

STATE OF NEW HAMPSHIRE

TENTH CIRCUIT - BRENTWOOD

PROBATE DIVISION

In Re: The Judith E. Tierno Revocable Trust of 2003

Docket No. _____

**PARTIALLY ASSENTED TO PETITION TO VALIDATE THE THIRD AMENDMENT
AND RESTATEMENT OF THE JUDITH E. TIERNO REVOCABLE TRUST OF 2003**

NOW COMES Daniel E. Healy (“Petitioner” or the “Trustee”), Trustee of The Judith E. Tierno Revocable Trust of 2003, established by Grantor Judith E. Tierno, late of Portsmouth, New Hampshire, by instrument dated June 19, 2003 (the “Trust”), by and through his attorneys, McLane, Graf, Raulerson & Middleton, Professional Association, and respectfully requests that this Honorable Court DECLARE the unsigned Third Amendment and Restatement (“Third Amendment”) of The Judith E. Tierno Revocable Trust of 2003 (consisting of twenty four (24) pages) valid pursuant to RSA 564-B:6-602. In support thereof, the Petitioner states as follows:

I. INTRODUCTION

This is an action to carry out Ms. Tierno’s intent by validating the unsigned Third Amendment. Prior to her passing, Ms. Tierno clearly and unequivocally sought to amend the Trust and instructed her attorney, John E. Hughes, to prepare a Third Amendment and Restatement reflecting her intent. Unfortunately, after the Third Amendment was prepared and subsequently reviewed by Ms. Tierno and Co-Trustee Daniel E. Healy, but before it was formally executed, Ms. Tierno passed away. Because the Third Amendment is unsigned, the nominated successor Co-Trustee to Ms. Tierno, Enterprise Bank and Trust Company

(“Enterprise”) has declined to serve absent a judicial declaration that the Third Amendment is valid under New Hampshire law, potentially hampering ongoing Trust administration.

II. JURISDICTION AND VENUE

1. The Trust is a “trust” as described in RSA 564-A:1, and pursuant to the terms of the Trust, shall be construed under and regulated by the laws of the State of New Hampshire.

2. The principal place of administration of the Trust is New Hampshire.

3. RSA 564-B:2-203 grants the Probate Division exclusive jurisdiction in the interpretation, construction, modification, termination, and administration of trusts described in RSA 564-A:1, I.

4. Pursuant to RSA 564-B:2-204, venue for a judicial proceeding involving a trust is in the county of this state in which the trust's principal place of administration is located. At the time of her death, Ms. Tierno was residing in and the principal place of administration was Portsmouth, County of Rockingham, New Hampshire. Thus, venue is appropriate in this Court.

5. Currently, this Court is exercising jurisdiction over the Estate of Judith E. Tierno, case number 318-2012-ET-01540, in which the Trustee of the Trust has been appointed as Administrator.

III. INTERESTED PARTIES.

6. Petitioner, Daniel Healey, with a mailing address of 7125 Fruitville Road, Sarasota, FL 34240 is the Trustee of The Judith E. Tierno Revocable Trust of 2003.

7. Respondent, Enterprise Bank and Trust Company is the successor Trustee to Judith E. Tierno, nominated in the Third Amendment, with a mailing address of c/o George B. Leahey, Esq., 16 Pine Street, Suite 6, Lowell, MA, 01851.

8. Respondent, Scott A. Tierno, on behalf of himself and his minor children, Emma Tierno and Mary Tierno, all with a mailing address of 77 Winslow Place, Candia, NH 03034, are the son and grandchildren of Judith E. Tierno and are beneficiaries of the both the Second Amendment and Restatement and the Third Amendment.

9. Respondent, Laurie A. Tierno, with a mailing address of 1 Social Street, North Providence, RI 02904, is the daughter of Judith E. Tierno and a beneficiary of the both the Second Amendment and Restatement and the Third Amendment and Restatement.

10. Respondent, Charles F. Stubbart, with a mailing address of 458 Main Street, Waterville, ME 04901, is the brother of Judith E. Tierno and a beneficiary of the both the Second Amendment and Restatement and the Third Amendment.

