that she will not sign this.
Q. And that's your position, too?
A. Yes.
Q. Okay. What, if anything, does Rigdon Boykin stand to gain as being a Trustee of the Trust?
A. I believe he has land that's for sale that -- that -- that has -- bordered us.

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Q. Is he an income beneficiary of the Trust?
A. No.
Q. Is he going to inherit any land from the Trust?
A. No.
Q. Is he going to get anything under the Last Will and Testament of your dad?
A. No.
Q. Why is he not a Disinterested Trustee?
MR. BUNDY: Object to the form of the question.
Q. Go ahead and answer it.
A. Why -- he has influenced my brother and my sister to not talk to us.
Q. Would you like to talk to them?
A. Yeah.
Q. Is that a no?
A. I said yes.
Q. Oh, I'm sorry. I've got to where I have a hard time hearing.
A. Sorry.
Q. Would you like to talk to May?
A. Yes.
Q. About your investment strategy for the Trust?
A. I'd like to -- I'd like to know why she wants to sell everything.

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Q. Okay. Would you be interested in talking to Whit about your plan for the Trust?
A. Well, I think he made up his mind a long time ago.
Q. Would you be interested in talking to him about ---
A. Yes.
Q. -- your plan?
A. You know, in -- in a Trust meeting.
Q. Sorry?
A. If he wants to come to a Trust meeting, we'll set up a time.
Q. Would he -- would you be willing to invite Whit to a Trust meeting, Trustee meeting?
A. If he wants to come.
Q. So, the answer is yes?
A. Yes.
Q. Would you be willing to invite May to a Trustee meeting?
A. Yes, if they want to come.
Q. Okay.
A. But a Trustee meeting is supposed -- you know, they have not come before me and asked what we're going to do at all. Every time I talked to him, he was angry.
Q. Ms. Belger, are you aware of the fact that you have filed a Counterclaim against Rigdon Boykin?
A. Yes.

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Q. And I'm going to show you this document here and have it marked. I'll have it marked and show it to you.
MR. TETTERTON: Any objection to me marking this?
MR. BUNDY: No. Not at all.
COPY OF ANSWER AND COUNTERCLAIM MARKED PLAINTIFF'S EXHIBIT NUMBER FIVE.
Q. I'm going to show you what's been marked as Plaintiff's Exhibit Five.
MR. TETTERTON: Do you all want to take a break and look at it?
MR. BUNDY: We'll go outside.
VIDEOGRAPHER: Off the record, 3:39.
(OFF THE RECORD).
VIDEOGRAPHER: On the record, 3:51.
EXAMINATION BY MR. TETTERTON CONTINUED:
Q. Ms. Belger, while you were out or actually before you went out, we gave you Plaintiff's Exhibit Number Five which is designated as Respondents, Mary Deas Wortley and Alice Boykin Belger's Answer and Counterclaim to Rigdon H. Boykin's Petition, and I think you had the opportunity to go out and review that document with Mr. Bundy, did you not?
A. Yes.
Q. When did you first see this document?

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A. I had not seen the final stage until a couple days ago.
Q. The final document before it's filed was ---
A. I'd seen rough drafts.
Q. Did you ever see the final draft before it was filed?
A. Since, yes, sir.
MR. BUNDY: I think we're getting into attorney/client privileged documents that provided to her a work product. So, I -- I'll tell her not to answer.
Q. Did you see the document, Exhibit Number Five, before it was answered -- I mean, before it was filed?
A. I'm not sure.
Q. All right. Let's look at it. You've had the opportunity to review it; right?
A. (Witness shakes head affirmatively).
Q. Yes?
A. Yes.
Q. She's going to give us a spanking. All right. And ---
A. I think I got to read it three times.
Q. I understand that. And it indicates that it's also the Response of Mary Deas Wortley. Did you and Mrs. Wortley discuss this document, what you all were going to allege in the Counterclaim?
A. I think both of us prepared our -- our -- our

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Exhibit 7
(11/9/17 Email from Wortley to Peacock)

ELECTRONICALLY FILED - 2018 Jun 15 6:03 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

ELECTRONICALLY FILED - 2018 Jun 15 6:03 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: Jane M. Peacock
To: mary wortley
Subject: RE: heritage statement LWB marital trustB- Oct
Date: Thursday, November 09, 2017 6:25:32 PM

Mary Deas,

You did give me (and e-mailed me) USDA paperwork for the payments that came back in July/August, totaling the same amount....a delayed payment of the prior year, perhaps. In fact, I was supposed to return those papers to you and ended up with them in my possession. It's possible the USDA paperwork will follow the payment, which hit the checking account on 10/10.

So glad some progress was made today! Rigdon has spoken with me some about the Millpond property opportunity (with no names attached to the conversation). I have tried to throw in as many hints to Alice as I dare about the good aspects of that opportunity and how important it is to look at long-term goals and how it may accomplish them...could not speak directly on point because it is not really my place. Unfortunately opportunities like that could go away overnight. I know someone must have come away from the meeting very frustrated from that result today.

I'll be praying for you and Tommy, and especially as the 28th nears and passes. Do hope the possibilities become reality and Tommy can get some strength back.

Take care,
Jane

Jane M. Peacock, CPA
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From: mary wortley [mailto:marydeas@hotmail.com]
Sent: Thursday, November 09, 2017 5:08 PM
To: Jane M. Peacock <JPeacock@shgcpa.com>
Subject: Re: heritage statement LWB marital trustB- Oct

I think I did get a letter, and I thought I'd emailed it to you. But can't be sure. I'll look for it. Hope I can find it---if not I call & ask them.

by the way---we had a productive trust meeting today. We agreed to sell several properties. There is a big issue concerning the Millpond and downtown Boykin brought up by Rigdon which L Alice doesn't want to consider but I do--- I hope we can eventually get her to consider it. I'll tell you about it when I see you.

Tommy is going to get a special device --a 3 lead type pacemaker to synchronize his heart beats (which aren't in synch now due to something he has called a "left bundle branch block"---a condition which doesn't affect you when you're young and strong, but does when you are old and your heart is weakened)

ANYWAY--- the Doc believes it will strengthen his heart by 15 or 20 percent, significantly improving his strength and how he feels. The surgery (minor) is scheduled for the 28th. We are very hopeful about it.

AND I hope he will be up to a trip to SC in time for the Christmas Parade.

Take care---MD

From: Jane M. Peacock <JPeacock@shgcpa.com>
Sent: Thursday, November 9, 2017 1:04:54 PM
To: mary wortley
Subject: RE: heritage statement LWB marital trustB- Oct

Question for you…on the bank statement you sent me, there is a direct deposit from FSA for $7,448. Are those dollars for CRP payments? October is the time when those normally come in, I believe.

If you rec'd some type of letter related to that, I would appreciate having a copy when you get a chance.

Thank you.
Jane

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From: mary wortley [mailto:marylea@hotmail.com]
Sent: Thursday, November 09, 2017 12:20 PM

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Exhibit 8
(1/27/18 Email from Wortley to Peacock)

ELECTRONICALLY FILED - 2018 Jun 15 6:03 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

ELECTRONICALLY FILED - 2018 Jun 15 6:03 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: Jane M. Peacock
To: mary wortley
Subject: RE: heritage LWB MTB Dec
Date: Saturday, January 27, 2018 2:14:26 PM

I'll look forward to your sharing whatever is appropriate when we get a chance to speak, Mary Deas. I have heard some from both Alice and Rigdon. The overriding statement from both was how fortunate all are to have Justice Toal in the process. Both stated, as you, that there is a ton of work to do. Alice didn't mention anything about compromise, so I'm glad to hear that she is willing and understands that anything less is not an option.

Have a great weekend!
Jane

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From: mary wortley [mailto:marydeas@hotmail.com]
Sent: Saturday, January 27, 2018 2:07 PM
To: Jane M. Peacock <JPeacock@shgcpa.com>
Subject: Re: heritage LWB MTB Dec

Hi Jane---thank you for your thoughts and support. I think the hearing was basically a good thing because it let us all know in no uncertain terms that we have to work out a compromise. I didn't realize the extent of the compromise required, and Little Alice did not believe in any compromise at all. Period. Now she does. and she is willing, and we are busy working on it. (just fyi) I'll fill you in when I see you, but I'm sure you will soon know as much or more than I do, because as always we all will need your wisdom and advice re the financial details.

From: Jane M. Peacock <JPeacock@shgcpa.com>
Sent: Wednesday, January 24, 2018 11:36:45 AM
To: mary wortley
Subject: RE: heritage LWB MTB Dec

I am thinking of you all, especially today, and have already said a prayer on your behalf. I spent a little time with Alice yesterday and she is having a real hard time being as tough as she

likes to be. She told me she plans to be at the hearing today.

From: mary wortley [mailto:marydeas@hotmail.com]
Sent: Wednesday, January 24, 2018 9:10 AM
To: Jane M. Peacock <JPeacock@shgcpa.com>
Subject: Re: heritage LWB MTB Dec

I don't need copies at this time---thanks
Wish us luck today----
Take care----MD

From: Jane M. Peacock <JPeacock@shgcpa.com>
Sent: Tuesday, January 23, 2018 3:40:57 PM
To: mary wortley
Subject: RE: heritage LWB MTB Dec

Thank you for the bank statement.

Both Alice and Rigdon have requested copies of Karen's firm's invoices, which we have sent to them. If you would like a copy of all or any of them, please let me know. Alice also requested a cc of the LWBII estate tax return. As with the other, if you also want a pdf of the core pages of it, let me know.

Thanks,
Jane

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From: mary wortley [mailto:marydeas@hotmail.com]
Sent: Tuesday, January 23, 2018 3:56 PM
To: Jane M. Peacock <JPeacock@shgcpa.com>
Subject: heritage LWB MTB Dec

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Exhibit 9
(1/24/17 Email from Belger to K. Thomas)

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ELECTRONICALLY FILED - 2018 Jun 15 6:03 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

From: Karen Thomas <kthomas@sctlawfirm.com>
Subject: Re: Decisions re Telephone Conference on 1/19/2017
Date: January 24, 2017 at 4:19:11 PM EST
To: Alice Belger <aliceb@belgerfarms.com>
Cc: Rigdon Boykin <rhboykin@me.com>, Mary Deas Wortley <marydeas@hotmail.com>, David Siddons <dstaxlaw@bellsouth.net>

I agree Alice that is the better approach.

I will circulate the information Thursday and we will talk a week later.

Thank you
Karen

Sent from my iPhone

On Jan 24, 2017, at 3:32 PM, Alice Belger <aliceb@belgerfarms.com> wrote:

> Karen,
>
> I did and do agree to the sale of the two lots to Anne at the price discussed.
>
> I did not and do not agree to the sale of the 91 or 21 acre tracts.
>
> I did and do agree to purchase a quick claim deed - R/R right way.

I did and do agree to the sale to the Garrens, However I believe the price is too low, after looking at past sales in the area, following our call.

You are correct I did not and do not agree to the Tommy Laney Proposal.

As such I will take your recommendation, as the Trustee's Attorney "for the consent to stand for all but the Tommy Laney price per acre".

Again this does not include any consent regarding the 91 or 21 acre tracts, which I never gave.

In order to avoid confusion in the future I propose that all decisions that require unanimous consent cannot and should not be relied upon until all three trustees have signed a written memorandum of understanding.

I will plan to attend all meetings in person at your office so there will be no miscommunication.

When I get the list and the appraisals, I will need time to review them, so I suggest we have our call/meeting next week as planned.

Alice

From: Karen Thomas [mailto:kthomas@sctlawfirm.com]
Sent: Tuesday, January 24, 2017 11:08 AM
To: Alice Belger
Cc: 'Rigdon Boykin '; 'Mary Deas Wortley'; 'David Siddons'
Subject: Decisions re Telephone Cofernece on 1/19/2017

Alice, I am back in my office this morning and went back and checked my notes again from our call. My notes reflect that the three trustees agreed to all but the Tommy Laney issue during that meeting and that you were going to get back with Rigdon that day on Tommy Laney as Mary Deas and Rigdon agreed to it. I imagine Rigdon has gone forward with the others offer to Anne and to Garrens based on his reliance of the Trustee consent during that call.

Are you now withdrawing your consent for the offer to Anne and the Garrens on the terms we discussed on the call? If so I need to know for the future calls/meetings. The Trustees need to decide if consent can be withdrawn in the future and if so for what period of time after a decision has been made. This is necessary in order to avoid

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confusion and possible litigation if any of the Trustees act in reliance of a decision made in that meeting. My recommendation is for the Trustee consent to stand for all but the Tommy Laney price per acre.

I am going to go back through all the appraisals that we already have received both on the land and timber, what land is being appraised by different appraisers, the timeline, etc. I will circulate that list and make sure all have the appraisals by Thursday morning. Being that obtaining one much less two appraisals on the properties will take such a long time I am becoming anxious. Each appraisal we have received has been lower than expected and lower than the price you three Trustees have discussed selling the land for.

Giving the importance of these issues would you all prefer to move up our call to late Thursday afternoon or Friday morning this week?

Karen Hudson Thomas
Certified Specialist In Taxation Law
Certified Specialist In Estate Planning and Probate Law
Sojourner Caughman & Thomas, LLC
Physical Address: 1301 Gervais Street, Suite 1920, Columbia, SC 29201
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From: Alice Belger [mailto:aliceb@belgerfarms.com]
Sent: Monday, January 23, 2017 5:31 PM
To: Karen Thomas
Cc: 'Rigdon Boykin '; 'Mary Deas Wortley'; 'David Siddons'
Subject: Telephone Cofernece on 1/19/2017

Karen,

Until I have more information on appraisals and comps here is what I will agree to.

Thanks,
Alice

Tommy Laney
He offered to buy these tracts: Charlie Grant, Black River Road & Southern Part of Sumter Mtn. – these tracts have good timber value and recreation value are equal to other tracts in the area. Tommy

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made an offer below our asking price ($4,000.00P/AC which we set price in an earlier meeting).
Rigdon is counter offering to Tommy $3,500.00P/AC which is cheaper while other tracts in same area and/or adjacent are higher - $4,000.00 - $4,500.00P/AC.
I will agree to sell these tracts at $4,000.00 P/AC. I would like a 10 year timber revenue projection on all timber tracts before they are sold.

Anne DuPont
She interested to buying a part of the Millway Tract – west of 261 Highway – adjacent to Red Bank Farm
Rigdon set price for A Lot (AC :___): $40,000.00; B Lot (AC :____): $60,000.00.
At this time I'm not interested in selling anything other than the non-contiguous parcel that is separated by Red Bank Rd.
I agree to sell the $326,764.00 of timber estimated by Jimmy on this parcel west of Hwy.261 to pay taxes with

Garren Family
Garren are interest to buying Woodgate
Rigdon wants to sell 9.8 AC for $20,000.00P/AC
Interest to buying Peckwoods (39.88AC)
Rigdon wants to sell 39.88AC for $15,000.00P/AC
Rigdon wants to sell less 10 acres $18,000.00P/AC.
I will agree to sell these tracts at $25,000.00P/AC

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Begin forwarded message:

From: Karen Thomas <kthomas@sctlawfirm.com>
Subject: Meeting Summary
Date: February 16, 2017 at 3:17:25 PM EST
To: Alice Belger <aliceb@belgerfarms.com>, 'Mary Deas Wortley' <marydeas@hotmail.com>, Rigdon Boykin <rhboykin@icloud.com>, David Siddons <dstaxlaw@bellsouth.net>

Attached is the meeting summary

Karen Hudson Thomas
Certified Specialist In Taxation Law
Certified Specialist In Estate Planning and Probate Law
Sojourner Caughman & Thomas, LLC
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Exhibit 10
(2/24/18 Email from Wortley to Peacock)

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ELECTRONICALLY FILED - 2018 Jun 15 6:03 PM - KERSHAW - COMMON PLEAS - CASE#2017CP280831

From: mary wortley
To: Jane M. Peacock
Subject: Re: Follow-up
Date: Friday, February 24, 2017 1:48:28 PM

Did it---sorry I thought I'd done that when I was trying to get them to fill the tank just before the last cold spell. Anyway, they assure me Ginny's off of the account now. But in order to do it, they had to create a new account (go figure). So, we have a new account#, which , in case you need it is: 0921206371.

Tommy is better, thank you for asking----still feeling weary , but inching back toward normal.

I don't know how we are ever going to get any decisions made re our trust. (Just between you and me), Little Alice is the immovable object, and Rigdon is the irresistible force. To keep on quoting the same song, --- something's gotta give,--- but at this point, I don't see much sign of that. I love being in SC, I feel like Brer rabbit in the briar patch when I'm at home in Boykin, but right now, I have to admit, I'm glad I'm stuck 600 miles away in OHIO!

From: Jane M. Peacock <JPeacock@shgcpa.com>
Sent: Thursday, February 23, 2017 1:23:58 PM
To: mary wortley
Subject: Follow-up

Hey, Mary Deas.

I had a note on my calendar to follow-up with you regarding getting Ginny's name off of the Duke Energy account for 81 Boykin Mill Rd. This has probably been done, but wanted to touch base as I promised. In case you need it, here is the account info: DukePwr Meter#Y19266 Acct 2167642822
The most recent bill that came was addressed as follows:
Virginia L Barnette
Mary Wortley c/o J Peacock
PO Box 428
Camden, SC 29021

As you know from my previous note, a bill has now come for that property from Palmetto Propane for the trust to pay. Thank you for getting that all squared away. We have sent that payment.

As to other bills that I asked the trustees' permission to pay, Alice says she has to discuss them with Rigdon before she will approve payment. I know she had questions particularly about payment to Casey Bolton. I asked for affirmative permission from you all because I had a feeling Alice would have questions. (The Charleston company's appraisal fees looked awfully high to me, however I don't know in how much detail the appraisals were done. I can't imagine Rigdon being OK with paying it if the fees were out of line.)

Hope Tom's progress is steady. Wishing you both the very best!

Thanks,

Jane

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Exhibit 11
(3/15/18 Wortley Dep., pp. 133-34)

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Q. Do you have any opinion about the reasonable distribution to the income beneficiaries as a percentage of the overall Trust value?

A. Well, let me think a minute. I know that Rigdon says the rule of thumb is Three Percent (3%), but it's not a law in South Carolina. And I don't know. I think maybe we could approach Three Percent (3%). I think we could finagle that. And I think that they are probably entitled to more money than the net income because, as you have been pointing out, the net income is not necessarily the proceeds from the sale of our timber. All of that has to be from the IRS point of view attributed to principal. So, we are willing to give them out of the net income more than what would ever be net income. Around Three Percent (3%) or Two and a Half Percent (2 1/2%), whatever, yes, I would be -- I think they're entitled to that. I'm not sure exactly how much, but certainly not a Hundred and Eighty Thousand Dollars ($180,000.00) a year.

Q. Well, do you -- would you like to pay them more than Three Percent (3%)?

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A. No.