11. Respondent, Nathan N. Stubbart, with a mailing address of 16 Pleasant Street, Waterville Maine 04901, is a nephew of Judith Tierno.

12. Ethan T. Stubbart, with a mailing address of 49 Antoine Road, Windham, Maine 04062, is a nephew of Judith Tierno.

13. Charles F. Stubbart, III with a mailing address of 95 Heath Street, Oakland, Maine 04963, is a nephew of Judith Tierno.

14. Sherry Stubbart, with a mailing address of 21 Pope Road, Windham, Maine 04062, is a niece of Judith Tierno.

IV. FACTS

15. The Trust was established by the Grantor, Judith E. Tierno by agreement dated June 19, 2003.

16. Pursuant to paragraph 17 of the Trust, Ms. Tierno previously modified the Trust by First Amendment, dated June 29, 2007 and by Second Amendment and Restatement dated September 3, 2009.

17. At the time of the preparation of the Third Amendment, the Petitioner and Ms. Tierno served as Co-Trustees. *See* First paragraph of the Second Amendment and Restatement, attached as EXHIBIT 1.

18. On September 28, 2012, at Ms. Tierno's instruction, the Petitioner contacted Ms. Tierno's attorney, John E. Hughes, regarding Ms. Tierno's desire to amend the Trust and specifically discussed the changes to be made to the Trust as had been made known to the Petitioner by Mrs. Tierno. *See* Paragraph 5. of The Affidavit of John E. Hughes, Esq. hereinafter "Hughes Affidavit," attached as EXHIBIT 2.

19. Specifically, Ms. Tierno communicated her desire to appoint Enterprise as Co-Trustee and eliminate pecuniary distributions to her niece and nephews: Nathan N. Stubbart, Sherry A. Stubbart, Charles F. Stubbart, III, and Ethan T. Stubbart, which had been provided in the Second Amendment and Restatement to the Trust. Ms. Tierno expressed to Attorney Hughes that she had lost contact with her nieces and nephews after making significant gifts to them in recent years, and no longer wished to make provisions for them in the Trust. *See Id.* at paragraph 5.

20. On October 9, 2013, Attorney Hughes visited with Ms. Tierno personally at Whittier Rehabilitation Center and discussed Ms. Tierno's desire to amend the Trust. Ms. Tierno described the changes that she wished to make to the Trust. *See Id.* at paragraph 6.

21. Ms. Tierno confirmed to Attorney Hughes that she had shared her intentions and her desire to amend the Trust with the Petitioner. *See Id.*

22. On October 11, 2012, Attorney Hughes drafted the Third Amendment to Ms. Tierno's Trust. *See Id.* at paragraph 7.

23. On October 12, 2012, Attorney Hughes presented the Third Amendment to Ms. Tierno at Whittier Rehabilitation Center for her signature. *See Id.* at paragraph 8.

24. Due to prescribed medications taken by Ms. Tierno on the morning of October 12, 2012, Attorney Hughes determined that Ms. Tierno temporarily lacked legal capacity to execute the Third Amendment at that time, and would obtain her signature when the effects of the medication were not so debilitating. *See Id.* at paragraph 9.

25. Attorney Hughes returned to Whittier Rehabilitation Center on the afternoon of October 12, 2012. *See Id.* at paragraph 10.

26. When Attorney Hughes returned to Whittier Rehabilitation Center, Ms. Tierno was again suffering from the effects of her medication and was unable to execute the Third Amendment. *See Id.*

27. Ms. Tierno passed away on October 17, 2012, without having signed the Third Amendment. *See Id.* at paragraph 11.

28. Under paragraph 16. of The Second Amendment and Restatement, Ms. Tierno reserved the right to modify the Trust by filing notice of such modification with the Trustee. The relevant clause from Paragraph 16 of The Second Amendment and Restatement is shown below:

The Grantor reserves the right at any time or from time to time without the consent of any person and without notice to any person other than the Trustee to revoke or modify the trust hereby created, in whole or in part, to change the beneficiaries hereof, or to withdraw the whole or any part of the trust estate by filing notice of such revocation, modification, change, or withdrawal with the trustee.

29. Subparagraph 6. B. of the Third Amendment appoints Enterprise as successor Trustee if Ms. Tierno or the Trustee is unable or unwilling to serve in the capacity of Trustee for any reason. *See* Third Amendment and Restatement, attached as EXHIBIT 3.

30. Subparagraph 6.C. of the Third Amendment requires that after Ms. Tierno's death, two Trustees shall serve at all times. *See Id.*

31. The Trustee contacted Enterprise to inform it that due to the death of Ms. Tierno, the Third Amendment appointed Enterprise as her successor to serve with the Trustee.

32. In a July 2, 2013 letter, Attorney George B. Leahey, counsel to Enterprise, advised Enterprise not to accept the Co-Trusteeship absent a judicial declaration that the unsigned Third Amendment is valid and operative. *See* paragraph 12 of the Hughes Affidavit attached as EXHIBIT 2.

33. In a September 25, 2013 letter to Attorney Hughes, Attorney Leahey indicated that Enterprise would accept the position of Co-Trustee "if and when the Rockingham Probate Court approves this Petition" and after all appeal periods have expired. *See Id.* at paragraph 13.

34. As of the date of this Petition, no successor Co-Trustee is serving with Mr Healey. *See Id.* at paragraph 14.

V. ANALYSIS

35. Unlike a Will, a Trust need not be signed or be in writing to be valid. *See* RSA 564-B:4-401.

36. In New Hampshire, a grantor can validly amend a revocable trust pursuant to RSA 564-B: 6-602:

(1) by substantial compliance with a method provided in the terms of the trust; or

(2) by any other method manifesting clear and convincing evidence of the settlor's intent if the terms of the trust do not provide a method or do not expressly prohibit methods other than methods provided in the terms of the trust.

37. Unless the terms of the trust require a signed writing, there is no statutory or common law support that a trust amendment must be signed by the grantor to be valid. *See, In re Estate of Field*, 953 A.2d 1281 (Pa. Super. Ct. 2008), attached as EXHIBIT 4.

38. Paragraph 16 of The Second Amendment and Restatement of the Trust specifically grants Ms. Tierno the power to revoke or modify the Trust and prescribes a method of doing so. Ms. Tierno, as Grantor, had the right to modify the Trust by filing notice of the modification with the Trustee. The Trust does not require that the notice be in writing nor does it require an executed document.

39. Based on the standards set forth in RSA 564-B:6-602, the Trustees were given adequate and sufficient notice of the Third Amendment to satisfy the “filing of notice” requirement in Paragraph 16 because Ms. Tierno, herself a Trustee, was certainly aware of and had notice of the modifications she herself had asked Attorney Hughes to make, as well as her rationale for doing so. She communicated those changes to her Co-Trustee, Daniel Healy as well, who reviewed the written Third Amendment.

40. Moreover, because the terms of the Trust do not expressly prohibit methods to amend the Trust other than that method prescribed in Trust, Ms. Tierno validly amended the Trust by manifesting clear and convincing evidence of her intent.

VI. CONCLUSION

41. By instructing her attorney to draft the Third Amendment and by notifying her Co-Trustee of the Third Amendment, Ms. Tierno substantially, if not explicitly, complied with the prescribed method for amendment of the Trust as provided in the Trust instrument.

42. Moreover, Ms. Tierno's method manifested clear and convincing evidence of her intent and the Trust does not expressly prohibit changes by methods other than the methods provided in the terms of the Trust.

43. Consequently, the unsigned Third Amendment of the Trust was a valid exercise of Ms. Tierno's power and thus, is the controlling Trust instrument.

44. Interested parties, Enterprise Bank and Trust, Scott Tierno, on behalf of himself and his minor children, and Laurie A. Tierno have assented to and concur with this Petition.

45. Attorney Harman, on behalf of interested parties, Nathan N. Stubbart, Ethan T. Stubbart, Charles F. Stubbart, III, and Sherry Stubbart has not assented to or concurred with this Petition.

46. Charles F. Stubbart has not assented to or concurred with this Petition.

NOW THEREFORE, for the reasons set forth above, the petitioner respectfully requests that this Honorable Court:

1. DECLARE the unsigned Third Amendment and Restatement of the Trust valid and operative.
2. Grant such other and further relief as this Court determines to be just and equitable.