Q. So, you think Three Percent (3%) is all they should get?

A. I think it's the maximum.

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Exhibit 12
(3/19/18 Boykin Dep., pp. 67-71; 212-13)

should not be sold. He couldn't flat-out direct it as a response to a question that you had when in -- when in fact he could have.

Q. After you read the Will, was there anything that you read in there that mandates retention of any of the land?

A. In terms of an absolute mandate, no. It would -- he hoped it would, but that hope -- you've got to put the hope in context within which he did that Will, and that was, he was hoping it would be maintained primarily for the benefit of Whit's eldest son if he had one.

Q. How would you characterize the ability of the timberland that's being held in its -- when you consider how it generates income compared to its potential of it generating income; would a sale be the best way to exercise or realize the greatest potential of that asset?

A. Well, you have a -- you have a very fundamental

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problem. You have about two -- two thousand (2,000) acres or so in and around Boykin, and that land has a market value today substantially in excess of the use to which it's being put. To explain it in another way, if you're looking for land to farm on, you would rarely -- you -- you just wouldn't buy farmland

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particularly today for much more than, say, Twenty-five (2,500) to Thirty-five (3,500) Bucks an acre because you would not make an adequate return off of that farmland to be able to justify the expenditure more than that. The problem we have is, there's -- we have, for example, the land of the Yellow House Tract which is probably worth I would say somewhere around Six Thousand ($6,000.00) to -- or a good bit of it's worth between Six Thousand ($6,000.00) and -- and maybe Seven Thousand ($7,000.00) or Eight Thousand ($8,000.00) an acre. So, the land -- you're -- you're -- it's going to be impossible for the Trust to make a return commensurate to the value of the land because of the -- the high value that that land had. You just couldn't make it by farming or timberland. Timberland

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Q. What would be the alternative?

A. You -- you either have to develop it for sale or sell

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it. In fact, for quite some time, Alice even retained a -- a company to provide -- to come up with a real estate development for the Yellow House Tract where they were going to get a -- Great Southern Homes or someone else to come in and do a whole big subdivision there, and a company was hired to come and look at it. They didn't ultimately go through with it, but it --

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she -- she obviously was looking at how to monetize that differential in value.

Q. Have you -- are you familiar with the growth in the Dow or the S&P as compared to growth in timber in the last ten (10), say, fifteen (15) years?

A. I don't know -- well, I -- my guess is timber prices have not grown tremendously over the last twenty (20), thirty (30) years. I'd be surprised if they have. I know at the time Whit died, the Dow was, I don't know, (2,700) maybe. The S&P was 360 or 50.

Q. Do you know what it is twenty-eight (28) years later?

A. The Dow is 2,600 or 26,000 and something. The S&P is, I don't know, 2,700 or so plus or minus. It -- it's very volatile. It goes up and down ---

Q. Can you minimize ---

A. -- a percent or two so that the -- the -- while the Trust, and according to Alice and Mary Deas, has grown, has doubled in value, the -- the Dow and the S&P have both gone up over eight times in value over the same time frame, and that doesn't include the

dividends off of that, just like Alice was using some of the earnings off the Trust over those years.

Q. Did you get any indication or any impression from Alice or Mary Deas during the time that you all were working on this Trust that they had any knowledge of

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how to diversify in the stock market or any liquid assets?

A. I think the -- I think they were both brought up in the old school that land is always there and land is always going to be the most secure investment you can have. And they basically had no familiarity that I could see with the stock market at all.

Q. Did you discern an attitude of both Mary Deas and Alice during the administration of this Trust up to the present that they are intent on holding this property for Mary Deas' children and Alice's child?

A. Oh, I think there's no question about that. They -- I think they -- they initially were willing to sell all of the commercial property. They have now basically backed off of that. They will sell all of the development property. By development property, I'm talking about the Peckwoods and lots over there, the raw land and lots. However, they have decided to continue operating these assets in exactly the same fashion as Big Alice did and, by that, collecting rents and collecting -- and when you needed money,

sell some timber or sell a piece of land.

Q. Does the commercial properties include the Steak House, the Broom Store, the Grits Mill, Ginny's cottage and Rosa Lee's Cottage and the church?

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A. It includes those properties and the Hawthorne Pharmacy property, the Leo's Wings in Lugoff and the Wateree Enterprises Liquor Store in Lugoff.

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Commerce Alley in Camden, I think they still want to sell that.

Q. What is the maintenance on the downtown Boykin properties, the buildings down there?

A. Well, that's a hard question to answer because Alice didn't believe in maintenance. I asked Mark Price, for example, ---

Q. Who is he?

A. Mark Price leases the Steak House. How much had Alice spent on that building maintaining it since he had been leasing it, and he told me probably less than Three or Four Thousand Bucks.

Q. So, it looks like, if I hear what you're saying, that the Trustees have reached an impasse as to the future investment strategy of the Trust?

A. I think there's no question about that, and ---

Q. Have you ---

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A. -- Karen Thomas recognized that early on and said, "We ought to get a Court to -- to figure this out."

Q. Have you ever been given a solid investment strategy from Mary Deas and Alice?

A. No. We -- when -- when it became that there was a

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A. A return, not necessarily income.
Q. If -- if Allie were Allen instead of Allie, ---
A. Yeah.
Q. -- if she were a boy, would that satisfy any requirements of the Will ---
A. No.
Q. -- or did the son have to be born of the son?
A. When he died -- I mean, were you alive -- were you around when Whit was alive -- I think you were here.
Whit believed in fee payable. He believed that the elder son should get it, and if it wasn't -- if -- if it wasn't a Boykin, it didn't matter. So, that's why he wouldn't have put -- he didn't put in actuality -- in fact, I argued with him about this, that the -- that a -- that a child of one of his other children couldn't take it. He -- it had to be a Boykin child as far as he was concerned, and the only person who would carry on that would be Whit.
Q. So, you're actually asking the Court to enforce primogeniture in a way?

A. No, I'm not at all. I'm asking the Court to -- to hold that -- since this language is precatory that -- and -- and precatory language was twenty (20) some odd years ago, things changed between the time Whit made the Will and he died, and things have changed since

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then that the precatory language should certainly not control in this instance and that we diversify the assets.

Q. You don't contend that the Will is not valid, do you?

A. No.

Q. Okay. And the fact that things changed between the time he wrote the Will and the time he died, he had the ability to change it during that period if he wanted to?

A. He was pretty sick for a lot of that period. And the real problem did not occur until Hurricane Hugo occurred. If Hurricane Hugo had not occurred, Whit's Estate could have been as much as Ten Million Dollars more and there would have been even a heck of a lot bigger today and there could be a lot more room for diversification and everything else. I think that is a -- a very different circumstance. I think the other circumstance that changed drastically is the fact that

the land around Boykin appreciated disproportionately to the rest of the land that he had. And so, the land around Boykin became more valuable than the use to which it was being put. When Whit died, the land wasn't worth more than farmland anywhere. But by the time Alice died, that land was worth Three or Four Thousand Bucks more than anyone would buy for

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Exhibit 13
(10/13/17 Trust Meeting Summary)

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Estate of Boykin:

Meeting Summary 10/13/2017

In attendance was Alice, Rigdon, Mary Deas (by phone), Karen, Bill, and Jamie.

1. Payment of Trustee Fee:
   a) General Administration per Bank Fee Schedules. Karen reported used four different corporate fee schedules to determine a range of fees to pay the Trustees. The fee range were all over the board, but if Gross Estate is $18,000,000 then range is $250,000 to $400,000. Karen recommended a fee for the administration of the estate and trusts through the end of 12/31/17 to be$100,000/Trustee. A vote was called and Mary Deas and Alice voted to pay each Trustee $100,000 compensation; Rigdon voted no. Bill stressed that this vote was final.
   b) Fees for Insurance and Residuary Trust: Karen stated the Residuary Trust and Insurance were not part of the gross estate and not part of the fee voted upon. A fee for continued management of the Trusts needs to be determined. We all agreed to table this until another time.
2. Payment of Attorney Fees/Other Expenses of Trust Litigation: We discussed whether each should be able to hire an attorney and have the Trust pay for each's attorney's fees. Bill stated that it was imprudent to pay themselves to sue each other, that the petitioner then has no skin in the game. Ridgon has requested $72,000 of legal fees be paid. Further discussion was had and Rigdon voted to pay the fees (which could be reimbursed if the court determines unreasonable) and Alice and Mary Deas voted not to pay the fees until the Court orders that they be made.
3. Regular Income Distributions for Income Beneficiaries/Special Considerations for Whit and May Trust language. A long discussion was had on the distributions to the beneficiaries. The Trust provides that all income based on needs/may adjust over time and principal distributions based on needs. Mary Deas and Alice presented options, for having one-fourth of income to each but guaranteeing White and May $100,000 first, having Whit live rent free, having Whit and May present budgets to determine if $100,000 is sufficient so that principal distributions may be made for support if the income is not sufficient in any one year. Mary Deas and Alice suggested Whit should take priority and receive special consideration. While Karen is concerned about distributing all income and determining the beneficiaries' needs for principal distributions Rigdon is not concerned as he is going to use the power to adjust as an independent trustee to convert principal to income to allow the distribution (converting to have 3% of the value being considered income). When he determined the distribution of$100,000/per year/beneficiary he knew that was temporary at the time. Rigdon stated that he handled Whit's bank account so that he knew Whit could survive on $100,000/year and pay his rent timely with no problem. Rigdon noted that Whit has repaid what was advanced to him prior to death and paid for his health insurance and rent. Rigdon felt strongly that all four beneficiaries should receive the same unless there was a drastic reason to not to and that the $100,000 distribution should continue. Bill said there is probably no need to use the power to adjust and that Alice and Mary

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Deas are willing to postpone their distributions. This was a long discussion and Bill added that the two Trustees are going to follow the terms of the Will and would be willing to postpone an annual distribution if the income is not sufficient; Rigdon said this is a bad idea for the Trust to have a debt to the beneficiaries for distributions. All three Trustees voted to continue the current distribution plan of $100,000/year to beneficiaries for at least October and November.

4. Status of House Rent Payments. Except for the big house, all rent is up to date. Alice is concerned about paying $2,500 as the house is an albatross. There is the issue of if Alice or the Trust should pay for maintenance and repairs and Big Alice didn't maintain the property and it is in disrepair. The Trustees agree that the rent for the Millway need to be finalized. Graham Realty suggested $1,000/month and Milliken verbally told Karen it estimates the rent to be $1280 to $1600/month but will provide a written report. The Trustee agreed to revisit the following week and for Karen to have Milliken to give a report on its view of the rent.
5. Downton Boykin/Yellow House. A long discussion of the status of the structures of Ginny's house, downtown Boykin, insurance and budgeting repairs was had. Rigdon is concerned that the costs of repairs could be so substantial that it would not be recovered with the rent. Mary Deas and Alice disagreed that all the buildings have substantial disrepair that need substantial work. Mary Deas and Alice believe that downtown Boykin is not a quaint village on Cape Cod and that the Trust should make repairs and commence renting, including the Church and Rosa Lee properties. Rigdon disagreed and gave example of the porch at the steak house being detached. This was just an example, Rigdon asked the Trust to determine what downtown Boykin could be for the long term and whether it if for the Trust to make it a quaint downtown area. Rigdon asked do we sell or rent the downtown on a long term basis in order for it to be improved? He asked for authority to get a contractor to look at the buildings and give quotes to either (1) maintain at the status quo, or 2) repairs to lease. The Trustees voted to give Rigdon the authority to have a contractor review the condition of the buildings and make recommendations as to upkeep, with priority given to the buildings which are rented. Rigdon said he is in prelimary discussions with a person that might be interested in buying the pond and maintain the dam. Rigdon said this is a long shot and does not want to pursue this possibility without authority of the Trustees. They may be interested in a buffer area, Mary Deas' place, acreage below the pond for drainage; Rigdon stated we may be able to accomplish the purpose of conservation and put $2.7M in the Trust. The Trustees agreed to discuss this at the next meeting.
6. Potential Sale to Tommy Laney. Rigdon reported that he received a bid for $390,000 for 130 acres that he wanted to purchase. He stated that a survey needed to be done for the acreage on the southern tip. Best Bill Lindler could come up with is 130+/ 4 acres. A discussion regarding the potential use of solar panels was had; there was a consensus to hold off on completing the sale to Tommy Laney while Rigdon looked into the solar panel potential.
7. May's option to purchase. The Trustees discussed giving May the right to purchase property; Mary Deas and Alice stated that they were in favor of her just using the property (the Trust giving her a life estate) without her having to pay for it. Rigdon pointed out that she would like to have 15 acres and if willing to pay the appraised price, but that full ownership is what she needed given all the buildings/money she is hoping to put into the property. The Trustees

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Voted to sell the property to May with a restriction in the deed that the Trust be given the first right of refusal if she wanted to sell the property in the future.

8. Boykin Christmas Parade. Swift Creek Preservation Society may hold the parade. A discussion was had that whoever is holding the parade must enter into a lease and have adequate insurance and that the Trust not pay for the parade.
9. Alice and Mary Deas Investment Plan. Jamie provided on behalf of Mary Deas that she feels the directions of the Will controls, that there is no SC law that overrides the clear direction in the Will. That this is still early in the administration of a Trust with a lot of land and we don't even know the Estate tax values, how much the estate taxes will be, or when we will have to pay the taxes over what period of time. It is her position that it is premature to embark on a program to sell all real estate and invest it in the stock market; it is reckless and imprudent to dump all real estate and flood the market. Mary Deas is prepared at the appropriate time to consider any reasonable sale of any property but as governed by the Will. He stated the object is net income to the beneficiaries in accordance with the Will; the best way is to sell timber and she believes Jimmy LaFrage's timber management plan is adequate for the primary mission of the trust in this moment in time. Jimmy is reputable with decades of experience with the property and the plan provides sufficient income to the beneficiaries for a sufficient life style. Mary Deas and Alice stated that the current plan should be continued until there is further information available and a compelling reason to change. Jamie added that Rigdon had mentioned the trustee Duty; Jamie said the Trustees have a duty to minimize administration fees (attorney fees) and other expense to maximize net income for the beneficiaries. Rigdon responded that he never advocated dumping land to sell; that would be irresponsible. Rigdon said there is a real estate bubble in Boykin area that could dissipate; land selling at $20,000/acre. He is also concerned about a hurricane that could cause the Trust to lose money overnight, also forest fires. Rigdon says this much of the Trust is timber and land is irresponsible. Rigdon doesn't believe Jimmy LaFrage's plan is a plan for the trust and that the Will is precatory. Rigdon says the Trustees have a multiple obligations: income to income beneficiaries, generate money for expenses, and to make sure the corpus grows for the remaindermen. Rigdon said is he not criticizing Jimmy's 15 year plan, but it will not generate the kind of money that is required. He said again that it should be treated as a unitrust and has hired Jim Harden as a trust expert. The discussion came back around to the Boykin bubble and how you cannot really get $20,000/acre; that the average would be $6,000/acres. As of now Rigdon has received no concrete offers.
10. Prices for Commercial/Other Properties to Sell
11. Rabbit Pen boundary/timber issues; Rigdon wants to understand more about this and the lines.
12. Racetrack Property: Work by Whit; all three Trustees agreed to have stump work done by Whit.

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STATE OF SOUTH CAROLINA COUNTY OF KERSHAW IN THE MATTER OF: LEMUEL WHITAKER BOYKIN, II, deceased	)	IN THE COURT OF COMMON PLEAS CASE NO: 2017-CP-28-831
Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Petitioner, v. Mary Deas Wortley, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Alice B. Belger, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; Lemuel Whitaker Boykin, III; and May Cantey Boykin Respondents.	)	**TRIAL BRIEF OF PETITIONER AND RESPONDENTS WHIT BOYKIN AND MAY BOYKIN**

TO: ALL COUNSEL OF RECORD

Pursuant to the Court's June 6, 2018 request for the submission of briefs, Petitioner, Rigdon H. Boykin ("Petitioner"), as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B (collectively the "Residuary Trust"), and Respondents Whit Boykin and May Boykin, by and through their undersigned counsel, hereby submit the following authorities and arguments in further support of their pleadings and the relief sought therein.

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I. THE INTERPLAY BETWEEN THE LANGUAGE IN THE WILL AND THE LANGUAGE IN THE SOUTH CAROLINA TRUST CODE, INCLUDING THE UNIFORM PRUDENT INVESTOR ACT.

In Paragraph 24 of their Answer, Respondents deny Petitioner's allegation that "[i]t is more prudent to invest the Residuary Trust assets in a diversified portfolio, while still retaining a portion of the Residuary Trust's existing real estate assets." Resps.' Ans. and Counterclaim ¶ 24; Am. Petition ¶ 37. They also deny that the Co-Trustees of the Residuary Trust must follow the provisions of the South Carolina Uniform Prudent Investor Act. Id. Respondents instead advocate for doctrinaire adherence to the precatory language contained in the Last Will and Testament (the "Will") of L.W. Boykin, II ("Decedent") regarding the retention of certain trust properties. While the disagreements between Petitioner and Respondents are many, this fundamental dispute serves as the fulcrum of this litigation. The following authorities clearly establish that the Co-Trustees of the Residuary Trust *must immediately begin* to diversify trust assets and act as prudent investors in accordance with the South Carolina Trust Code, including the South Carolina Prudent Investor Act, S.C. Code Ann. § 62-7-933.

A. Decedent's Will and South Carolina Statutory Law Impose the Duty of Prudent Investment on the Co-Trustees of the Residuary Trust.

Decedent died on December 19, 1989. The "prudent man" or "prudent person" rule, and the requirements of diversification of trust assets, have been applied in South Carolina statutory and case law decades before Decedent's death, and those same principles apply today. In fact, in Item XIV of his Will dated June 2, 1989, Decedent imposed upon his fiduciaries a standard of prudent investment consistent with long-standing South Carolina law. In that provision, Decedent granted his personal representatives and trustees various powers, including the power

> to invest and reinvest the property of the estate or trust in such manner as men of prudence exercise in the management of their own affairs. At any time, and from time to time, to keep all or any portion of the estate or trust in cash and uninvested

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> for such period or periods of time, as he may deem advisable, without liability for any loss in income by reason thereof. In addition, the 'underproductive property rule' of the Revised Uniform Principal and Income Act shall not be applicable.

Item XIV, Paragraph C.

At the time of Decedent's death, S.C. Code Ann. § 62-7-302 ("Trustee's standard of care") set forth the default rule of trust investing. Then S.C. Code Ann. § 62-7-302 was located in Part 3 ("Duties and Liabilities of Trustees") of the South Carolina Probate Code, enacted in 1986 (effective on July 1, 1987). Then S.C. Code Ann § 62-7-302 provided in part:

> "(a) Except as otherwise provided by the terms or limitations set forth in any will, agreement, court order, or other instrument creating or defining the fiduciary's duties and powers (the terms "legal investment" or "authorized investment" or words of similar import, as used in any such instrument being taken, however, to mean any investment which is permitted by the terms of this section), in acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the benefit of another, *a fiduciary shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.* Within the limitations of the foregoing standard, a fiduciary is authorized to acquire and retain every kind of property and every kind of investment, specifically including but not by way of limitation, bonds, debentures, and other corporate obligations, and stocks, preferred or common, and within the limitations of the foregoing standard a fiduciary may retain property acquired, without limitation as to time and without regard to its suitability for original purchase, and a fiduciary may retain the property received by such fiduciary on the creation of the estate, guardianship, or trust... without regard to its suitability for original purchase . . . ."

(Emphasis added).

The current South Carolina Prudent Investor Act, S.C. Code Ann. § 62-7-933, works no revolutionary change to the preexisting law of prudent trustee investments embodied in the prior S.C. Code Ann. § 62-7-302. As it relates to this case, there is no material difference between the two. Then S.C. Code Ann. § 62-7-302 effectively mirrors the standard of prudent investing which Decedent required of his fiduciaries in Item XIV, C. of his Will.

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Then S.C. Code Ann. § 62-7-302 appears to have been based in part on the Restatement of Trusts 2d, § 228 (1959), which provides for a standard of prudence. The federal Employee Retirement Income Security Act ("ERISA") (1974) likewise insists upon the rule of Restatement of Trusts 2d § 228 in regard to trustee administration of pension trusts. Section 228 of the Restatement of Trusts 2d and Section 227 of the Restatement of Trusts 3d: Prudent Investor Rule (1992) form the basis for the Uniform Prudent Investor Act (1994), which was enacted in South Carolina in the year 2001, the same year that the South Carolina General Assembly enacted the Revised Uniform Principal and Income Act (1997).[1]

When the South Carolina Trust Code was enacted in 2005 (effective January 1, 2006), the preexisting South Carolina Prudent Investor Act was recodified to form a part of the South Carolina Trust Code. The South Carolina Prudent Investor Act is presently codified as S.C. Code Ann. § 62-7-933. Respondents have denied that the South Carolina Prudent Investor Act applies to them as Co-Trustees of the Residuary Trust. Resps.' Ans. & Counterclaim ¶ 24; Am. Petition ¶ 37; **Ex. 1** Wortley Dep. p. 173 ("I think there is a waiver in the Will that overrides the Uniform Prudent Trustee Act and there's also a situation that overrides it which is a closely held family business. I think we have two situations that override the Act."). Yet Respondents seem to concede that the South Carolina Trust Code is applicable to Decedent's Will and to this case. See Resps.' Ans. & Counterclaims ¶¶ 45–72 (invoking provisions of the South Carolina Trust Code in connection with counterclaims). Respondents also admit that "the Co-Trustees should follow the prudent investor rule to the extent so adopted in [Decedent's] Will." Resps.' Ans. & Counterclaim ¶ 2. Respondents' inconsistent positions are difficult to grasp. Respondents' position also

[1] See Section I, C. below with regard to how the new Uniform Principal and Income Act abrogated the "underproductive property rule."

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conflicts with the effective date provisions of the South Carolina Trust Code (of which the Prudent Investor Act is a part), S.C. Code § 62-7-1106, which provides that "this article applies to all trusts created before, on, or after its effective date [January 1, 2006]." S.C. Code Ann. § 62-7-1106 (a)(1).[2]

Even if Respondents were correct that the South Carolina Prudent Investor Act does *not* apply to this case, its predecessor (then S.C. Code Ann. § 62-7-302) clearly does, as it was in effect well before (and at) the time Decedent's Will was drafted in 1989. That section imposes an equally inescapable standard of prudence similar to the standard Decedent charged in his will and the standard imposed by the current Prudent Investor Act.

Finally, Hardin and Medlin in The South Carolina Trust Code (South Carolina Bar Publishers, 2006) note the following about the South Carolina Prudent Investor Act:

> "Total return" and "modern portfolio theory" are the theoretical underpinnings of the Prudent Investor Act. "Total return" is the "total investment return derived from current yield (dividends and interest) and realized or unrealized capital appreciation or loss. *Fundamental to the total return concept is the requirement that the fiduciary 'exercise reasonable care, skill, and caution.' The term 'caution' refers to the fiduciary obligation to protect the interest of those in need of economic protection.* Unless the governing instrument provides to the contrary, the exercise of caution calls for the fiduciary to bear in mind both safety of capital and a reasonable return." Citing E. James Gamble, "Total Return meets the Uniform Principal and Income Act," Presentation Outline from Fiduciary Administration for the Total Return Era, the Essentials (South Carolina Bar seminar, Charleston, South Carolina, August 16, 2002) (Emphasis supplied).

Hardin and Medlin, The South Carolina Trust Code (South Carolina Bar Publishers, 2006) at 9-3.

[2]The South Carolina Probate Code has a similar section regarding retroactive application. S.C. Code Ann. § 62-1-100. In two of the most salient cases on point, White v. Wilbanks, 301 S.C. 560, 393 S.E.2d 182 (1990) and Bowles v. Bradley, 319 S.C. 377, 461 S.E.2d 811 (1995), the South Carolina Supreme Court was not reticent about applying the South Carolina Probate Code retroactively.

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With regard to the Co-Trustees' required exercise of "caution," Whit and May Boykin are those most in need of economic protection, and therefore, the Co-Trustees must act swiftly to comply with the mandates of prudent investment and diversification set forth above.

B. Case Law Overwhelmingly Supports the Duty of Prudent Investment and the Duty to Diversify.

The Reporter's comments to the South Carolina Prudent Investor Act recognize that "[t]he prudence standard for trust investing dates back to Harvard College v. Amory, 26 Mass. (9 Pick.) 446 (1830). Trustees should 'observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, *considering the probable income, as well as the probable safety of the capital to be invested.*'" S.C. Code Ann. § 62-7-933, cmt. to subsection (B) (citing Amory, 26 Mass. at 461) (emphasis added). A later comment notes: "Case law overwhelmingly supports the duty to diversify." Id., cmt. to subsection (D) (citing Annot., Duty of trustee to diversify investments, and liability for failure to do so, 24 A.L.R.3d 730 (1969) and 1992 Supp. at 78–79.)

Furthermore, the following South Carolina cases, dating to 1989 and earlier, formed a body of decisional law at the time of the Decedent's death, and are annotated under the former S.C. Code Ann. § 62-7-302: Chandler v. Britton, 197 S.C. 303, 15 S.E.2d at 344 (1941); Ex parte Guaranty Bank & Trust Co., 255 S.C. 106, 177 S.E.2d 358 (1970). The prudence standard also applies in cases of receivership. See Chandler, 197 S.C. 303 (1941). In Chandler, the court noted that "the facts disclosed by the record made it a question for the court and jury to determine whether the receiver in this case has exercised that degree of care and prudence in the management of the receivership funds which is required by law, *to wit, the care, prudence, and diligence which a person of ordinary care, prudence and diligence would exercise in his own business.*" Id. at 309 (emphasis added). In Ex parte Guaranty Bank & Trust Co., 255 S.C. 106 (1970), the court

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authorized the sale of land held in trust. The trustees instituted the action to ask the approval of the court to deviate from the terms of the trust alleging that the beneficiaries of the trust and the trust itself would suffer unless the sale was authorized. Id. at 360. The opinion states that the property as farm land had, in recent years, a very low monetary yield and that *"[n]o landowner with complete control of this property, and in his right mind, would continue to use this land for agricultural purposes."* Id. (emphasis added).

Based on these cases, and those cited in support of Petitioner's investment plan under Section II below, it is clear that the weight of authority rests heavily in favor of the duty to invest trust assets prudently—including by diversifying—so as to protect the beneficiaries and the trust corpus.

C. Decedent's Waiver of the "Underproductive Property Rule" Does Not Abrogate the Co-Trustees Duty to Invest Prudently.

Respondent Wortley testified at her deposition that "my father particularly said in his Will that we should not – we should hold onto the treasured tracts even if they were under-productive assets." **Ex. 2**, 3/15/19 Wortley Dep., p. 30. As support for this statement, Respondent Wortley apparently relies on Item XIV, Paragraph C. of Decedent's Will, which provides that "the 'underproductive property rule' of the Revised Uniform Principal and Income Act shall not be applicable." Item XIV, Paragraph C. However, Respondent Wortley's reliance on this language for the broader proposition that underproductive property "should" be retained is misplaced, as it misconstrues the meaning of the "underproductive property rule" under the Revised Principal and Income Act.

At the time Decedent's Will was executed, the South Carolina Revised Uniform Principal and Income Act was codified as S.C. Code Ann. §§ 62-7-401 through 62-7-421. In S.C. Code

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Ann. § 62-7-415 ("Allocation of receipts from sale of underproductive property; delayed income."), the Act set forth the "underproductive property rule," which provided in relevant part:

> (a) Except as otherwise provided in this section, a portion of the net proceeds of sale of any part of principal which has not produced an average net income of at least one percent per year of its inventory value for more than a year (including as income the value of any beneficial use of the property by the income beneficiary) shall be treated as delayed income to which the income beneficiary is entitled as provided in this section. The net proceeds of sale are the gross proceeds received, including the value of any property received in substitution for the property disposed of, less the expenses, including capital gains tax, if any, incurred in disposition and less any carrying charges which have been paid while the property was underproductive.
>
> (b) The sum allocated as delayed income is the difference between the net proceeds and the amount which, had it been invested at simple interest at four percent per year while the property was underproductive, would have produced the net proceeds. This sum plus any carrying charges and expenses previously charged against income while the property was underproductive, less any income received by the income beneficiary from the property and less the value of any beneficial use of the property by the income beneficiary, is income, and the balance is principal.

Put simply, if a trust has an underproductive asset (defined as an asset which has not produced an average net income of at least 1% per year) and that underproductive asset is sold, then a portion of the proceeds from the sale are allocated to the income beneficiaries as "delayed income," to compensate those beneficiaries for the fact that they did not receive a better return on that trust asset. Under this rule, the amount to be allocated to the income beneficiaries as delayed income is the difference between the net proceeds from the sale and the amount which, had it been invested at simple interest of four percent (4%) per year while the property was underproductive, would have produced the same net proceeds.

Contrary to Respondent Wortley's testimony, the Will's language concerning the underproductive property rule does not authorize the Co-Trustees to breach their duties of diversification and prudent investment. The fact that Decedent drafted around the applicability of

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this rule simply means that if the Co-Trustees sell one of the Residuary Trust's many underproductive properties, no portion of the proceeds from such a sale would be treated as delayed income payable to the four named beneficiaries equally.[3]

II. THE LEGAL GROUNDS SUPPORTING THE TRUST MANAGEMENT PLAN ADVANCED BY PETITIONER.

As the Court is well aware, there is a stark contrast between Petitioner's and Respondents' vision for the future management and administration of the Residuary Trust. Briefly put, Petitioner's plan is based on diversification to protect the Residuary Trust corpus, while Respondents' plan appears to include retaining as much of the Residuary Trust's farmland and timberland as possible, with minimal diversification (selling only 16% of land acreage by 2023). See **Exhibit 3**, John Helms' 5/30/18 Investment Plan, p. 6.

A. Petitioner's Plan

Petitioner's plan for management and administration of the Residuary Trust is simple and is centered on diversification as a means of mitigating risk, generating meaningful income, and contributing to consistent growth in principal. See **Ex. 4**, 3/19/18 Boykin Dep., pp. 219–240.[4] Under Petitioner's plan, the Co-Trustees would operate as prudent investors, but would slightly overweight real estate in the asset mix to the degree it can be done in a responsible manner. At this time, approximately ninety percent (90%) of the Residuary Trust's overall value is concentrated in one asset class in one general location—farmland and timberland located in Kershaw, Sumter, Lee, and Fairfield Counties in South Carolina. As a result of this grave

[3] Section 413 of the new Revised Uniform Principal and Income Act, enacted in South Carolina in 2001, did away with the underproductive property rule in all cases other than trusts for which an estate tax marital deduction is available.

[4] Petitioner's complete, written Investment Plan for management and administration of the Residuary Trust is forthcoming, and the undersigned anticipates it will be filed with the Court within days of the filing of this brief.

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imbalance, the Residuary Trust is exposed to unnecessary risk and is suffering (and will continue to suffer) from waste, as the Co-Trustees are raiding principal to make even modest annual distributions (based on the overall trust value) to the current beneficiaries. See **Ex. 5**, Plan Comparison; **Ex. 6** 3/19/18 Boykin Dep., pp 43 – 44, 117, 213.

Though it is impossible to predict the performance of the stock market with any certainty, it has out-performed real estate in the past and can diversify risk. As an example, if the Residuary Trust had an average annual gross return of six and one-half percent (6.5%), using an overall Residuary Trust value of $25,000,000, a that return would generate $1,625,000 for the Residuary Trust. Based on those figures, the Residuary Trust could pay the income beneficiaries $750,000 ($187,500 each), pay annual expenses of $300,000, and have growth in the trust assets of $575,000 (2.3%). This type of performance on average would lead to the distributions to the income beneficiaries growing at a 2.3% rate and the Residuary Trust corpus growing at a compounded rate of 2.3% per year. At that rate, the Residuary Trust corpus would be approximately $49,000,000 in thirty (30) years, which is likely around the time that it will be distributed to the remainder persons.

Petitioner's plan is superior to Respondents' plan because it more closely adheres to the requirement of investment prudence imposed by Decedent's Will and by the Prudent Investor Act.[5] Petitioner's plan also respects and adheres to the total return theory of investing embodied in the Prudent Investor Act. The Act requires an assessment of the portfolio of trust assets as a whole. Petitioner's plan adopts an overall investment strategy having risk and return objectives reasonably suited to the Residuary Trust. Petitioner's plan not only places careful attention on the real estate

[5] Or, if the Prudent Investor Act does not apply, then the requirement of investment prudence is imposed by South Carolina's prudent person statute in effect in 1989 and in the years leading up to the enactment in South Carolina of the Prudent Investor Act in 2001.

components, but also posits an expedited timeline for asset diversification that is highly quantitative in nature. See **Ex. 4,** 3/19/18 Boykin Dep., pp. 219–240; Petitioner's Investment Plan.

B. Respondents Belger and Wortley's Plan

Respondents' plan has typically been to rely on the status quo—periodic sales of timber, the leasing of land for hunting and fishing rights, and the sale of real property parcels when money is required for taxes and distributions to income beneficiaries. Respondents initially believed such measures would generate between $400,000 and $600,000 per year on average for the income beneficiaries of the Trust. **Ex. 7**, 6/5/17 Letter re: Belger and Wortley Plan. However, it has since become clear to the Co-Trustees that based on accounting principles of the Uniform Principal and Income Act, a substantial portion of any proceeds from the sale of timber will likely be allocated as trust *principal* rather than as net income. For example, in 2017 the Residuary Trust had approximately $850,000 in proceeds from timber sales, rents, and the sale of one (1) piece of property for approximately $100,000. **Ex. 8**, 3/15/18 Wortley Dep., pp. 33–34. Of that total, approximately $600,000 was attributable to timber sales. Id. However, because a large portion of the proceeds from the sale of timber was allocated as Residuary Trust *principal*, the trust only had minimal *net income*. **Ex. 5,** Plan Comparison. Thus, to even distribute the equivalent of approximately 1.6% of the Residuary Trust value ($25MM), or $400,000 ($100,000 each), to the beneficiaries in 2017, the Co-Trustees were required to invade principal to a significant degree, thereby depleting the trust corpus. This depletion is even more significant after accounting for other annual expenses, like trustee fees, legal and accounting, and property maintenance. Id.

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C. Petitioner's Plan Should be Followed Because Respondents Belger and Wortley Have Unavoidable Conflicts of Interest.

First Union Nat. Bank of South Carolina v. Cisa, 293 S.C. 456, 361 S.E.2d 615 (1987) explains the impact of conflicting interests on trustee-beneficaries. In that case, the South Carolina Supreme Court affirmed the trial court's finding that the settlor's wife was "prohibited from participating in any decisions as trustee to distribute residuary trust income and principal to herself as a beneficiary." In reaching this conclusion, the court relied on In re Hale's Trust, 292 S.C. 308, 356, S.E.2d 138 (1987), which held:

> A trustee must exclude all selfish interest in his dealings on behalf of the beneficiaries of the trust." Cartee v. Lesley, 290 S.C. 333, 350 S.E.2d 388 (1986). Consequently, it is generally undesirable for one of the beneficiaries of a trust to act as trustee, since he is thereby put in a position to favor himself at the expense of the other beneficiaries. Yates v. Yates, 255 Ill. 66, 99 N.E. 360 (1912); Selleck v. Hawley, 331 Mo. 1038, 56 S.W.3d 387 (1932).

Cisa, 293 S.C. at 461, 361 S.E.2d at 618. The court ultimately found that

> for the [settlor's wife] to have participated as a trustee in decisions relating to the distribution of income and principal from the residuary trust to herself would have put her in position to favor herself at the expense of the other beneficiaries. Such a restriction does not preclude a beneficiary from service as a trustee. *However, under the principles of trust law, the trustee-beneficiary is required to refrain from taking actions which it cannot exclude all selfish interests from affecting.* Under the circumstances, [the wife]'s participation in the trust would have been a breach of her fiduciary duty of loyalty to and impartiality among the beneficiaries. Therefore, we conclude that the law prohibited her from such participation.

Id. at 461–62, 361 S.E.2d at 618 (internal citations omitted) (emphasis added).

Furthermore, "[i]n the situation of co-trustees, where interested trustees have a certain conflicting interest, the general rule is that the effect that the trust is valid but that the trustee who is also a beneficiary is disqualified from acting where his interests as a beneficiary are involved, but may act in all other cases." Trustee with a double interest, The Law of Trusts and Trustees §

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129. "*The disinterested trustees must act alone when the rights of the trustee-beneficiary are at stake.*" Id. (emphasis added).

The lack of fiduciary management by Respondents Belger and Wortley (described herein and to be established at trial) indicates a pattern of conduct by them designed to enhance their interests and the interests of their children above the interests of the other Residuary Trust beneficiaries, Whit Boykin and May Boykin.

D. Courts Have Routinely Held that Precatory Language in a Testamentary Instrument is Not Controlling When Adherence Would Harm the Trust.

Numerous cases support the proposition that a court may deviate from the terms of a trust if, due to changed circumstances, the purpose of the trust is compromised. Davison v. Duke Univ., 282 N.C. 676, 194 S.E.2d 761 (1973) ("We are convinced that this perceptive and shrewd businessman, were he alive today, would direct the [trustees] to take immediate action to prevent erosion of the corpus of the trust in order to preserve the dominant purposes of the [trust]: to serve the needs and pay the expenses of its charitable beneficiaries."); See also Furman Univ. v. McLeod, 238 S.C. 475, 489, 120 S.E.2d 865, 872 (1961) ("It would be unfair to consider [the settlors] so short sighted that they never envisioned further growth, development and expansion."); Cutter v. Am. Tr. Co., 213 N.C. 686, 197 S.E. 542, 549 (1938) ("[I]n a case where the income of the trust property is insufficient . . . and the body if the [trust] is in danger of being lost entirely, the court will . . . preserve it as far as possible. . . . The directions of the settlor as to *methods of management* are of secondary importance. The primary consideration is the end which he had in mind, the benefits and advantages which he desired to confer upon the beneficiaries named.").