Respectfully Submitted,

DANIEL E. HEALY in his capacity as
Trustee of the JUDITH E. TIerno
REVOCABLE TRUST OF 2003

Date: December 6, 2013

By:

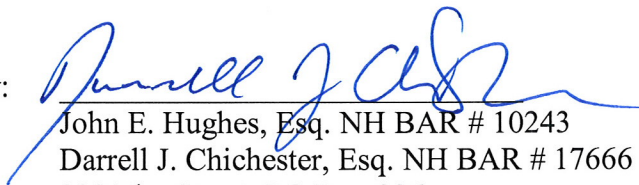

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EXHIBIT 1

Second Amendment and Restatement of The Judith E. Tierno Revocable Trust of 2003



**SECOND AMENDMENT AND RESTATEMENT
TO
THE JUDITH E. TIERNO
REVOCABLE TRUST OF 2003
DATED: June 19, 2003**

WHEREAS, I, Judith E. Tierno, of Portsmouth, New Hampshire, did on the 19th day of June, 2003, execute a TRUST AGREEMENT entitled THE JUDITH E. TIERNO REVOCABLE TRUST OF 2003, of which I am the Grantor and Judith E. Tierno, of Portsmouth, New Hampshire and the Grantor's friend and business associate, Daniel E. Healy, serve as co-Trustees; and

WHEREAS, Paragraph 17 of said TRUST AGREEMENT expressly reserves the right in the Grantor to modify said TRUST AGREEMENT, in whole or in part.

WHEREAS, I previously amended said TRUST AGREEMENT by way of the FIRST AMENDMENT dated June 29, 2007.

NOW, THEREFORE, pursuant to the power of modification contained in said Paragraph 17, I hereby modify said TRUST AGREEMENT by this SECOND AMENDMENT AND RESTATEMENT, as follows:

1. The introductory narrative paragraph and Paragraphs 1. through 20. of the TRUST AGREEMENT inclusive, and all sub-paragraphs thereto, and all references thereto, and the FIRST AMENDMENT are deleted in their entirety and the following are substituted therefor:

TRUST AGREEMENT, made on June 19, 2003, between Judith E. Tierno, residing in Portsmouth, New Hampshire (hereinafter called the "Grantor"), and Judith E. Tierno, residing in Portsmouth, New Hampshire, and the Grantor's friend and business associate, Daniel E. Healy (hereinafter individually and collectively called the "Trustee").

At the time of the signing of this trust, the Grantor's children are Scott A. Tierno and Laurie A. Tierno.

1. TRUST PROPERTY. All property transferred and delivered to the Trustee, which the Trustee may, at any time, hold or acquire, including cash, securities, or other property, shall be referred to collectively as the "trust estate" and held and administered and disposed of by the Trustee for the uses and purposes, and upon the terms and conditions, herein set forth.

2. DISPOSITIVE PROVISIONS: LIFETIME. The Trustee shall hold, manage, invest and reinvest the trust estate, and shall collect the income thereof and dispose of the net income and principal as follows:

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Initials

- A. Pay such parts of the income, if any, and such parts of the principal of this trust to, or for the benefit of, the Grantor as the Grantor directs from time to time for the Grantor's support in reasonable comfort, education (including college and professional education), and maintenance in health (including medical, dental, hospital, nursing and nursing home expenses). Any income accrued or accumulated at the time of the Grantor's death shall be paid and transferred to principal, to be administered according to the terms hereinafter provided.
- B. In addition, during the lifetime of the Grantor, if the Grantor becomes so incapacitated that Grantor cannot exercise Grantor's rights under sub-paragraph 2.A. above, and there are sufficient assets in this trust to do so, the Trustee is authorized to pay such parts of the income, if any, and such parts of the principal of this trust to, or for the benefit of, the Grantor and the Grantor's children as it deems advisable for their support in reasonable comfort, education (including college and professional education), and maintenance in health (including medical, dental, hospital, nursing and nursing home expenses), taking into consideration the amount of their income from sources other than this trust.