First Ala. Bank of Huntsville v. Spragins, 515 So. 2d 962 (Ala. 1987) highlights the perils facing a trustee if they fail to diversify. In Spragins, the decedent (a former chairman of the board of the appellant bank) created a trust naming the bank as trustee and funded it primarily with the

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stock of the bank's own holding company. The beneficiaries argued that the bank breached its fiduciary duty to diversify and engaged in self-dealing by holding on to such a large concentration of its own stock. The bank argued that the terms of the trust modified the prudent person standard by providing that the trustee had the power "to make new investments from time to time as it may deem necessary or desirable, regardless of any lack of diversification, risk, or nonproductivity." The trust document also allowed the trustee to hold any assets originally received upon creation of the trust. The court, finding against the bank, held that the donor "*did not intend to vest in the trustee Bank a power to diversify so little as to prejudice the interests of the beneficiaries.*" Id. at 964. The court also found that the bank "failed to provide a reasoned plan of investment calculated to accomplish the testator's purpose," id., and that whatever plan it had was merely a justification for holding on to its own stock. This was due in part to the fact that the bank's own investment advisory service was recommending that no more than five percent (5%) of a portfolio consist of bank stocks.

The bank argued that even if a breach occurred, there were no damages because the trust suffered no loss. Id. at 963. The court rejected this argument and held that, although the value of the trust property had increased, the amount of the gain was much less than what it would have been, had the bank actively and prudently managed and diversified the trust assets. Id. at 965. The beneficiaries successfully argued that the appropriate measure of damages was the amount the trust property would have grown to, had the bank invested in a mix of the S&P 500 index and fixed-income Treasury bills. Id. at 966–67.

Ex parte Guaranty Bank & Trust Co., 255 S.C. 106, 177 S.E.2d 358 (1970) is equally instructive. In that case, there was language in the trust stating that the trustees should "hold under said trust the said [several hundred acres of farmland] for and during the term of the natural life of

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the said beneficiaries[.]" Ex parte Guaranty Bank & Trust Co. at 110, 177 S.E.2d at 359. Despite that expression by the settlor, the court permitted the sale of trust land under the settlor's trust where a lucrative option agreement was offered for the purchase of the otherwise underproductive land. Id. The court wrote:

> A review of the facts, abundantly established by the evidence, will reveal that this property as farm land has had, in recent years, a very low monetary yield . . . *The fact that this property can now be sold for commercial purposes and used for industrial development brings about somewhat of a bonanza or a windfall. No landowner with complete control of this property, and in his right mind, would continue to use this land for agricultural purposes.*
>
> It should be noted that the will of [the settlor] did not authorize the trustee to convey his real estate. At the same time sale was not specifically prohibited. Under such facts a sale will not be authorized merely because it would benefit the trust. The court will approve a power of sale only where the circumstances are such that the real purposes of the trust would be defeated or seriously impaired unless the trustee be permitted to sell the property and convert the same to cash.
>
> In Wingard v. Hennessee, 206 S.C. 159, 33 S.E. (2d) 390 (1942) this court held that a court of equity could provide for sale of land "in the case of reasonable necessity." An absolute necessity need not be shown. It is sufficient that a reasonable necessity be proven, such to be determined from the whole of the evidence . . . .

Id. at 111–12, 177 S.E.2d at 359. In the present controversy, the record supports a finding that a similar "bonanza or a windfall" exists with respect to the Residuary Trust property. See, e.g., **Ex. 9**, 3/19/18 Boykin Dep, pp. 67–71; 212–13; **Ex. 10** , 10/13/17 Trust Meeting Summary.

The court in Ex Parte Guaranty Bank & Trust Co. found that "[t]he real intent of the settlor of the trust was to provide for the beneficiaries[,]" and that "[f]ailure to grant the relief sought in this action would defeat the overall purpose of the trust to provide for the beneficiaries and would be to their detriment." Id. at 112, 177 S.E.2d at 360–61. Petitioner, like the Court in that case, believes that the "[s]ale of the [Residuary Trust] property merely changes the form of the body of

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the trust. The beneficiaries will enjoy the income from the money and the ultimate distribution instead of enjoying the income from the land and its ultimate distribution." Id.

Courts have even found that sale of a property in contravention to the terms of the trust is appropriate in certain circumstances. See e.g., Am. State Bank v. Kupfer, 114 Ill. App. 3d 760, 768–69, 449 N.E.2d 1024, 1029–30 (1983) (court approval of sale of a theater over objections of beneficiary where failure to sell theater would be lost financial opportunity for beneficiaries not contemplated by settlor); Rutanen v. Ballard, 424 Mass. 723, 728, 678 N.E.2d 133, 138 (1997) (requiring sale over objection of trustees where trust property had become unproductive). In Rutanen, certain income beneficiaries and remaindermen of a trust brought an action against trustees for breach of their fiduciary duties to the trust in refusing to sell unproductive property of the trusts. The court found that trustees had a duty to sell such properties and that the co-trustee acted in bad faith by refusing to sell trust properties where the co-trustee testified that she feared she "would have been left out in the cold with nothing" if she sold the property and that she did not consider effects of her refusal to sell on either income beneficiaries or remaindermen. Id. Section 240 of the Restatement (Second) of Trusts likewise supports the Courts' action in Rautanen, providing:

> Unless it is otherwise provided by the terms of the trust, if property held in trust to pay the income to a beneficiary for a designated period and thereafter to pay the principal to another beneficiary produces no income or an income substantially less than the current rate of return on trust investments, and is likely to continue unproductive or under-productive, the trustee is under a duty to the beneficiary entitled to the income to sell such property within a reasonable time.

Restatement (Second) of Trusts § 240 (1959). The Comments of Section 240 provide further clarification on unproductive and under-productive property.

> a. What is unproductive property. The rule stated in this Section is applicable to unproductive land, to reversionary interests, to chattels which are not productive of income, and to securities yielding no income. *The duty of*

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conversion is owing to the beneficiary entitled to the income and not to the beneficiary entitled to the principal, unless the property should be disposed of because it is in other respects not a proper trust investment, for example if it is of a hazardous or speculative character.

b. Under-productive property. If the trust property produces an income which is substantially less than the income which would be derived if the property were sold and the proceeds were invested so as to yield the current rate of return on trust investments, *the trustee is under a duty to the life beneficiary to sell the property and invest the proceeds*. The mere fact, however, that the income derived is somewhat less than such return does not impose a duty upon the trustee to sell the property. The duty arises only where the difference is so great that it is unfair to the life beneficiary to retain the property.

c. Where trust estate originally includes unproductive property. The rule stated in this Section is applicable to property which was a part of the trust estate at the time of the creation of the trust, whether it was unproductive at that time or subsequently became unproductive

Restatement (Second) of Trusts § 240 (1959) (emphasis added).

Petitioner's management plan for the Residuary Trust will protect and grow the trust assets over time. It is also consistent with the requirement that Petitioner and Respondents, as Co-Trustees, act as prudent stewards of the Residuary Trust property they have been charged with managing. For the reasons set forth herein, and based on further evidence to be presented at trial, Petitioner respectfully requests that the Court order such appropriate relief as to ensure diversification and proper fiduciary management of the Residuary Trust.

III. THE LEGAL GROUNDS SUPPORTING THE PAYMENT OF A MANDATORY MINIMUM TO THE INCOME BENEFICIARIES.

The Court has the authority to impose a mandatory minimum distribution to the current beneficiaries of income and principal. This authority is derived from the following sources.

A. The Language of Decedent's Will

Under the assumption that the mandatory minimum distribution would be greater than the current net income of the trust, the Court's authority to impose a mandatory minimum is based on

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the terms of Item VIII, Paragraphs (1) and (2) of the Will. Under those provisions, the Co-Trustees *must* pay all of the net income and *may* in addition pay sums from the trust principal. Since the Co-Trustees have the discretion to set such a mandatory minimum, so too would the Court have the inherent power to direct the Co-Trustees to make payment of a mandatory minimum. See S.C. Code Ann § 62-7-201 (a)(1) (giving the Court the authority to "ascertain beneficiaries, determine a question arising in the administration or distribution of a trust . . . ."); S.C. Code Ann. § 62-7-105 (b)(11) (authorizing the Court "to take such action and exercise such jurisdiction as may be necessary in the interests of justice.").

B. The Unitrust Conversion Statute

The Unitrust Conversion Statute, S.C. Code Ann §§ 62-7-904 B through P, affords only a non-beneficiary trustee, like Petitioner, the authority to convert the Residuary Trust from one which pays just the net income to the beneficiaries, to a trust requiring the payment of a "unitrust amount" which is a percentage (no less than 3% nor more than 5%) of the fair market value of the trust assets at the beginning of the trust year. S.C. Code Ann. §62-7-904B. If the disinterested trustee encounters opposition from his co-trustees, or the beneficiaries, he may apply to the court under S.C. Code Ann. § 62-7-904A ("Judicial Control of Discretionary Power") for an order of conversion. The unitrust amount is the mandatory minimum distribution, which generally will afford the beneficiaries something more than just the net income. The Unitrust Conversion Statute, therefore further provides a legal basis supporting a mandatory minimum distribution to the Residuary Trust beneficiaries.

C. The Power to Adjust Statute

Under the Power to Adjust Statute, S.C. Code Ann. § 62-7-904, a non-beneficiary trustee, like Petitioner, is granted the power to adjust between income and principal. The power to adjust

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simply means the authority to convert to income trust assets which are traditionally considered to be principal (the corpus which produces the income), if doing so would further fulfill a trustee's duties as a prudent investor. If the disinterested trustee encounters opposition from his co-trustees, or the beneficiaries, he may again apply to the court under S.C. Code Ann. § 62-7-904A (" Judicial Control of Discretionary Power ") for an order of adjustment. An adjustment can be used by a Petitioner and the Court to impose a mandatory minimum distribution to the Residuary Trust beneficiaries.

D. South Carolina Trust Code Section 62-7-412.

Under S.C. Code Ann. § 62-7-412(a) ("Modification or termination because of unanticipated circumstances or inability to administer trust effectively"), the Court "may modify the administrative or dispositive terms of the trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification must be made in accordance with the settlor's probable intention." Here, the Court could modify the Residuary Trust so as to impose a mandatory minimum distribution. As Petitioner has alleged in his Amended Petition (which seeks this very relief), Decedent could not have anticipated at the time he drew his Will and died in 1989 the substantial changes in the market for timberland and the proliferation of buyers of Kershaw County land near Boykin, South Carolina. The highest and best use of the Residuary Trust's real estate in lower Kershaw County around Boykin—primarily timberland and farmland—has drastically changed, such that its fair market value is now 2-3 times that which a rational investor would pay for growing timber or row crops. Am. Petition, ¶¶ 65–66. Based on those changed circumstances (and others to be proven at trial) the Court may impose a mandatory minimum distribution to Residuary Trust beneficiaries under S.C. Code Ann. § 62-7-412(a).

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E. The Decanting Statute

e. Under the South Carolina Trust Code's decanting statute, S.C. Code Ann. § 62-7-816A, the Court has the power to decant the Residuary Trust into another trust with substantially similar, but not identical terms. The decanting statute affords only a non-beneficiary trustee, like Petitioner, the authority to transfer the assets from the present trust to one that might provide for, among other things, a mandatory minimum payment to the Residuary Trust beneficiaries or less restrictive terms than those requiring unanimous voting by the Co-Trustees. If Respondents Belger or Wortley, or any beneficiary, object to the decanting after receiving the required advanced notice, or should Petitioner commence an action for Court approval of the decanting, the Court could enter such relief as it deems advisable.

F. Case Law

In Sarlin v. Sarlin, 312 S.C. 27, 430 S.E.2d 530 (1993), the testator provided for the establishment at his death of a trust for the benefit of his surviving spouse, with remainder to the settlor's son and the son's descendants. The testator named that son from a prior marriage as the trustee and afforded the trustee discretion with respect to the payment of trust principal, directing that the trustee was to exercise his discretion "without the intervention or consultation of anyone." The surviving spouse commenced a declaratory judgment action requesting that the court determine, among other things, whether the trustee had violated his fiduciary duties in failing to pay adequate amounts to her, in paying himself allegedly excessive compensation, and in investing the trust assets aggressively, for capital appreciation and not income. The circuit court determined that the will required that all of the income of the trust be paid to the surviving spouse, that the trustee needed to realign his investments so as to enhance the net income to the spouse, and that

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the trustee pay the surviving spouse a mandatory minimum amount. The Court of Appeals affirmed, reasoning as follows:

> Additionally, we find no abuse of discretion by the trial court in ordering the Trustee to invest the trust assets in such a manner as to enhance the trust income. The trial judge ordered the Trustee to pay Sarlin [the surviving spouse] out of the trust funds, whether it be from income or principal, the greater of $4,000 per year or 5% of the total value of the assets held in trust. It is well settled that, in proper cases, courts of equity may interfere with the disposition of trust funds; however, such power should be exercised only in cases of real necessity. Wanamaker v. South Carolina State Bank, 176 SC 133, 179 SE. 896 (1935). In light of the trustee's breach of fiduciary duties, we hold that this is a case of "real necessity" and find the trial court's remedy appropriate.

Sarlin, 430 S.E.2d at 533.

Based on the foregoing statutory and case law, as well as the Decedent's Will, there is ample authority for the Court to set an annual mandatory minimum payment to the Residuary Trust beneficiaries in this matter.

IV. THE LEGAL GROUNDS SUPPORTING THE REMOVAL OF RESPONDENTS WORTLEY AND BELGER AS TRUSTEES.

Decedent's Will is silent as to the process or grounds for trustee removal. Therefore, the grounds for removal are those contained in S.C. Code Ann. Section 62-7-706, which provides that removal may be sought by the settlor, a co-trustee, or a beneficiary, or removal may be accomplished by the court on its own initiative. S.C. Code Ann. § 62-7-706(a).

The court may remove a trustee if:

(1) the trustee has committed a serious breach of trust;

(2) lack of cooperation among cotrustees substantially impairs the administration of the trust;

(3) because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries; or

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(4) there has been a substantial change of circumstances or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

S.C. Code Ann. § 62-7-706(b); cmt. to subsection (b) ("Removal for conduct detrimental to the interests of the beneficiaries is a well-established standard for removal of a trustee." (citing Restatement (Third) of Trusts Section 37 cmt. d (Tentative Draft No. 2, approved 1999); Restatement (Second) of Trusts Section 107 cmt. a (1959)).

Under S.C. Code Ann. 62-7-706(b) and the comments thereto, Respondents Belger and Wortley should be removed as Co-Trustees of the Residuary Trust for four reasons: (1) they have committed a serious breach of trust; (2) their lack of cooperation and responsible action has substantially impaired the administration of the Residuary Trust; (3) they are unfit to serve as Co-Trustees of the Residuary Trust, and due to their persistent failure to administer the trust effectively, their removal as Co-Trustees would serve the best interests of the income and remainder beneficiaries; and (4) there has been a substantial change of circumstances such that removal of Respondents Belger and Wortley as Co-Trustees serves the best interests of all of the beneficiaries and is not inconsistent with a material purpose of the Residuary Trust.

A. Respondents Belger and Wortley Have Committed a Serious Breach of Trust.

A "serious breach of trust" is defined as "a single act that causes significant harm or involves flagrant misconduct, *or* a series of smaller breaches, none of which individually justify removal when considered alone, but which do so when considered together." S.C. Code. Ann. § 62-7-103 (24). Serious breaches of trust can occur through omission as well as commission. A serious breach of trust warranting removal may arise out of a trustee's failure to act as a prudent investor. See Estate of Cooper, 81 Wash. App. 79, 913 P.2d 393 (1996). In Estate of Cooper, the

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trustee's removal was justified where he breached the duty of impartiality in investment matters, giving rise to a distrustful relationship which made it likely that litigation would continue if the trustee were retained. Id. at 95, 913 P.2d 401. In that case, the Court of Appeals of Washington affirmed the trial court's finding that trustee removal was warranted due to the trustee's breach of his duty to act as a prudent investor. Id.

Here, Respondents Belger and Wortley have committed serious breaches of trust, either through one or multiple acts. The following list is merely illustrative of Respondents Belger and Wortley's serious shortcomings as Co-Trustees:

- They have failed to conduct regular Trustee meetings for extended periods of time in 2017 (See **Ex. 11,** 1/16/18 Aff. of Rigdon Boykin ¶15; **Ex. 12**, 3/19/18 Boykin Dep., pp. 240–41);

- They have refused to execute the proposed Option Agreement to purchase the Boykin Millpond and several of the downtown Boykin properties for over $4.5 million, which to date has presented the only viable option for converting the Residuary Trust's largest financially draining asset into substantial revenue while also preserving the land for future generations (See **Ex. 13**, 4/20/18 Aff. of Rigdon Boykin ¶¶ 8, 12);

- They have failed to honor and act in accordance with the duty of impartiality imposed upon them as trustees by S.C. Code Ann. § 62-7-803 by administering the trust for the sole benefit of themselves and their heirs, to the detriment of Whit Boykin and May Boykin (See **Ex. 14**, 2/26/18 Belger Dep., pp. 134–35 (stating her desire to retain the Boykin Millpond for her children and Wortley's);

- They have failed to honor and act in accordance with the duties of prudent investment and diversification imposed upon them as trustees by S.C. Code Ann. §§ 62-7-803, 62-7-933 by demonstrating a complete unwillingness to sell Residuary Trusts assets, including even certain tracts of land which are not subject to the precatory language of Decedent's Will (See, e.g., **Ex. 15,** 1/24/17 Email from Belger to K. Thomas (refusing to sell trust property despite previous agreement); **Ex. 16**, 1/27/18 Email from Wortley to Peacock (regarding Belger's complete unwillingness to compromise); **Ex. 17**, 2/24/18 Email from Wortley to Peacock ("Little Alice is the immovable object . . . .")); and

- They have failed to effectively administer the Residuary Trust in such a way as to provide sufficient income generation for reasonable beneficiary distributions, growth in the Residuary Trust corpus, or risk mitigation in the interests of all

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beneficiaries (See, e.g., **Ex. 18**, 3/15/18 Wortley Dep., pp. 133–34 (stating her belief that the *maximum* annual net income generated by the Residuary Trust and distributed to the current beneficiaries should be three percent (3%)).

In particular, Respondents Belger and Wortley's failure to act impartially with respect to the other current beneficiaries, Whit Boykin and May Boykin, is the most serious breach of trust warranting removal under S.C. Code Ann. § 62-7-703.

B. Respondents Belger and Wortley's Lack of Cooperation and Responsible Action Has Substantially Impaired the Administration of the Residuary Trust.