It is the Grantor's intention that the support in reasonable comfort, education (including college and professional education), and maintenance in health (including medical, dental, hospital, nursing and nursing home expenses) of the Grantor shall be of primary concern, and the Trustee shall exercise its discretion in using principal for the Grantor, considering all other beneficiaries to be secondary and without liability to any other beneficiary for the use of principal for the Grantor.

- C. Further, the Trustee is authorized to give, transfer or convey any of the trust estate to persons of the Grantor's natural affection to whom the Grantor would normally consider making such gifts, transfers or conveyances, whether outright or in trust, having in mind the ultimate objective of such gifts, transfers or conveyances is the qualification for state or federal medical, welfare or other assistance programs for the Grantor's benefit and the reduction of the state and federal estate, inheritance, transfer, legacy and succession taxes and any interest and penalties thereon imposed by reason of the Grantor's death.
- D. So long as the Grantor's brother, Charles F. Stubbart, survives the Grantor, then the Trustee shall have the discretion to provide Charles F. Stubbart with an annual payment of Twenty-Four Thousand Dollars (\$24,000) for each calendar year, pro rated for any partial calendar year, for the remainder of said Charles F. Stubbart's life. Said Twenty-Four Thousand Dollars (\$24,000) annual payment may, at the Trustee's sole and uncontrolled discretion, be increased at a rate of three percent (3%) each year to compensate for the annual increase in the cost of living.

3. DISPOSITIVE PROVISIONS: AFTER-DEATH. Upon the death of the Grantor, the trust estate shall be held and administered and disposed of as follows:


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- A. The Trustee shall distribute certain items of the Grantor's tangible personal property and household effects which are then part of the trust estate, including furniture, clothing, jewelry, silver, books, pictures, china, automobiles and their equipment, other vehicles and their equipment, and other articles of personal and household use or ornament, in accordance with a "Memorandum of Wishes" which the Grantor shall or may leave in writing and shall be incorporated by reference into this Trust or otherwise legally binding, in which the Grantor will direct the distribution, limited to tangible personal property and household effects, to the Grantor's beneficiaries.

The remainder of the Grantor's personal property and household effects shall be distributed, outright and free of trust, to the Grantor's issue who so survive the Grantor, such issue to take per stirpes.

The Grantor expresses the hope that said beneficiaries will dispose of said tangible personal property and household effects according to the Grantor's wishes, however said wishes may be made known to them.

If a division of the property under this distribution is required among the beneficiaries, such division shall be made by the beneficiaries, in appropriate shares, as they may amicably agree.

The Grantor prefers that said beneficiaries shall agree upon the manner in which said property is to be divided, but should they not agree among themselves as to the division thereof within ninety (90) days after the Grantor's death, the Trustee shall have full power and authority to divide said property among said beneficiaries, in appropriate shares, and its determination with respect thereto shall, insofar as permitted by law, be binding and conclusive upon such beneficiaries.

- B. If the trust estate shall include real property located on Marshal Point Road, Port Clyde, Maine, the Trustee shall hold and administer such real estate for the benefit of the Grantor's issue, as follows:

1. The Trustee shall, to the extent possible, hold and manage said real estate for the exclusive use and occupancy of the Grantor's children and further issue. During such time as the Trustee shall hold the property, each living child and grandchild of the Grantor shall, subject to the sole and


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absolute discretion of the Trustee, have the right to the use of such property for their personal enjoyment.

- a. The Trustee shall, to the extent possible, make such distributions from the trust estate to satisfy any and all liens, mortgages or other encumbrances, then outstanding on said real estate. However, it is the Grantor's intention that the support in reasonable comfort, education (including college and professional education), and maintenance in health (including medical, dental, hospital, nursing and nursing home expenses) of the Grantor's issue shall be of primary concern, and the Trustee shall exercise its discretion in using principal for the payment of such outstanding obligations.
- b. The Trustee may make distributions from the trust estate for the payment of any and all costs and expenses associated with said real estate, including, but not limited to, real estate taxes, normal costs of maintenance and upkeep of said real estate, including fire and casualty insurance, utilities, fuel, electricity, etc., and costs and expenses of repairs to keep said real estate in the same condition said real estate is in at the commencement of said use (reasonable wear and tear excepted).
- c. At any time after the death of the Grantor, if the Trustee shall determine, in its sole and uncontrolled discretion, it necessary to sell any parcel of real estate as described hereinabove, then each living issue of the Grantor shall have the right of first refusal to purchase said real estate, pursuant to the provisions hereinbelow:
 - i. The Trustee shall give notice in writing to Grantor's living issue, of their right to purchase said real estate at its then fair market value, without conditions or contingencies other than the normal seller's obligation to convey good and marketable title and deliver the premises free and clear of liens and parties in possession ("Notice of Purchase").


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- ii. The fair market value shall be established by a qualified independent appraiser selected by the Trustee.
- iii. A living issue of the Grantor shall exercise the right to purchase by giving written notice to the Trustee of his or her intent to exercise the right within thirty (30) days of receipt of the Notice of Purchase ("Right of Purchase").

The Right of Purchase shall lapse and be deemed released if:

- (a) a living issue gives written notice of his or her decision not to exercise the Right to Purchase within thirty (30) days of the receipt of Notice of Purchase ("Waiver"); or
- (b) a child or grandchild fails to notify Trustee of his or her desire to purchase the real estate within thirty (30) days of receipt of the Notice of Purchase ("Release").

Further, said Right to Purchase shall be personal to each said issue of the Grantor, and shall lapse in the event said issue shall predecease the Grantor.

- iv. In the event more than one living issue of the Grantor shall exercise this Right to Purchase, then the living issue with priority shall be determined by lottery supervised by the Trustee.
- v. In the event a living issue of the Grantor exercises said Right to Purchase, then the closing shall take place within one hundred and eighty (180) days of the living issue exercising his or her Right of Purchase. The Trustee shall add the net proceeds from the sale of said residential real estate to the remaining trust estate, to be held and administered and disposed of in accordance


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with the provisions of sub-paragraph 3.E.
hereinbelow.

2. The decisions of the Trustee under this sub-paragraph 3.B. shall be binding and conclusive upon all beneficiaries and parties of interest.

- C. After the distributions in sub-paragraphs 3.A. and 3.B. hereinabove, the Trustee shall distribute money or other property equal in value (when distributed) to the following amounts, outright and free of trust, to or for the benefit of such of the following persons as are then living:

Twenty Thousand Dollars (\$20,000) to the Grantor's nephew, Nathan N. Stubbart, if he survives the Grantor;

Twenty Thousand Dollars (\$20,000) to the Grantor's nephew, Charles F. Stubbart, III, if he survives the Grantor;

Twenty Thousand Dollars (\$20,000) to the Grantor's niece, Sherry A. Stubbart, if she survives the Grantor; and

Twenty Thousand Dollars (\$20,000) to the Grantor's nephew, Ethan T. Stubbart, if he survives the Grantor.

- D. After the distributions in sub-paragraphs 3.A., 3.B. and 3.C. hereinabove, if the Grantor's brother, Charles F. Stubbart, survives the Grantor, then the Trustee shall set aside a sum of money sufficient to provide Charles F. Stubbart with an annual payment of Twenty-Four Thousand Dollars (\$24,000) for each calendar year, pro rated for any partial calendar year, for the remainder of said Charles F. Stubbart's life. Said Twenty-Four Thousand Dollars (\$24,000) annual payment may, at the Trustee's sole and uncontrolled discretion, be increased at a rate of three percent (3%) each year to compensate for the annual increase in the cost of living. The Trustee's determination of the amount of funds necessary to be set aside to satisfy this annual payment shall be final and conclusive. The Trustee shall not be liable for any errors made when making such determination except in the case of willful intent or gross negligence. Upon the death of Charles F. Stubbart, the remaining principal and accumulated income, if any, shall be administered and disposed of in accordance with the provisions of sub-paragraph 3.E.

- E. After the provisions, if any, in sub-paragraphs 3.A., 3.B., 3.C. and 3.D. above, the Trustee shall hold and administer and dispose of


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the then remaining trust estate, for the benefit of the Grantor's children and further issue (hereinafter referred to collectively and individually as "beneficiary" and "beneficiaries") as follows:

1. The Trustee may pay over to a beneficiary or may use, apply or expend for their direct or indirect benefit, so much of the income and principal of the trust estate, at such times and in such proportions as the Trustee may determine, in its absolute discretion, for their support in reasonable comfort, education (including college and professional education), and maintenance in health (including medical, dental, hospital, nursing and nursing home expenses).