Under S.C. Code Ann. § 62-7-706 (b)(2), "the lack of cooperation among trustees justifying removal . . . need not involve a breach of trust. The key factor is whether the administration of the trust is significantly impaired by the trustees' failure to agree." A trustee's removal is "particularly appropriate if the naming of an even number of trustees, combined with their failure to agree, has resulted in deadlock requiring court resolution." Id., cmt.[6]

Serious friction between co-trustees may also warrant removal of one or both of them. Restatement (Third) of Trusts § 37 (2003), cmt. e(1). "[W]here there is such friction or hostility as seriously to impede the proper performance of the trustee, especially if the trustee is at fault, the trustee will be removed." II William F. Fratcher, Scott on Trusts § 107 (4th ed. 1987). Such friction between between co-trustees, "is a sufficient ground for the court to remove the trustee if (1) the provisions of the instrument creating the trust require mutual interchange of ideas, and (2) if the hostility tends to defeat the purpose of the trust." Ashman v. Pickens, 12 Ark. App. 233, 236, 674 S.W.2d 4, 5 (1984); See also In re Estate of Palma, 40 A.D.3d 1157, 1158 (N.Y. App. Div. 2007) ("Friction, hostility or antagonism between a fiduciary and beneficiaries can also

[6] While the Residuary Trust has an odd number of trustees, because of the Will's unanimous voting requirements, deadlock exists nonetheless.

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disqualify the fiduciary, but only when such enmity threatens to interfere with the administration of the estate."); In re Estate of Gonzales, 977 P.2d 1284 (Wyo. 1999) (upholding lower court's revocation of letters administration on the grounds that the hostility, litigiousness, and antagonism between the PRs and other family members had "reached the point where it will hamper the expedient, efficient resolution of the probate estates[.]"); Rand v. Giller, 489 So.2d 796, 798 (Fla. Dist. Ct. App. 1986) (finding that the best interest of an estate may best be served by removing a personal representative where there are irreconcilable differences between the parties, such that the fiduciary needs to constantly resort to court action to resolve conflicts).

There is no question that the administration of Decedent's Residuary Trust is deadlocked as a result of trustee friction caused by Respondents Belger and Wortley. See **Ex. 19**, 11/9/17 Email from Wortley to Peacock ("There is a big issue concerning the Millpond and downtown Boykin brought up by Rigdon which L Alice doesn't want to consider but I do—I hope we can eventually get her to consider it. I'll tell you about it when I see you."); **Ex. 16**, 1/27/18 Email from Wortley to Peacock. ("I think the hearing was basically a good thing because it let us all know in no uncertain terms that we have to work out a compromise. I didn't realize the extent of the compromise required, and Little Alice did not believe in any compromise at all. Period. Now she does."); **Ex. 15**, 1/24/17 Email from Belger to K. Thomas (refusing to sell trust property despite previous agreement); **Ex. 17**, 2/24/18 Email from Wortley to Peacock ("Little Alice is the immovable object . . . ."). Pursuant to S.C. Code Ann. § 62-7-706 (b)(2), legal grounds for removal of Respondents Belger and Wortley exist.

C. Respondents Belger and Wortley are Unfit or Unwilling to Serve as Co-Trustees of the Residuary Trust.

The removal of a trustee for "unfitness" is left to the broad discretion of the trial court. Floyd v. Floyd, 365 S.C. 56, 93, 615 S.E.2d 465, 485 (Ct. App. 2005), overturned on other grounds

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by legislative action. In South Carolina, a court will deem a trustee unfit because of "(a) dishonesty, (b) serious breaches of trust, or (c) failure to adequately perform trustee duties." Id. at 98, 615 S.E.2d at 487. The comments to S.C. Code Ann. § 706 further provide:

> Unfitness" may include not only mental incapacity but also lack of basic ability to administer the trust. "Unwillingness" includes not only cases where the trustee refuses to act but also a pattern of indifference to some or all of the beneficiaries. See Restatement (Third) of Trusts Section 37 cmt. a (Tentative Draft No. 2, approved 1999). A "persistent failure to administer the trust effectively" might include a long-term pattern of mediocre performance, such as consistently poor investment results when compared to comparable trusts.

S.C. Code Ann. § 62-7-706, cmt; Restatement (Third) of Trusts § 37 (2003), cmt. e (explaining that removal based on unfitness may be "due to insolvency, diminution of physical vigor or mental acuity, substance abuse, *want of skill, or the inability to understand fiduciary standards and duties*.") (Emphasis added).

Additionally, a lack of good judgment may indicate an individual is unfit to serve as trustee and may merit their removal. In re Marriage of Petrie, 105 Wash. App. 268, 277, 19 P.3d 443, 448 (2001) ("[Appellant's] lack of good judgment . . . illustrate his unfitness . . . ."). A court may remove a trustee for being unfit "if it best serves the interests of the beneficiaries." S.C. Code Ann. § 62-7-706; Floyd, 365 S.C. at 93, 615 S.E.2d at 485 ("When in the course of the administration of a trust . . . a trustee cannot, in fairness to the beneficiaries, be allowed to continue in the exercise of his powers, he may be removed . . . .").

"[W]hen a beneficiary serves as trustee or when other conflict-of-interest situations exist, the conduct of the trustee in the administration of the trust will be subject to especially careful scrutiny. Restatement (Third) of Trusts § 37 (2003), cmt. f(1). Removal of a trustee may be warranted where the trustees demonstrates "unwarranted preference to the interests of one or more

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beneficiaries; a pattern of indifference toward some or all of the beneficiaries; or unreasonable or corrupt failure to cooperate with a co-trustee." Id., cmt. e.

Respondents Belger and Wortley have demonstrated a lack of good judgment, a pattern of indifference to certain beneficiaries, and a pattern of poor or mediocre performance (which will continue based on their investment plan). Respondents Belger and Wortley also do not possess the temperament, education, or experience that management of the Residuary Trust requires. See, e.g., 2/26/18 Belger Dep., pp. 106–07, 120–22; **Ex. 20**, 3/15/18 Wortley Dep., pp. 15–16; **Ex. 11**, 1/16/18 Aff. of Rigdon Boykin, ¶ 11; **Ex.13**, 4/20/18 Aff. of Rigdon Boykin, ¶ 9. They have failed to devise any comprehensive budget for the Residuary Trust which accounts for all expenses, income beneficiary distributions and the need for growth for the remainder persons. As alleged in Petitioner's Amended Petition, his "Co-Trustees do not possess sufficient understanding of the financial concepts necessary to administer the Residuary Trust—which is essentially a $25,000,000 business with a need for financial planning, budgets, analyses, and forecasts. In fact, despite repeated requests for over twelve (12) months, and despite promises to do so, the Respondent Co-Trustees have failed to provide a cogent explanation of how administering the Residuary Trust as has been done in the past is going to provide the return necessary to meet the Residuary Trust's obligations." Am. Petition ¶ 74. For those reasons, Respondents Belger and Wortley should be removed as Co-Trustees of the Residuary Trust.

D. There Has Been a Substantial Change of Circumstances and Removal of Respondents Belger and Wortley as Co-Trustees Serves the Best Interests of the Beneficiaries and the Residuary Trust.

As noted above, the Court may remove a trustee or trustees where there has been "a substantial change of circumstances . . . [and] the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust."

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S.C. Code Ann. § 62-7-706(b)(4). As set forth in the Amended Petition, a substantial change of circumstances exists, such that the "Residuary Trust cannot continue to operate as it was during Mrs. [Alice] Boykin's lifetime, because the demands on the Residuary Trust are now a multiple of what they once were." Am. Petition ¶ 75. Furthermore, Decedent could not have anticipated at the time he drew his Will and died in 1989 the substantial changes in the market for timberland and the proliferation of buyers of Kershaw County land near Boykin, South Carolina. The highest and best use of the Residuary Trust's real estate in lower Kershaw County around Boykin—primarily timberland and farmland—has drastically changed, such that its fair market value is now 2-3 times that which a rational investor would pay for growing timber or row crops. Am. Petition, ¶¶ 65–66; **Ex. 9**, 3/19/18 Boykin Dep, pp. 67–71; 212–13; **Ex. 10**, 10/13/17 Trust Meeting Summary. Petitioner testified at his deposition on March 19, 2018 that the Residuary Trust has "about two -- two thousand (2,000) acres or so in and around Boykin, and that land has market value today substantially in excess of the use to which it's being put." **Ex. 9**, 3/19/18 Boykin Dep., pp. 67–71. Moreover, just before Decedent died, he lost over half of his net worth from the decimation of his timber as a result of Hurricane Hugo. **Ex. 6**, 3/19/18 Boykin Dep., pp 43 – 44, 117, 213. The Residuary Trust's forester, Jimmy LaFrage, testified at his deposition on June 12, 2018 that the effect of Hurricane Hugo on Decedent's timber holdings was "devastating."

The substantial change of circumstances described herein regarding the Residuary Trust and its real estate assets, together with the authorities cited Section II, D. of this brief, warrant the removal of Respondents Belger and Wortley as Co-Trustees to protect the best interests of the Residuary Trust and its beneficiaries.

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V. CONCLUSION

Petitioner Rigdon H. Boykin and Respondents Whit Boykin and May Boykin respectfully submit the foregoing authorities and arguments, together with the evidence in this case, in support of the relief requested in the Amended Petition and Answer and Crossclaim of Respondents Whit Boykin and May Boykin.

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Charleston, South Carolina
June 18, 2018

Exhibit 1
(Wortley Dep. p. 173)

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Paragraph Nine, Page Three. The allegation is this.
MR. TETTERTON: Can we ask her to look at it?
MR. BUNDY: It's your Pleading.
MR. TETTERTON: I understand that, but if you're going to ask her to look at the question about a document, she needs to look at that document.
MR. BUNDY: Well, I can read it ---
A. I have it.
Q. Yes. Page Three, Paragraph Nine.
MR. TETTERTON: Thank you.
A. I've got it.
Q. Thank you. It starts on the second line. It says, "There is considerable discord between all three Co-Trustees to the extent that Wortley and Belger have taken the position they will vote no on every investment strategy proposed by the Petitioner." Is that true?
A. No.
Q. This is ---
A. I mean, I am in favor of diversifying. I am just not in favor of diversifying everything or selling everything and putting it in the stock market. But I believe we need to diversify. I agree with that.

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Q. Okay.
A. You know, to the sale of some land and maybe we'll agree to sell some more as long as they aren't treasure tracts or ---
Q. Okay.
A. -- some of our timberland.
MR. TETTERTON: I'm sorry. I didn't get that last answer. You faded out on me. Not as long as it's treasure tract and ---
MRS. WORTLEY: What part?
MR. TETTERTON: You said ---
A. I would not agree to sell the treasure tracts land, the treasure tracts and some of the timberland I probably would not agree to sell. But, I mean, we -- we consi -- I would consider to sell a lot of other things because I agree we need to diversify. We just don't need to diversify this minute or and sell everything all of a sudden. And we need to be careful what we do now and how it will affect the rest of our income.
Q. Okay. Let's go back to the allegation though because what I'm interested in trying to drill down on is what would be the basis for Mary Deas or Whit to make this allegation and how they would have come to the conclusion to make such an allegation. Can we believe

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-- can we agree that it's not true that Wortley and Belger have taken the position that they will vote no on every investment strategy proposed by the Petitioner. That's just not true, is it?
A. Not true.
Q. Okay. Were Mary Deas and Whit at any of these meetings?
MR. TETTERTON: May and Whit.
MR. BECKER: May.
Q. Excuse me. Excuse me. May. I apologize.
A. Well ---
Q. Were May and Whittle at any of these meetings?
A. No, they were not.
Q. Okay. So, whatever the basis of that untrue allegation is, it would have come from someone else?
MR. TETTERTON: Object to the form.
MR. DUFFY: Object to the form.
Q. Correct?
A. Right. Well, you know, they weren't there; so that -- I don't know how they would know that it wasn't run properly; we weren't -- how would they know that we voted no on everything?
Q. Okay. Well, we're going to get there. Did you tell May or Whit that Co-Trustees Wortley and Belger had taken the position they will just vote no on every

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investment strategy plan proposed by the Petitioner?
A. No, I did not.
Q. Is it accurate to assume and believe or do you have any reason not to believe that Alice did not tell May or Whit that Wortley and Belger had taken the position they were going to vote no on every investment strategy proposed by the Petitioner?
A. I feel certain Alice did not tell them that.
Q. Okay. So, the only -- so, then we just need to go to the other people at those meetings to determine who may have told them that because those are the only people that -- who know; right?
A. Right.
Q. Is it your understanding that the Uniform Prudent Investment Act governs this Will and Trust?
A. No, it is not.
Q. And is your understanding based upon the -- the Will and Trust itself, the writing of the Will and Trust itself?
A. Yes. I think there is a waiver in the Will that overrides the Uniform Prudent Trustee Act and there's also a situation that overrides it which is a closely held family business. I think we have two situations that override that Act.
Q. Okay.

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A. Although I am not, you know, against some diversification, I do not think we are required to do it.
Q. Okay. Did Mr. Rigdon Boykin take the position that you were required as Trustees to and were governed by the Uniform Prudent Investment Act?
A. Yes, he said it was a rule of thumb that we needed to follow.
Q. Okay. And that was just a good faith disagreement between the Trustees, yours based upon the writing of the Will and the Trust, and his based on some other belief; correct?
A. Correct. We were told that it is not a law in South Carolina.
Q. Okay. Did it ever occur to you initially to sue Mr. Boykin because he disagreed ---
A. No.
Q. -- with you about this -- the application of this?
A. No.
Q. Do you believe it's really necessary for all this lawsuit and all you -- all your family members to be suing each other over all this stuff?
A. It's horribly damaging to the family and horribly expensive to the Trust.
Q. And is it ---

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A. I see no reason for it. I think it's awful.
Q. And is it totally and utterly inconsistent with what your father wanted?
A. Yes.
MR. TETTERTON: Objection. How would she know that?
Q. How -- that's a good question. Mr. Tetterton wants to know how you would know what your father wanted. Why don't you explain to us if you will how you know as his daughter what he wanted?
A. Well, my father loved his land. He loved his land. He drove around it every night. He just drove and looked and -- and he loved the Mill Pond. He told me always that I -- where he found me was in a stump-hole in the Mill Pond. So, that's in my DNA. And it was in his, and I inherited his, -- you know, I -- I love how he treasured the land and wanted to leave it as a legacy. He spoke about it a lot, but he also loved his children. He adored his children. He was so proud when Little Alice was born and Whit and May. He was thrilled. You never saw anybody so proud as my father. And when Alice was born, he came running down the hospital corridor and said, "My wife just had a six pound baby. I caught a fish bigger than that yesterday." And he was thrilled. So, he loved his

Exhibit 2
(Wortley Dep. p. 30)

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spelled out in the Will. The Gilley's tract, the Laney tract, the Mill Pond. Those tracts held out in the Will as treasured tracts. Broadway Plantation.

Q. **Is there any circumstance under which you think the Trust should dispose of those tracts you just mentioned?**

A. If we were broke. If we were going bust or if there was some horrible catastrophe, but I can't see that we have any of those conditions now.

Q. **What are the -- what are the assets of the Trust as we speak?**

A. Well, it's my understanding we have about Twenty-two Million and -- we have about Twenty-two Million in land, about Three Million in cash and about Two Million in commercial properties.

Q. **The tracts you just mentioned, how much is that in timberland or farmland?**

A. All of the tracts or just the tracts I just mentioned?

Q. **The ones you mentioned as treasured tracts.**

A. Well, I -- I don't know what percentage. We have a lot of good timber on that, but I would have to look up the -- I would have to look that up. I don't have that information on the top of my head.

Q. **Have you in your mind developed an investment strategy of how to administer this Trust?**

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A. Yes, it's a sort of a -- I wouldn't say it's a thorough complete investment strategy but, yes, I have an idea of how we would manage it.

Q. **Okay. What is your -- what is your suggestion for a plan or investment strategy to administer this Trust? As we ---**

A. I believe ---

Q. **As we sit here today -- as of today. First of all, have you developed in your mind an investment strategy for the Trust?**

A. General - a general investment strategy.

Q. **And what ---**

A. I can't say I ---

Q. **I'm sorry. And what is that?**

A. I think we do need to diversify further. I think we do need to protect. I think we do need to protect the treasured tracts. I think we need to sell some of our assets then and invest them in the stock market. But I think we have to do it carefully and prudently. We cannot rush into dumping a whole lot of land on the market. It would -- it would ruin the costs and drive everything down. I think we need the luxury of time to manage our timber resources and sell what we can and see how it goes.

Q. **Have you suggested or you have developed in your mind**

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a percentage of assets that should be put into a diversif -- diversification strategy?

A. No, because I think percentages vary according to a lot of variables, and I would not be able to give you a percentage now. I do -- I will admit that Ninety Percent (90%) in timberland and farmland is too much. I think we need more diversity than that. I -- I'm not prepared to say what percentage.

Q. **So, I understand your testimony is, you have no idea at this point what percentage you think should be held in real estate and what percentage should be used for diversification; is that correct?**

A. I don't think it's possible to tell that at this time given the nature of our timber business.

Q. **And what is the nature of the timber business?**

A. I think the timber business is a very profitable business. And I think that, considering that we have a very profitable family business that my father built up, he earned Two Million dollars ($2,000,000.00) starting out with very little, and I'm still learning and enjoying the proceeds of this business. I think that it's a very fine business and we should try to remain in it as much as possible and that perhaps we shouldn't be in the stock market half and half; I do not know. But I do believe that we have to balance

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stock market and timber business.

Q. **Okay. And the ---**

A. I wouldn't say what that balance is yet.

Q. **Do you have any idea when you can come up with an investment strategy to suggest to the other Trustees how to diversify the assets of this Trust?**

A. How to or when to?

Q. **How to and when to. How to first of all, and then when to.**

A. Well, I believe we have a real A team of advisors, Jane Peacock and in Karen Thomas. I think they're the best, and I would go on their advice. And Ansel Bunch, he has done very well for us, and I think we have to weigh in the benefits. I think when we sell land, we can invest in the stock market; when we sell the timberland, invest as much as we can in the stock market. I would think we would gradually build that position in the stock market. And with the advice of Ansel Bunch or anybody else and, gradually. I don't think we shouldn't rush into anything, and I certainly don't think we should rush in to sell our wonderful timberland producing properties.

Q. **So, as I understand your testimony, you would agree that the Trustees have a duty to divest -- to divest -- to diversify the assets of the Trust; is that**

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correct?

A. That's correct.

Q. **Are there any special circumstances that would cause you and the Trustees to vote not to diversify?**

A. I can't say. I don't know what the circumstances would be. I can't answer that.

Q. **As a Trustee, what is the -- what are the reasons to diversify the assets of a Trust this large?**

A. It reduces risks.

Q. **Okay. Have you considered ---**

A. Diversify to reduce risks.

Q. **Any other reason to diversify other than to reduce risks?**

A. Well, I would think -- I don't want to say under-productive assets because my father particularly said in his Will that we should not -- we should hold on to the treasured tracts even if they were under-productive assets. But perhaps other under-productive assets we should sell.

Q. **Would you also agree that one of the reasons to diversify other than risks would be to create growth in the assets?**

A. Yes, but I think holding on to the land creates growth, too. I know the property around Millway was about -- valued at about Three Hundred and Fifty

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Thousand ($350,000.00) when my father died, and now it's valued over a Million. So, I think you have growth in the land as well as growth in the stock market.

Q. **Have you considered any other investment strategies other than the stock market?**

A. You mean financial or what?

Q. **Financial.**

A. What -- no.

Q. **Okay. Whit does not have any children; is that correct?**

A. Yes.

Q. **And May does not have any children?**

A. Yes. Correct.

Q. **Whit is not ---**

A. True.

Q. **And Whit is not married; correct?**

A. Correct.

Q. **So, the only future remaindermen would be your children and Alice's child; is that correct?**

A. Correct.

Q. **Do you consider whether or not Whit or May would have some expectations of getting some land during the administration of this Trust?**

A. I don't think they have expectations of getting land.

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Exhibit 3
(John Helms' 5/30/18 Investment Plan)

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MILLIKEN
FORESTRY COMPANY

DATE: May 30, 2018

TO: Trustees of the L. W. Boykin II Residuary Trust

FROM: John R. Helms (SC Registered Forester #850; SC Certified General Appraiser #A4365) John R. Helms

SUBJECT: Planning Spreadsheet for Use in Analyzing and Managing Real Estate and Timber Assets to Provide Income and Investment Diversification Goals

Per request of Mary Deas Boykin Wortley and Alice Boykin Belger, I have been asked to provide the accompanying **Planning Spreadsheet** and **Summary Valuation Table** to assist the Trustees in strategically planning for the management of real estate and timber assets to help meet goals, such as: providing for annual and long-term income to beneficiaries, diversifying the Trust's assets to include a higher percentage of financial assets and maintaining family legacy properties for future generations.

In preparing this Planning Spreadsheet and Summary Valuation Table, I have relied on appraisals of rural land acreage I performed for estate tax purposes, related to Residuary Trusts A & B. This is 4,787.21± acres of the 5,982.82± acres in the Residuary Trust. Appraisals of other specific tracts (if sold separately) were performed by other appraisers and were provided for some of the additional acreage, but tax assessments and similarities with other tracts or parcels had to be used for areas not involved in those trusts (which had no appraisal). Timber planning information developed by the Trust's forestry consultant, James Lafrage of Forest Land Management, Inc. (also used and considered in estate tax appraisals) and use of county geographic information systems and tax assessment records, as well as lists I was provided of Trust properties and Trust timber approved or scheduled for sale, were also used and included as part of this spreadsheet.

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As a disclaimer, it should be stated that this intended only as a reference and planning tool, and that any decisions to buy or sell timber on a specific tract or area of a tract should be considered on its own merits, especially considering that tax related appraisals and timber appraisals were dated August 8, 2016. However, the Summary Valuation Table generated provides useful insight into different elements of the property and can be modified to include any number of desired property groupings. As envisioned, the spreadsheet and table would be updated and reviewed quarterly and likely used for budgeting or setting targets and goals.

Based on the above information, and my familiarity with the property, I have classified and prioritized properties into 3 groupings as candidates for land sales, then used that information to formulate some summary figures for each category. As part of the overall process, I have attempted to develop estimates of "wholesale" (investment or bulk value when property is combined) and "retail" tract values (selling prices if sold in opportune amounts over time) for land and timber. Wholesale reflecting total property size and retail reflecting sales of individual tracts of land or timber stands.

These values are not to be construed as appraised values for any specific tract, although information from appraisals at earlier dates (e.g., August 8, 2016 in many cases) are included as wholesale values for many of the properties. Since the estate tax appraisal as of August 8, 2016 considered large overall size and geographic concentration of the property and a probable sale involving large portions of the property to investors for that reason, retail values have been formulated as if properties are sold separately over a more moderate to long time period, without excessive motivation to liquidate and with a profit motive. There is general consensus that there is a large amount of timber and also certain non-strategic properties that can provide for sales and income that the Trust can use to cover costs, provide income for beneficiaries and systematically purchase more financial investment assets during the next 5 years, with other properties and timber having potential to serve the same purposes in late years. My initial classifications can be modified in any way desired by the Trustees to study different time periods or groupings of sales priorities.

One aspect of managing a transition into more financial assets is a concern about the size of the real estate and timber holdings as well as the geographic dispersion, which are addressed in my estate tax-related appraisals. Considering these factors, the combined property can be described as a large investment, for which the primary market is large investors. Selling all of these assets to achieve optimum selling prices

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and return on investment could easily require 10 to 15 years, considering recent market absorption patterns. Attempting to sell all of the timber and all of the tracts of land in a shorter time period, say 2 or 3 years, would overwhelm the surrounding markets and would result in sub-optimum pricing. This is even before considering factors such as the relative tax advantages of forestry and the tree growth aspects.

Column "G" in the Spreadsheet shows how each tract is classified in terms of "Priority of Land Sale" [the 3 Categories are "Family Legacy Property", "First 5 Years (2018-2022)" and "Low Priority Due to Timber Production and Recreational Qualities."]

The spreadsheet is color coded and includes tracts grouped together in geographic assemblages and/or other categories as follows:

Spreadsheet Rows	Group or Assemblage	Ref. Numbers	Priority of Land Sales
5	Millway/Race Tract	A1	Family Legacy
7-9	Mill Pond Area	R1-R3	Family Legacy
10-18	Mill Pond Area	1-10	Family Legacy
19	Fairfield County	11	Low Priority
20	Lancaster County	12	First 5 Years
22-24	Misc. Lee County	13-15	First 5 Years
26-40	Sumter Mtn. & Nearby	17-31	Varies (First 5 Years or Low Priority)
42-55	Misc. Incl. Peckwoods	80-87	First 5 Years

Over the past two (2) months, I have contemplated the relative returns and merits of this specific land and timber, land and timber in general, stocks, bonds and cash. There is a good argument that financial assets are not going to provide as strong of yields over the next 25 years as has been achieved or perceived historically. Also, the stock market and long term bond markets may be overvalued to a certain extent, so

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systematic investments are probably better than making large investments at one time. The stock market is likely to go through a period of correction, creating good buying opportunities, and systematically investing in financial assets is a well accepted practice. These factors support the concept of gradually converting some of the Trust's assets into financial assets, allowing optimization of selling prices for the land and timber sold.

I believe owning land and timber and some other income producing properties (e.g., farm land, commercial buildings, etc.) are as good or better than owning long term government bonds, especially in the current market, because interest rates are likely to go up from where they are now (which will lower the values of bonds) and because currently, subject land and timber have good potential to appreciate, or at least be stable, with moderate growth and income. A 30-year Treasury yields 3%, which *includes inflation*, and I view average to above average timberland investments as yielding at least 3% to 5% *above inflation* (depending on how the land is valued and a variety of other assumptions). Rural land provides opportunities to participate in both timber markets (for different products) and agricultural markets, as well as recreational and rural residential markets. All of these aspects are cyclical and not always correlated with each other or with financial markets, creating diversity.

Instead of investing heavily in long term bonds, owning real estate and timberland are stable investments that generate income and have long term capital gain and other tax advantages (for example, reforestation costs are quickly recoverable, etc.), and money markets or short term bonds appear to be a good, liquid and safe way to store cash for paying annual distributions and eventually tax payments. So, while I defer to financial advisors for their opinions, my perception of a good strategy to consider is to attempt to have about 10% of assets in those kinds of (liquid and low risk) cash instruments and then very cautiously and systematically start using revenues from timber and gradual sales of land to purchase stocks, exchange traded funds or mutual funds over the next 5 years (and beyond).

From the attached Summary Table, there is about $15.04MM in land, timber and improvements on a "wholesale" basis on 5,982.8 acres of land. There is a large amount of mature timber present (per the attached table, $5.4MM to be cut or sales underway from 2018 to 2023. A portion of this timber revenue can be used for annual distributions or incidental costs, but most of it converted into stocks or similar financial instruments during that period.

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Harvesting that amount of timber shown in the next 5 years, reduces the residual wholesale value in real estate (land, timber and improvements) to $9.6MM (reducing the wholesale value in real estate and timber by about 36%).

The Summary Table presents estimates related to value and potential income for 3 classes of land:

#1) Family Legacy (including Treasured and nearby Boykin Mill Pond Area) Tracts (11 Tracts totaling 2,444.25 acres)(wholesale value of $6.776MM, almost 1/3 of which is timber that can be managed, and also agricultural land that produces income)($1.8MM of timber harvests in the next 5 years); some of this land is specified for retention in the Will, but other acreage is simply nearby or associated with that land and portions could be sold at opportune times if conditions warranted; some of this property may have conservation values in the future such as wetlands or other types of mitigation, etc.

#2) Tracts where planned timber sales can be finished or implemented (when applicable) and then underlying land sold in the next 5 years (including all of the miscellaneous small tracts in the list, with some of these being commercial or residential properties around Camden) (a total of 24 Tracts that total 957.4 acres and have $2.5MM in wholesale value and $2.745MM in retail value of land and timber, of which about $0.86MM is timber that can be sold prior to selling the land);

#3) 8 Tracts where the underlying land could be sold, if at a favorable price, but also have good potential for timber production and appreciation over time, due to soil and recreational qualities (8 tracts totaling 2,580.97 acres with a wholesale value of $5.5MM and generating about $2.7MM in timber sales over the next 5 years).

<u>First (Next) 5 Years</u>

The first 5 years involves reducing and benefitting from the sale of mature timber, which creates opportunities for reforestation and continued timber production on many acres and also reduces the amount of money that potential Buyers need to purchase some of the other land. Selling planned timber sales during the next 5 years and all the real estate in category #2) above will remove [$2.75MM in wholesale value from land and timber on those tracts + $4.5MM in timber from the other categories =] $7.25MM over the next 5 years.

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Thus almost 50% of the wholesale value will be removed during the next 5 years and a very high percentage could be invested in money markets, short term bonds and stocks, after providing for annual distributions to heirs and beneficiaries and operating expenses.

And all of this while selling only about 16% of land acreage. During that same 5 years, and certainly within 10 years, I suspect some favorable opportunities and offers will emerge for some other land out of category #3 tracts, plus possibly even a few things out of category #1 (which includes some outlying tracts that are not mentioned in the Will of L.W. Boykin, II, or some other specific areas of land in the Boykin Mill area that are not as strategic or highly valued for long term retention).

After 5 Years, at least 50% of the current real estate asset value will have been obtained to use for various purposes, including payments to beneficiaries, re-investment in new financial assets, operating and management costs, reforestation costs, etc. This will have been accomplished by selling only 16% of the acreage as well as alleviating the mature timber backlog. Keeping in mind that some consideration has to be given to paying deferred estate taxes.

After 5 years, there should be a good track record and good experience in managing a greater variety of assets and investment opportunities, including a refined knowledge based for making decisions regarding selling or retaining the residual land.

<u>After 10 Years</u>

Category #3 (above) represents 43% of the total acreage and includes properties with land that could be sold, but has value to continue producing timber or bring highly favorable land prices, allowing up to 10 years to participate in land, stock and timber markets and make better informed and timely decisions, optimizing sales and purchase prices. The underlying land in this category can be sold (retail) for more than $3MM, under conditions where decisions to sell land can be made without being compelled to sell for any particular reason. The same thing applies to a portion of category #1 land. And of those amounts, $1.6MM is scheduled for timber harvests during years 6-10 (2024 thru 2029). Let's just assume about half this amount of underlying land gets sold, in which case the combined land and timber sales during years 6-10 will generate $3.1MM in additional free cash for covering costs and investing.

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After 10 years, the Trust could still own up to 3,600 acres, or 60% of its current acreage, and still be growing crops and timber on most of that acreage (as well as getting other benefits such as hunting leases, recreational and residential uses, etc.), while converting significant value into annual distributions and investments in the stock market. I believe there will also be some opportunities to monetize some of the conservation values associated with the Boykin Mill Pond area during that period as well. Conservation markets have been developing for some time, and I expect them to continue to develop and improve over the next 5 years. This includes mitigation of wetlands and potentially some new markets such as carbon and mitigation of industrial water use.

Sometime between 5 and 10 years from now, the estate tax situation can be fully studied, budgeted and planned for, considering the residual land and timber as well as the other diversified investments.

At the end of 10 years, at least, $10MM or 2/3 of the current $15.0MM in wholesale value will have been monetized.

By the end of 10 years, the Trust will be in a good position to have a solid and more diversified financial position, experience in all the different types of investments, and a variety of options for paying distributions as well as all estate taxes.

Long term bonds are yielding 3%, short term bonds or money markets 1% or less and land and timber I believe will yield at least 4% on a sustained basis—possibly as high as 6% or 7% if inflation is included. Stocks allow a better degree of diversification than just owning land or timberland, some income potential due to dividends and rates of return similar to or slightly better than land and timber (but more risk). Stocks can also go through periods or cycles of fairly large swings in value, creating good buying and selling opportunities.

One of the results of my analysis suggests about a 22% difference in wholesale (base investment) and retail (patient selling price) values of the Boykin Trust Assets. Expressed differently, estimated individual selling prices average 28% above the investment or wholesale valuations. The wholesale values (or even lower values if sales are heavily distressed) are achieved under the mentality of liquidating or trying to sell everything at once; retail values (or something similar or greater) are achieved by a more patient mentality over a longer time period.

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Summary & Recommendations

In Summary, knowledge gained through appraisal work, various information from others and further research and analysis have been used to classify the Trust properties into categories that allow for a systematic diversification of assets to include a much higher percentage of financial assets, while benefitting from some of the tax benefits and stable investment returns offered timberlands, also maintaining family legacy properties.

The Planning Spreadsheet is simply a tool for strategic planning and understanding what is present on the components (tracts or individual properties) owned by the Trust. These figures can be used to set annual or periodic (e.g., 3 or 5-year) goals, but are not intended to be the ultimate basis for buy or sell decisions (all of which should be evaluated in greater detail, based on the merits of land or timber sale opportunities as they may arise). Also, the spreadsheet can be updated periodically (quarterly or annually) as various events take place. Keeping in mind that timber grows and markets for both land and timber change. Most of the "wholesale" land values in the spreadsheets are allocations from appraisals with value dates of 8-08-2016 and are almost 2 years out of date.

At the present time, timber markets are relatively weaker, but timber growth has occurred since the value date, etc. Land markets and the economy have improved in 2016, 2017 and 2018 and population of SC urban and coastal areas is increasing at above average rates. From a timber standpoint, there has been a regional oversupply of pine logs while housing starts have been increasing slowly, expected to become more balanced starting in 2020. Export markets have developed for both pine and hardwood logs; pulpwood prices have moderated to a degree, but appear stable and have some upside potential. These conditions support the planned timber harvests and provide opportunities for some land sales over the next 5 to 10 years at reasonably opportune times.

Based on the estimated and assumed values and classifications of property categories, about 2/3 of the estimated current wholesale (combined investment) value of the Trust's holdings can be extracted and used to pay costs, expenses, distributions and conversions to financial assets over the next 10 years, with much of that occurring in the next 3 to 5 years.

Other Assumptions and Versions of the Planning Spreadsheet and Summary Table can be created to study alternative investment strategies or simply update the strategy and document conditions over time. At some point, modern GIS mapping and a stand level forest inventory data base would also be helpful in managing the Trust's rural land assets. Additionally, other measures need to be created to evaluate the relative performance of combined assets and investments.

The Trust needs to consider a variety of financial advisors and possibly several different financial advisors as a means of reducing risks and diversifying. Also, the Trust should use other professionals such as surveyors, commercial and rural land real estate specialists, foresters, appraisers and environmental specialists to the extent reasonably justified. Pine silviculture should be based on soil and location specific genetics and good quality site preparation and other practices. Improved genetics and site preparation or silviculture methods as well as markets are such that pulpwood rotations of 10 to 15 years provide a good base return on investment; at age 15± years, decisions can be made on whether to grow larger and older timber for lumber or other products based on the economy and objectives at that time.

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BOYKIN RESIDUARY TRUST												
LAND & TIMBER SALE SUMMARY TABLE 5-30-2018												
				Includes Timber								
Priority of Land Sales	# of Tracts	% of Acres	Acres	Estimated Total Wholesale Value	Estimated Total Retail Value	Estimated Wholesale Land Value	Estimated Wholesale Improvement Value	Estimated Wholesale Timber Value		Timber Sales 2018-2023	Timber Sales 2024-2029	Total Retail Timber Value
Family Legacy Property	11	40.9%	2,444.25	$ 6,775,842.57	$ 8,880,255.27	$ 3,825,520.92	$ 843,349.65	$ 2,106,972.00		$1,825,083	$665,342	$2,293,571
First 5 Years (2018-2022)	24	16.0%	957.60	$ 2,745,131.56	$ 3,658,472.49	$ 1,599,155.76	$ 111,700.00	$ 1,034,275.80		$865,479	$0	$1,136,340
Low Priority Due to Timber Production and Recreational Qualities	8	43.1%	2,580.97	$ 5,517,790.73	$ 6,718,183.44	$ 2,289,289.68	$ 37,853.40	$ 3,190,647.65		$2,708,540	$1,005,131	$3,509,712
TOTAL	43	100.0%	5,982.82	$15,038,764.87	$19,256,911.21	$ 7,713,966.37	$ 992,903.05	$ 6,331,895.45		$5,399,102	$1,670,473	$6,939,624
Wholesale Value as % of Total Retail Value				78.10%		40.06%	5.16%	32.88%				
Retail Value as % of Total Wholesale Value					128.05%					35.90%	11.11%	46.14%

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Exhibit 4
(Boykin Dep. pp. 219-240)

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the properties in the Residuary Trust was that those were properties that almost nothing was done with respect to those properties. And Alice determined that, to the extent Boykin downtown would be fixed up, she did that out of her own assets rather than the Trust assets and, initially, there was quite a bit -- she spent a lot of money doing that. She gets a tremendous amount of credit for that. The idea was right; we just didn't have the funds to do it all right at the end of the day.

Q. **Uh-huh (affirmative response). But during Alice Boykin's life, meetings of the Trustees for the Residuary Trust were -- only occurred a couple times a year and usually by phone?**

A. They didn't even occur a couple times a year. And when we -- when we had any discussions relative to the Trust, it was basically about distributions.

Q. **Okay.**

A. Or she would say she wanted to cut this or that. There was almost no -- nothing done because -- I mean, what are you going to do with the pond, you know, that kind of thing.

Q. **Yeah. Okay.**

A. And the house, for the most part -- she did most of the -- most of the expenditures with respect to all of

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that property; I think she did pretty much all of it out of her own pocket or out of income she received from the Marital Deduction Trust. So, there weren't burdens on the -- on the Trust itself.