Such payments or applications need not be apportioned equally among said children, but may be made according to their needs, as determined by the Trustee, taking into consideration their respective ages, talents, educational needs, health and other available resources.

2. If, at any time before the final distribution of the trust estate there shall be no person in existence who is eligible to have the benefit of such trust estate, the Trustee shall distribute all of the trust estate then remaining, outright and free of trust, to those persons then living who would have taken the Grantor's estate, and in such shares thereof as they would have taken, had the Grantor then died intestate, domiciled in New Hampshire.

- F. The provisions contained hereinabove which require the Trustee to apportion the trust estate into shares and parts of shares are for purposes of computation only and shall not be construed to require the Trustee to make physical segregation of one share or a part of a share from the others, although the Trustee shall have full right to make such segregation if it thinks it better to do so.

Notwithstanding said provisions, the Trustee shall have the full right to regard the trust estate as one undivided estate for purposes of management and investment.

- G. If the Grantor or the executor of the Grantor's estate or any other individual (including any individual who shall transfer property in trust hereunder or the executor or administrator of the estate of such individual) has allocated any portion or all of any Generation Skipping Transfer ("GST") exemption provided by Section 2631(a) of the Internal Revenue Code of 1986, as amended, (and any corresponding sections of any future Internal Revenue Code)


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to any property to be held in trust hereunder, then notwithstanding anything to the contrary contained in this agreement, the Trustee is authorized to establish such number of separate trusts, with identical terms, to hold the property received in trust hereunder as it, in its sole discretion, shall deem advisable, bearing in mind the allocation of the said GST exemption and the desirability that any trust to which all or any portion of the said GST exemption is allocated shall, if practical, have an inclusion ratio of zero.

Further, the Trustee is authorized to allocate such trusts among the trust shares hereinabove created in order to minimize (or eliminate, if possible) any GST tax.

4. TRUSTEE'S POWERS. In the administration of the trust estate, the Trustee shall have all of the powers granted to trustees by New Hampshire common law and statutory authority (including, but not limited to, the Uniform Trustees' Powers Act, R.S.A. 564-A, and the Uniform Trust Code, R.S.A. 564-B, as they may be amended from time to time), without restrictions.

In addition to such power, and not in limitation thereof, the Trustee shall have the following powers, all of which shall be exercised in a fiduciary capacity and for the benefit of the beneficiaries:

- A. During the lifetime of the Grantor, the Trustee may retain as an investment, unless and until the Grantor by a writing delivered to the Trustee shall otherwise direct, all of the securities and other property originally assigned, transferred, or delivered to the Trustee hereunder or at any time forming a part of the trust estate, whether or not such securities or other property be of the character authorized by the laws of the State of New Hampshire for the investment of trust funds.

Upon the death or incapacity of the Grantor, the Trustee is authorized to purchase, sell, lease, or alter any investment by buy or sell orders transmitted by it, whether by telephone call, electronic facsimile transmission, computer message or other current non-written method of business communication.

- B. To buy, sell and trade in securities of any nature (but not on margin), and to pledge any securities held or purchased by it with such brokers as security for loans and advances made to the Trustee.
- C. To take and hold title to real estate, and to convey any interest in real estate and improvements thereon held in trust, and no purchaser or third party shall be bound to inquire whether the Trustee has said power or is properly exercising said power, or see to the application of any trust asset paid to the Trustee for a conveyance thereof.