Q. **You've spoken about Hurricane Hugo and the impact that it had on Mr. Boykin's timber holdings at the time. And then later, you said that, if it had not occurred, then his Estate would have been worth about Ten Million more than it was. Do you recall that?**

A. Yes.

Q. **What is -- on what basis do you make that ---**

A. That -- that claim ---

Q. **-- estimate?**

A. -- is based on anecdotal information from Big Alice and from comments made by Jimmy LaFrage and even -- even -- everyone, at that time, it was sort of like the community knowledge kind of thing. This was not an estimate made by an expert that I know or anything. I was just told at the time, actually, not by just Alice but by Whit that it had destroyed that much value in this Estate.

Q. **All right. What is your investment strategy and plan for the Trust?**

A. You have me at somewhat of a disadvantage because I gave very detailed summaries of this in the past to

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people, but in a -- in a nutshell, my strategy -- I had hoped originally that Alice and Mary Deas would buy the properties that we had talked about and that, if they had done that, then the Trust could have probably kept legitimately another Fifteen Percent (15%) or so of the timberland for the benefit of the -- the Trust; the remainder of the property I thought should be liquidated. It would take in my view a number of years to do that because you could not dump that much property on the market at one point, but you would have to do it judiciously so that you weren't doing it at a fire sale like price. We would keep somewhere in the neighborhood of Fifteen Percent (15%) of the property. In fact, there were some discussions as to what that number should be originally in the October time frame where it was discussed that perhaps it would be Eighty-five Percent (85%) of it liquid and the rest in -- in land. My view is, we do not have -- it would -- we should sell as soon as we can on a reasonable basis all of the commercial property because we're not set up to take care of it. You would have to hire a Property Manager or something. All of the commercial property is, with the exception of Hawthorne, which is brand new, and -- by commercial property, I'm referring to non-downtown

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Boykin property. I'm talking about the Lugoff property, 1 Commerce Alley, that kind of stuff, that we would sell all of that because none of it was earning a return commensurate with its value either because, unfortunately, for some reason, Alice -- I think virtually all of Alice's Leases -- there might be a few exceptions -- were for ten years or five years with the right to renew for another ten years or another couple five year terms with no escalation at all in rent, and so, for example, you have that problem I think with both Leo's and the liquor store. The rent has been the same for a number of years and will have to stay the same as long as they're within their renewal rights. So, I thought we should sell that as soon as we could and the Peckwoods property are going to be very difficult to sell because, right now, I think they're overpriced. In fact, interesting side note, they -- those properties were appraised at a higher value in Whit's Estate than we're trying to sell them for today. And I think -- we've had no activity at all with respect to any of that land. No interest at all. I think then we should have a mix of stocks and fixed income. The normal type of diversification that you would see in Trusts like this -- I would be against putting any into hedge funds or

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-- or ---

MR. TETTERTON: Rigdon, could you take your hand down?

MR. BOYKIN: I'm sorry.

MR. TETTERTON: I'm having trouble hearing you.

MR. BOYKIN: I'm sorry.

MR. TETTERTON: Thank you.

A. I think that's sort of a summation of -- of how I would do it. There are lots of peculiarities to it, but ---

Q. **Well, ---**

A. I have -- and I have discussed that and discussed the numbers that would be produced. In fact, I think in the letter from Richard Rosen to you, it has some of that in it.

Q. **Well, -- so, basically, then your plan and your strategy is to hold -- to sell real estate until and invest the money in financial assets such as stocks, bonds, ---**

A. And etcetera.

Q. **-- until the ratio of real estate assets to financial assets is Fifteen Percent (15%) to Eighty-five Percent (85%) or Eighty-five Percent (85%) to Fifteen Percent (15%)?**

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A. Pretty much in that -- in that range. Some -- if we did that, we would not be able to have much of anything in real estate stocks, but sort of the rule of thumb with the various Trust experts that I have worked with, and certainly over the years, that seems to be a number that they feel is the limit of what a responsible Trust should hold.

Q. **How long do you think that it would take to make that conversion without selling the Trust's current real estate assets below their fair market value?**

A. That's all in the eye of the beholder because I mean, what Alice feels is fair market value to sell it may be light years different from what she thinks is fair market value for her to buy it. The -- basically, to sell it at the appraised value that we have -- and I'm not talking about Millikin's appraised value because I look at that as sort of a tax dodge more than anything else, and so. it's more than the Millikin's appraised value -- I will hope and trust for that.

Q. **Uh-huh (affirmative response).**

A. But to a real appraised value, I think a good -- certainly, my guess would be probably Thirty (30), Forty Percent (40%) could be sold within a year of the value. The real problem is going to be figuring out what fair market value is for things like Peckwoods,

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but Peckwoods and all those lots could be, you know -- you know, over -- way over a Million Bucks worth of assets, and I haven't the foggiest idea what's that worth or how long it would take you to sell it at fair market value. You're probably going to have to find a developer or you're probably going to have to basically pull in a spec developer who will build a house and you don't get the money for the lot until he sells the house. That's being done a lot these days. I have talked to a few people about doing that with respect to some of the Peckwoods lots and, actually, that is a realistic possibility. It's outside the norm for what Mary Deas or Little Alice might be used to, but I think it is possible. The places like the Swamp Tract, the -- unfortunately, you -- you have a problem here because the land that -- that has a value in excess of what we're using it for is precisely the land that Alice wants to keep. The land that we could sell probably fairly quickly at a reasonable price is the land that is in Sumter County or Lee County or Fairfield County or Lancaster County; so, that creates somewhat of a conflict right there with all of those places in those other counties, we could probably sell within a couple of years my guess would be. The land in Kershaw County, you have to wait until the right

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person comes along. It's just like -- what's the Yellow House Tract worth? We sold six point seven seven (6.77) acres of the Yellow House Tract for Fifteen Thousand ($15,000.00) an acre. We had an appraisal done on a larger piece in the Yellow House Tract for May to buy, and that appraisal came in at Nine Thousand ($9,000.00) an acre. And May was willing to pay Nine Thousand ($9,000.00) an acre at the time for it. Larger pieces are worth less. I don't know -- I think the first thing we would have to do is -- is reach some kind of a consensus on what would be reasonable to sell the entire Yellow House Tract for or what would be reasonable in terms of subdividing it into a hundred acre tract or whatever or put it on the market and whatever the buyer wanted of it would be how you would go. I -- I don't -- I don't -- I haven't bothered to do all of that homework, given the fact that, starting about January of 2017, there was no longer an interest in selling that property.

Q. Have you created any long-term projections about what income might be realized in -- in any given year going five, ten years out in the future?

A. It's -- yes, I have worked on some of that, some of it rougher than -- than not. Part of the -- part of the

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problem was -- is until Alice submitted her Affidavit to the Court, I hadn't focused on the fact that -- that -- that she and Mary Deas thought all timber sales were income, and I realized that, intuitively, that couldn't possibly be true. Otherwise, you could sell a pile of timber and have the Trust go down by a -- a third in value almost overnight. So, when she came out with that or -- or her attorneys did or whoever it is that produced that, it was clear to me that that was a little misleading because it included in essence as income the Hundred Thousand Dollars ($100,000.00) that was received in the sale of the six point seven seven (6.77) acres or whatever it was to Sue Ziemke, a Hundred Thousand plus and when that should have been credited to principal rather than income, and the more I looked at the timber side of it and this is a very big problem ongoing, because I don't think my other two Co-Trustees understand just how much of the timber sales that will be realized over the next few years, how small an amount of those sales will be income as opposed to principal. For example, in the 2017 analysis that Jane prepared and Jane -- Jane acknowledged on it that wasn't done to figure out what net income was, that was just to tell you cash in, cash out kind of analysis.

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Q. That's what was attached to Alice Belger's Affidavit; right?

A. Correct.

Q. Correct.

A. Correct. And as you may recall, we had a meeting at Jane Peacock's office to try and explain for the benefit of everyone what the rules were on that and of the Six Hundred Thousand ($600,000.00) or whatever it was that was sold in that year, the great majority of that was going to be principal, not income. It -- to do a rough rule of thumb, if the timberland was in the Marital Deduction Trust, very little of that will be income if it's sold in the next year, two years, three years. If it's -- but you won't have to pay any capital gains tax because you've got the step-up in basis. On the other hand, if it, the timber sales, came out of the Residual Trust, a substantial percentage of that would be income and not principal. And that would vary by -- by the terms of when it came into the Trust, too. For example, on the 20/80 Percent, probably has a different starting point on that Twenty Percent (20%) if it came from the Marital Trust into the Residuary Trust. I'm not that knowledgeable about that, but it's something that will have to be analyzed. But for the year 2018, which is

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the year we're in right now, a -- most or the -- the lion's share of the timber sales that will be achieved in this year will accrue to principal rather than income, because most of that is from Marital Deduction property.

Q. On an Estate value of Twenty-five Million, ---

A. Yes.

Q. -- Thirty-five Percent (35%) of that would equal Eight Million, Seven Hundred and Fifty Thousand Dollars ($8,750,000.00). Do you believe that that much real estate could be sold within twelve (12) months?

A. Well, we've got a potential buyer right now with the Option if they exercise it for Four Million right there. That's half of the amount. I think -- I think it's -- there -- there is a lot of interest in Sumter Mountain. There is a lot of interest in St. James. There's a lot of interest in about five or six tracts that -- that Dennis ---

MR. BOYKIN: (To MR. Duffy) What's Dennis' first name? I've forgot now.

MR. DUFFY: James.

A. James. James Dennis. Because it adjoins his land or encircles his land. There is a fair amount of interest in Yates. There is -- there will always be interest in the Yellow House just because that seems

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to be the magic corridor right now where all of the land in between Cantey Lane and Tombfield are adjacent to it. It seems to be where a lot of the Charlotte people are buying big tracts of land or trying to get them. That could change with the potential bankruptcy of the women that own Far and Away Farm or whatever it is. I don't know. But I -- I believe, yes, at appraised value, we can -- and -- and even a little above appraised value, you can sell quite a bit of real estate right now. I'm told, for example, that -- and we have authority, I think, it's not the price necessarily, to sell Molly Creek and to sell the Heath Springs property, maybe not at the price we've asked for, but I think if I can spend more time on it, I can probably locate a buyer for those.

Q. Earlier, you said that you were asking the Court to determine whether the Trust could or should follow the Prudent Investor Rule. By that, do you mean the South Carolina Prudent Investor Act?

A. I don't know ---

Q. Uniform Prudent Investor Act?

A. I don't know what the ins and outs of the South Carolina were -- are. I know to a fairly decent degree what the Uniform Code is in this area because New York has -- I mean, most of the states have passed

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some kind of variant of it. The exact variants South Carolina has, I don't know. But I do believe they all in a nutshell require a Trustee to invest assets as a prudent investor would, which, actually, it's -- it sort of places a duty on Trustees for an excess of what the duties seem to have been, you know, a hundred years ago or something. People now have to take being a Trustee seriously. They have to do a good job on it.

Q. South Carolina does have a Uniform Prudent Investor Act. It's Section 62-7-933 of the South Carolina Code.

A. I know we have one. I just don't know whether there are any sort of little variants that South Carolina has from other states. Every state seems to have some little variant from what the Uniform Code was that was or uniform -- there's an entity in the Trust -- that did a uniform thing that was suggested for most states as I understand it. But not all states follow that; there were variants on it is -- is my understanding.

Q. Well, would you agree, that if the Court were to agree with your general premise, that this Trust should follow the Prudent Investor Rule as it would apply in South Carolina, that the Court would look to the Uniform Prudent Investor Act, Section 62-7-933 ---

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A. I don't know the Section, and ---

Q. -- of the South Carolina Code?

A. -- so, I can't tell you.

Q. Yes. Well, it's entitled ---

A. I mean, I can take your -- your -- I mean, you can represent that, but I don't know ---

Q. All right.

A. -- what it is or what it says or whether there are five or six provisions that affect all of this. I just don't know.

Q. Okay. But you would -- you would -- would you agree that, if this Court is to decide that certain language in the Will can be disregarded in favor of the Prudent Investor Act as it applies in South Carolina, then we would be looking to the provisions of the South Carolina Code that deal with the subject of prudent investment?

A. You're -- you're asking me to speculate on something I know. I -- I don't know the provisions. All I am looking for is -- is, hopefully, we'll get is a Court decision that says we need to act as a prudent investor with respect to this property. We need to diversify the assets and we need to have a -- a plan. Part of my frustration on this whole thing is that this is a business; this isn't a hobby. And any

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business that I've been affiliated with, you have business plans, you have budgets, you have ways to do all of this or ways to look at it. I -- I have an idea about it. I've told them in a -- in a -- in a general sense what I have, but no one wants to consider that. They say they want to do something else, but I haven't been able to see anything that demonstrates any ability to do that or any ability to generate the income we need, and maybe as I said before, maybe there's a rabbit in that hat somewhere, but doggone, I haven't seen -- I don't even get to see the hat much less the rabbit that might be in it.

Q. Have you proposed a budget?

A. I have -- I have -- cannot propose a budget, because right now, I'm in limbo because I don't have a Court decision. I don't even know what we will have. I've been trying to avoid spending any money on commercial property, for example, because I think we ought to be getting rid of it. Plus, I don't think there's a chance in hell we will get a return commensurate with the money that we will spend. You take 1 Commerce Alley, shoot, that roof is leaking like a sieve. It's got all kinds of problems. That property -- my guess is, is that if someone buys that property, they'll bulldoze it. They're buying it just for the land, not

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the property -- the structure that's on it.

Q. Okay. But the answer to my question is, you have not proposed a budget for the Trust for any particular year in the future; is that right?

A. That is absolutely correct because I do not know what property we will hold and we don't have the money to spend on this budget.

Q. And just so we all know, your investment strategy can basically be boiled down to sell real estate assets until you have about Eighty-five Percent (85%) of the total Trust value invested in financial assets such as stocks and bonds?

A. Well, it's a little more complex than that because, for example, in an ideal world, which this isn't, you would only keep real estate that was productive and could give you a return commensurate with its value. However, I am willing to give some on that because of the emotions involved and everything else. Even though -- but I don't want to give so much on that notion that I'm being -- going across the line of being really imprudent.

Q. Okay.

A. I think the primary thing that needs to be done is diversification.

Q. Okay.

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A. Absolutely, and doing it in a way that you know will generate the funds. Nothing is guaranteed in life. I understand that. All I can go is on percentages and what's happened in the -- basically, in asset classes and everything else. It's like ---

Q. All right. Are you agreeable to Ducks Unlimited as the -- if -- if the Option were to be exercised, are you agreeable to insisting on Ducks Unlimited as the Land ---

A. No.

Q. -- Management Organization?

A. And I'll tell you why.

Q. Okay.

A. Ducks Unlimited is the conservation recipient that a lot of people like because -- especially, in almost all cases, they like it because they're only giving a conservation easement and not the fee, and the reason why so many people like Ducks Unlimited is that they are -- are -- are very forgiving in terms of policing the land in terms of the conditions that they impose on the land and everything else. For the most part, Ducks Unlimited is dedicated to preserving land from development more than a lot of the conservation goals of a lot of other organizations. And I would be pretty confidant that Ducks Unlimited would not

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qualify as a mitigation recipient.

Q. For the Haile Gold Mine?

A. Yeah.

Q. Okay.

A. I mean, it's got to be a real -- a real conservation organization. I mean, I think if you look at the ones on that list, I think they have a very different character from Ducks Unlimited.

Q. Okay.

A. And -- and actually, I'm sure Ducks Unlimited may get some outright gifts, but I think most of their holdings are easements.

Q. Yeah. Did -- did you serve as an Executor or Trustee for an Estate that arose out of Broadview Plantation?

A. You have to be more particular than that. I don't even know what Broadview Plantation is.

MS. BELGER: You've got it wrong?

MR. BECKER: Huh? What's the name?

MS. BELGER: Beechwood.

Q. Beechwood Plantation.

A. Oh. Beechwood was a house here in Camden; it's a beautiful house. It was owned by McKee Boykin. McKee Boykin is a distant cousin. Rip Rose was the attorney for -- for McKee when he wrote his Will. However, at the time McKee died, Rip was working I think for the

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IRS in Washington and, therefore, was -- could not act as Executor, and I had to do that. So, I was the Executor for the Estate. I was supposed to be the Trustee in turn. I handled the Estate and told them that I was unwilling to serve as Trustee, and they needed -- because of the land and everything else involved, they needed a professional to do that, and that was Bill Canty in Columbia; they agreed, and he was appointed as Trustee for that. I handled the -- the settlement of the Estate. It was a miserable job because everyone was fighting. They were, like here, children by two different marriages, and I served as Trustee, -- I mean, as Executor for that.

Q. Were -- were you the sole Personal Representative for that?

A. I think I was.

Q. Yeah. Okay.

A. There might have been another -- no, I'm pretty sure I was.

Q. What was the name of the -- the person who died that gave rise to the Estate?

A. McKee Boykin.

Q. Okay.

A. It was -- I can't remember the whole name. Everyone called him McKee, but it is -- there's like four names

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there.

Q. All right.

A. That was just the name that -- that we all called him.

Q. Okay. With respect to Whit and May, are they entitled to anything from the Trust other than money, in your view?

A. I have to tell you, I was so -- sort of persuaded by Justice Toal when -- when she said that they have no interest in the Residual, if I were them, I would ask for some principal, etcetera. I didn't think of that beforehand, but after thinking about it, it would be sort of nice for them to have some principal to -- in other words, build a house or -- or -- or buy land to build a house on because they are in a very different situation and have no long-term expectations for family or whatever. I didn't realize you could; I hadn't focused on that, and when she brought up the fact that this language in the Will for their comfort and all, I said, -- you know, that makes a lot of sense. I just hadn't focused on it. Didn't -- didn't have the experience to know that that was possible.

Q. What I'm -- what I'm getting at is, do they have a right to dictate certain investment decisions?

A. I don't -- they are -- I think they would have the right to go to Court and complain if they thought we

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as Trustees were acting inappropriately. They would have the right to seek to have us surcharged. They would have the right to seek to have us removed. I don't necessarily -- I mean, I think they could give us -- they could say, -- you know, you all really ought to look at doing this. I don't -- I think that would be in the way of advice as opposed to a dictate. Dictate is pretty strong language.

Q. Well, or demand. Demand that certain investments, particular investment decisions, be made. For -- for example, if they were receiving what you consider to be an appropriate annual distribution of money equal to a certain percentage of the Trust's assets, would they have any basis to complain if -- if ---

A. Depends on the circumstances. I couldn't tell you that. I think that brings up a very fundamental disconnect, though, between my view of what should happen for beneficiaries and what appears to be May and, -- I mean, Alice and Mary Deas' view. They seem to start from the point that Whit and May should get what they've had to live on all their life up until the time Alice died or maybe a little bit more, whereas I start from the -- the proposition that they're entitled, whether there's any need whatsoever, at least a minimum amount, and that minimum amount in

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my view, absent extraneous, you know, some exigent circumstance, should be at least Three Percent (3%). And probably since they do not have any children or anything, I -- and I think they -- it isn't just their entitlement; it's all four of them are entitled to it, whether they need it or not. If Mary Deas was married to you know, the -- to Bill Gates, she would still be entitled to that percentage of income. That's my view of my responsibilities as a Trustee. It has nothing to do with need. Need comes in where you want to invade principal or -- or something like that probably, but I don't think and -- and, you know, what's the fair number -- the fair number might be Three and a Half Percent (3 1/2%), could be Four Percent (4%). It all depends on, you know, what's going on -- what's going on in the Trust, how are you doing, and I think it's very important that the Trust grow in size, and I didn't realize just how important that was until I've looked back over the years at how the distributions have grown in the Trust that I manage. For example, in 2016 -- for 2017, we increased the distributions Fourteen Percent (14%) for the beneficiaries, income beneficiaries, and for this 2018, we increased it another Fourteen Percent (14%). So, that's compounded now. And that's because of

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growth in the corpus of the Trust. And so, the growth affects existing income beneficiaries as well as the remaindermen.

Q. All right.

MR. BECKER: I don't think I have any further questions.

MR. TETTERTON: Larry, how are we doing on the ---

MR. WHITE: If you can do it in fifteen (15) minutes, we'll be fine.

MR. DUFFY: I think we can do that.

MR. WHITE Okay.

MR. DUFFY: All right.

EXAMINATION BY MR. DUFFY:

Q. Rigdon, between approximately April and October 2017, how many times did you and Alice and Mary Deas meet as Co-Trustees?

A. Between April of when?

Q. Excuse me. Approximately March 2017 ---

A. March?

Q. -- into October?

A. And -- well, we met once between -- in May. May -- I can't remember the exact date -- and then we didn't meet again until November 9th or something in 2017.

Q. What was your understanding about why you all weren't

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able to meet as Co-Trustees?

A. I kept asking for meetings. I think for the first couple of months, the reason between March and the May meeting, I had hoped it was because that time was being taken up by them doing a plan, which Mary Deas continually assured me they were doing, and so, I didn't get too upset about that. I didn't get real upset until we had the meeting in May and there was no plan at that meeting. I thought I was going to get the plan and there was no plan.

Q. And to this day, have you seen such a plan?

A. No.

Q. Have you continued to ask for it?

A. Yes.

Q. In January I think of 2018, you wrote a letter or an e-mail to the Trustees saying you still had not yet seen a plan?

A. Yes. I -- I wrote -- I -- I'd have to look, but my guess is there are at least -- at least six, seven, eight e-mails or letters asking for a plan, asking for -- and -- and frankly, I thought I was going to get it. It wasn't until Jamie told us in November there wasn't going to be a plan; I didn't realize that was going to be ---

Q. And do you consider Jimmy LaFrage's fifteen (15) year

Exhibit 5
(Plan Comparison)

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From:	Rigdon Boykin <rhboykin@icloud.com>
Sent:	Monday, April 2, 2018 5:01 PM
To:	Alice Belger; Alice Belger; mary wortley; Walter H. Bundy (WHBundy@att.net); James Becker
Cc:	Liam Duffy; Richard Rosen; Jane M. Peacock
Subject:	Investment Comparison
Attachments:	ATT00001.htm; DOC040218-013.pdf; ATT00002.htm; DOC040218-011.pdf; ATT00003.htm; DOC040218-008.pdf; ATT00004.htm; DOC040218-012.pdf; ATT00005.htm
Importance:	High

The attached files are designed to compare in a rough manner the effect on the asset value of the L.W. Boykin II Trusts over time of:

1. Continuing to manage the assets in the same manner as in the past ("Past Practice Scenario") or

2. Selling over time, 80 to 85 % of the land and investing in a diversified portfolio of equities and fixed income instruments. ("Diversification Scenario")

They have been prepared at my direction by Jane Peacock using assumptions that have been originated by me. Her accounting firm is not responsible for them and her participation has been limited to formatting, helping to make the two scenarios consistent, and calculating in a macro sense trust level tax effects for timber sales, etc. in a vacuum. She has spent innumerable hours working on this project, many of which were at night and on Easter weekend.

The projections used in the preparation of this example are rough estimates and are useful only to demonstrate the order of magnitude between the two investment approaches.

Assumptions used:

Diversification Scenario

1. Real estate sales values are an approximation made by RHB based on the appraisals. RHB has given Jane Peacock the land sale prices net of Capital Gains Taxes – using the estate valuations for Marital Trust B property and estimates of basis for Residual Trust properties.
2. Year One property sales are based on indications of interest already received on these properties. Subsequent year sales are projections based on the valuation estimates of time required to market and other data. For example, I have recently received some interest in Sumter Mountain.

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3. The Diversification Scenario will pay the remainder of the Estate Tax no later than November of 2018.
4. It is assumed that the financial assets will have an average return of 6% per year. The trusts that I manage in New Jersey have averaged a gross return of approximately 7.3% for the last 18 years.

Past Practice Scenario

5. The Past Practice Scenario will have to sell properties to pay for deficits. Principal balances have not been reduced to take into account Capital Gains on such sales.
6. Used the Timber cutting estimates contained in Forest Land Management's 15 year projection. The timber which originated in Marital Trust B has a growth factor applied to it of 3% per year in calculating Net Accounting Income. The timber which originated in the Marital Trust B and was transferred to the Residual Trust as part of the 80/20 split transaction is assumed to be 40 % growth from the stand point of calculating net income and capital gains tax. The timber originating in the Residual Trust is assumed to be 80% growth and subject to capital gains tax. There was one deviation from the FLM projection in that the clear cutting on the Swamp tract was omitted due to its effect on the value of the tract.
7. In the Past Practice Scenario, it has been assumed that some of the $200,000 principal repair funds are used to fix up the Church and Rosalee's cottage. We have assumed a rent for them which is included in the commercial rents for the Residuary Trust of $36,000 per year, beginning with Q4 of 2018. We are also including a $13,000/year rent for Ginny's cottage in the residential rents for the Residual Trusts.

It is important to note that the differential in return of approximately $1,300,000 per year will continue in years after 2021 and the Trust principal in the Past Practice Scenario will continue to decline while Trust principal will increase in the Diversification Scenario.

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April 2, 2018

Accountant's Letter

Trustees of the L.W. Boykin II Marital & Residuary Trusts A & B
P. O. Box 632
Camden, South Carolina 29021

Management is responsible for the accompanying projected accounting income worksheets and related statements of the L.W. Boykin II Marital Trusts and the L.W. Boykin II Residuary Trusts. The schedules represent illustrations of projected trust accounting income and changes in principal for the periods 2017 through 2021, based on data and assumptions provided to Sheheen Hancock & Godwin, LLP, by Rigdon H. Boykin, Trustee. The projections are presented on an income tax basis. We did not compile, review or audit the schedules nor were we required to perform any procedures to verify the accuracy or completeness of the information provided by management, nor to determine the accuracy of data or reasonableness of the assumptions provided by management. We therefore do not express an opinion, a conclusion, nor any other form of assurance on these projections.

Management has elected to omit substantially all disclosures as a part of these schedules.

We are not independent with respect to the L.W. Boykin II Marital and Residuary Trusts.

Respectfully submitted,

Sheheen, Hancock & Godwin, LLP

Sheheen Hancock & Godwin, LLP
Certified Public Accountants

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April 2, 2018

Trustees of the L.W. Boykin II Marital & Residuary Trusts A & B
Ms. Mary Deas Wortley, Ms. Alice Boykin Belger and Mr. Rigdon H. Boykin
P. O. Box 632
Camden, South Carolina 29021

RE: Prospective Illustrations of Trust Accounting Income and Principal

Dear Trustees:

We have been engaged to assist you in the formatting and clear presentation of projections of the accounting net income, and the principal increase or decrease, of the combined trusts above, given certain hypothetical assumptions. We undertook this project at the request of the trustees and their counsel. The resulting schedules were prepared from data and assumptions provided to Sheheen Hancock & Godwin, LLP, by Rigdon H. Boykin.

We have not compiled, reviewed or audited these prospective accountings or the data included therein. We express no opinion on this work product or on any conclusions therein, and accept no responsibility for its content.

Respectfully submitted,

Jane M. Peacock

Jane M. Peacock, Partner, for Sheheen Hancock & Godwin, LLP

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L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Business as in the Past Illustration
Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2017

Combined Schedule of Net Accounting Income for 2017:

	Combined 2017 Net Accounting Income	Combined 2017 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate Tax
Beginning Combined Trust Principal (approximate at FMV)			$ 24,000,000.00
Marital Trust B	$ 128,613.00	$ 28,094.00	
Residuary Tr A, including Marital Tr. A	72,775.00	(12,041.00)	
	201,388.00	16,053.00	
Less: Reserve for Trustee Commissions	(150,000.00)	(150,000.00)	
Combined Total 2017 Net Return or (Deficit)	51,388.00	(133,947.00)	
Less: Actual Distributions	(400,000.00)	0	
	(348,612.00)	(133,947.00)	
Less: Reserve for Benficiary Catch-up Distribution (at $180k/benef./annum)	(447,124.00)		
Net Combined Decrease for 2017 Only After Ttee Fee Reserve & Actual plus Catch-up Reserve for Distributions to Beneficiaries	**$ (795,736.00)**	**$ (133,947.00)**	(133,947.00)
Transfer from Principal to Net Return under Power to Adjust	795,736.00		(795,736.00)
Balance at 12/31/17	0		$ 23,070,317.00

Disclaimer: These schedules were prepared from data and assumptions provided by Rigdon H. Boykin, Trustee, to Sheheen, Hancock & Godwin, LLP. We express no opinion on this work product or any conclusions therein, and accept no responsibility for its content.

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L.W. BOYKIN MARITAL TRUST B
Accounting Income Worksheet - Historical Base Year
January 1, 2017 - December 31, 2017

	Trust Income		Trust Principal	
	Income Receipts	Disbursements & Costs of Sale	Principal Receipts	Disbursements & Costs of Sale
Receipts:				
Dividends	$ 3,024			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	75,800			
Camden Commercial Real Property Rents	13,600			
Residential Rentals Receipts	15,050			
Hunting Lease Receipts	44,907			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts (2 years)	14,969			
Pinestraw Sale Receipts	1,000			
Net Profit on Sale of Timber and Land:				
Rabbit Pen Tract - timber			$ 564,674	$ 540,000
80% Int. Yellow House Tr thinning			29,120	24,743
80% Int. Dr.Irvin's Tr thinning			10,601	3,833
80% Int. Sale of 6.77ac Cantey Lane			80,586	21,074
Disbursements:				
Lugoff Commercial Rental Exp.		$ 16,404		
Camden Commercial Real Property Exp.		10,306		
Residential Rental Expense		4,408		
Hunting Lease Property Expense		7,600		
Farm-related Expenses		15,314		
State Income Tax Paid in 2017				3,000
Real Property Tax Not Allocated - Rental		3,754		
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases		3,821		
Accounting Fees		12,490		12,490
Appraisals				15,200
Insurance Not Otherwise Allocated		866		2,046
Miscellaneous Expenses				811
	$ 203,576	$ 74,963	$ 684,981	$ 627,599
Net for 2017 Before Ttee Fees & Distributions		**$ 128,613**		
2017 Income Tax Liability Remaining				$ 29,288
Net 2017 Increase Remaining at 12/31/17		0		$ 28,094

Disclaimer: These schedules were prepared from data and assumptions provided by Rigdon H. Boykin, Trustee, to Sheheen, Hancock & Godwin, LLP. We express no opinion on this work product or any conclusions therein, and accept no responsibility for its content.

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L.W. BOYKIN TRUSTS A
Accounting Income Worksheet - Historical Base Year
January 1 - December 31, 2017

	Trust Income		Trust Principal	
	Income Receipts	Disbursements	Principal Receipts	Disbursements
Receipts:				
Interest Income	$ 4,475			
Improved Property Rental Receipts:				
Residential Rentals	16,800			
Commercial Rentals	35,350			
Hunting Lease Receipts	33,590			
Net Profit on Sale of Timber and Land:				
20% Yellow House Tr thinning			7,913	633
20% Dr.Irvin's Tr thinning			13,132	2,481
GunClub/LaneyTr - thinning			20,208	7,438
20% of 6.77ac Cantey Lane			20,310	922
Disbursements:				
Commercial Real Property Expenses		$ 6,937		
Residential Rental Expenses		14,989		
Hunting Lease Property Expenses		9,527		
Miscellaneous Expenses				$ 36
Real Prop. Taxes Not Allocated-Non-rental				1,621
Accounting Fees		5,771		6,396
DHEC - Required Repairs to Dam				3,172
Workers Comp. Insurance		886		
Insurance Not Otherwise Allocated				2,957
Federal Income Tax Paid				2,000
2016 S.C. Income Tax Paid				600
	$ 90,215	$ 38,110	51,563	$ 16,782
*To remove from principal of Res. Tr. A portion of sold timber/land net proceeds included in estim. trust FMV, but not otherwise deducted as cost basis or NAI.			$ (19,419)	
**Allocation of timber gain to NAI, net of estim. income tax of $8038	20,670		(20,670)	
***Estim. '17 Income Tax Liability Remaining				6,733
Net for 2017 Before Ttee Fees & Distributions		$ 72,775		
Net 2017 Decrease at 12/31/17		0		$ (12,041)

* To adjust principal for value of timber/land sold and replaced with cash, but not deducted as cost basis or allocated to NAI.
**At the direction of Rigdon Boykin, 100% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income.
***Carryover credit for income taxes totalled $750

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L.W. BOYKIN MARITAL AND RESIDUARY TRUSTS - Business as in the Past Illustration
Projected Accounting Net Income and Principal Worksheet - Combined Trusts
For the Year 2018

Combined Schedule of Projected Net Accounting Income for 2018:

	Combined 2018 Net Accounting Income	Combined 2018 Credits and Charges to Principal	Estimated FMV of Combined Principal of All Trusts, Net of 100% of Estate
Balance: Combined Trust Principal at 1/1/2018 (approximate at FMV)			$ 23,070,317.00
Marital Trust B	$ 138,322.00	$ 38,981.00	
Residuary Tr A, including Marital Tr. A	90,292.00	(335,571.00)	
	228,614.00	(296,590.00)	
Less: Planned Trustee Commissions	(150,000.00)	(150,000.00)	
Combined Total 2017 Net Return or (Deficit)	78,614.00	(446,590.00)	
Less: Distributions @ $180k/Benef.	(720,000.00)	0	
	(641,386.00)	(446,590.00)	
Less: Interest on 6166 Estate Tax	(55,000.00)	-	
Net Combined Decrease for 2018 After Deduction of Trustee Fees & Distributions to Beneficiaries	**$ (696,386.00)**	**$ (446,590.00)**	(446,590.00)
Transfer from Principal to Net Return under Power to Adjust	696,386.00		(696,386.00)
Balance at 12/31/18	$ -		$ 21,927,341.00

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L.W. BOYKIN MARITAL TRUST B - Business as in the Past Illustration
Projected Accounting Income Worksheet
January 1, 2018 - December 31, 2018

	Trust Income		Trust Principal	
	Income Receipts	Disbursements & Costs of Sale	Principal Receipts	Disbursements & Costs of Sale
Receipts:				
Dividends	$ 3,024			
Interest	276			
Improved Property Rental Receipts:				
Lugoff Commercial Real Property Rents	70,000			
Camden Commercial Real Property Rents	13,600			
Residential Rentals	18,000			
Hunting Lease Receipts	44,907			
Farm Receipts:				
Farmland Rental Receipts	34,950			
FSA/USDA CRP Receipts	1,500			
Net Profit on Timber Sales:				
Trust B Timber Sales			$ 319,000	
Tr. B 80% of Timber Sales			769,600	
Less: Cost Basis of Timber Sold (estim. 80% of net)			(870,880)	
Reforestation Expense Reserve				$ 1,000
Amortization of Reforestation Expense				
Disbursements:				
Misc Repairs to Commercial Properties		$ 20,000		$ 50,000
Lugoff Commercial Rental Exp.		$ 16,404		
Camden Commercial Real Property Exp.		10,306		
Residential Rental Expense		4,408		
Hunting Lease Property Expense		7,600		
Farm-related Expenses		15,314		
Real Property Tax Not Allocated - Rental		3,754		
Real Property Tax Not Allocated - Non-Rental				4,402
Legal Fees Regarding Leases		3,821		
Accounting Fees		12,490		12,490
Insurance Not Otherwise Allocated		866		2,046
Miscellaneous Expenses				811
Income tax expense of 28% on Timber Gain				60,962
	$ 186,257	$ 94,963	$ 217,720	$ 131,711
Allocation of timber gain to : 6% of net proceeds, net of 28% CG/NI income tax	47,028		(47,028)	
Net for 2018 Before TteeFees/Distrib		$ 138,322		$ 38,981

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L.W. BOYKIN TRUSTS A - Business as in the Past Illustration
Projected Accounting Income Worksheet
January 1 - December 31, 2018

	Trust Income		Trust Principal	
	Income Receipts	Disbursements	Principal Receipts	Disbursements
Receipts:				
Interest Income	$ 4,475			
Improved Property Rental Receipts:				
Residential Rentals	18,600			
Commercial Rentals	43,000			
Hunting Lease Receipts	33,590			
Net Profit on Timber Sales:				
Mar. Tr A Timber Sales			$ 77,000	
Res. Tr A Timber Sales			$ -	
Res. Tr. A 20% of Timber Sales			192,400	
Less: Cost Basis of Timber Sold (Mar.A)			(61,600)	0
Less: Cost Basis of Timber Sold (Res.A)				0
Disbursements:				
Boykin Properties Maintenance & Repairs		$ 30,000		200,000
Commercial Real Property Expenses		$ 6,937		
Residential Rental Expenses		14,989		
Hunting Lease Property Expenses		9,527		
Miscellaneous Expenses				$ 36
Real Prop. Taxes Not Allocated-Non-rental				1,621
Accounting Fees		5,771		6,396
DHEC - Required Repairs to Dam				100,000
Workers Comp. Insurance		886		
Insurance Not Otherwise Allocated				2,957
	$ 99,665	$ 68,110	$ 207,800	$ 311,010
*To remove from principal of Res. Tr. A portion of sold timber/land net proceeds included in estim. trust FMV, but not otherwise deducted as cost basis or NAI.			$ (115,440)	
**Marital A: Allocation of timber *proceeds* to net income: 6% of proceeds, net of 28% CG/NI income tax	$ 3,326		$ (3,326)	
**Allocation of timber gain to NAI (gain is net of 28% CG/NIIT tax)	55,411		(55,411)	
Estim. '18 Income Tax Liability				58,184
Net for 2018 Before TteeFees/Distributions		$ 90,292		$ (335,571)

* To adjust principal for value of timber/land sold and replaced with cash, but not deducted as cost basis or allocated to NAI.

** For Marital Tr A, growth factor to allocate increases by 3points per year.
6% x net proceeds for 2018.

**Res. Tr. A: At the direction of Rigdon Boykin, 80% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 100% owned properties.

**Res. Tr. A: At direction of Rigdon Boykin, 40% of after-tax gain on timber sales has been allocated from principal to Net Accounting Income for 20% owned properties.

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