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- D. To have all of the necessary banking powers to open and manage financial accounts, including but not limited to, checking accounts, savings accounts, financial accounts and other related financial instruments and to conduct all necessary financial business in reference to the management of the financial assets of the trust.
- E. To rent a safe deposit box and to retain such assets in said box as the Trustee, in its sole, absolute, and uncontrolled discretion, determines appropriate.
- F. To borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust.
- G. To loan funds to the Grantor's estate upon such terms and conditions as to interest rates, maturities, and security as the Trustee shall determine.
- H. To make payments, transfers or conveyances, to the extent possible, to the estate of the Grantor (after exhaustion of the assets of the Grantor's estate) to satisfy legacies, bequests or devises, if any, made under the Grantor's will or included in the Grantor's estate for other purposes, if the Grantor's estate shall be insufficient to satisfy such legacies, bequests or devises.
- I. To invest in common trust funds.
- J. To select property, in its sole, absolute, and uncontrolled discretion, to be allocated to any trust hereunder or to be distributed in satisfaction of any gift provided for herein without respect to the income tax basis of such property, and the Trustee is specifically excused from any duty of impartiality with respect to the income tax basis of such property.

In the event that residential real estate is held in the trust estate, the Trustee may allocate said residential real estate to any trust created hereunder, to be held and administered and disposed of pursuant to the provisions thereof.

- K. If at any time during the Grantor's lifetime, there is delivered to the Trustee other than the Grantor, if any, or, if none, then to the successor Trustee, a written opinion, signed by a licensed physician, stating that the Grantor has become incompetent or incapacitated, then from and after the delivery of such written opinion the Trustee other than the Grantor, or the successor Trustee, as the case may be, shall have those powers and authorities with respect to the trust estate given to the Trustee in this trust agreement.
- L. Regardless of the extent of the authority that the Trustee holds to currently distribute income and/or principal of the trust estate to one or more beneficiaries of the trust, the Trustee shall have full power and authority, to be exercised in its sole, absolute, and uncontrolled discretion, to appoint any or all assets held in this


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trust estate to any other trust or trusts created under will, deed or otherwise, for the benefit of one or more of the beneficiaries hereunder.

This authority shall be subject to the limitations set forth in R.S.A. 564-B:4-418, as amended from time to time, provided that such appointment clause shall be null and void in the event there is a determination that the application of such clause shall result in the inclusion of any of the trust estate in the Grantor's gross estate under any provision of the Internal Revenue Code, including but not limited to Sections 2041 and 2042, which would not otherwise be includable in the Grantor's gross estate.

Provided further, however, that if this Trust qualifies as a "trust instrument" under the Qualified Dispositions in Trust Act, R.S.A. 564-D, as amended from time to time, then the Trustee may only appoint the assets of the trust estate to a new trust which will continue to qualify as a "trust instrument" under such Act and will provide similar protections to the assets held in this trust estate.

- M. If, at any time before the final distribution of the principal of any trust share hereinabove described, the value of the principal of said trust share shall be equal to, or less than, ONE HUNDRED THOUSAND DOLLARS (\$100,000), then the Trustee may, in its sole discretion, terminate said trust share and distribute the principal of said trust share, and any accumulated and undistributed income thereof, outright and free of trust, to those persons then entitled to benefit from said trust share, and in the proportions in which they are then entitled to benefit from said trust share, notwithstanding any provisions of this trust to the contrary.
- N. To exercise all the powers, authorities and discretions herein conferred, after the termination of the trust hereunder, until the complete distribution of the trust estate.

5. ADDITIONAL PROPERTY. The Grantor may, by will, trust or during her lifetime, from time to time, transfer and deliver to the Trustee cash, securities, and other property acceptable to the Trustee, in addition to the property presently transferred and delivered, and such cash, securities, and other property shall be held, administered, and disposed of by the Trustee in accordance with the provisions of this agreement without the execution of any further instrument or declaration.

6. ACCOUNTING BY TRUSTEE.

- A. At any time and from time to time, the Grantor shall have the power, by written instrument signed and acknowledged by the Grantor and delivered to the Trustee, to settle the account of the Trustee with respect to principal or income, or with respect to both principal and income, and to release and discharge the Trustee of and from any and every claim, demand, accountability, and liability of every nature, arising from any matter or thing done or omitted to be done, in connection


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with this agreement or any trust hereby created, during the period in respect of which the account of the Trustee shall have been so settled.

Every such settlement, release, and discharge shall be conclusive and binding upon, and shall be an absolute protection to the Trustee against all claims of any income beneficiaries, remaindermen, or other persons who might then or thereafter have or claim any interest under this agreement, and no such income beneficiary, remainderman, or other person shall have any right of accounting, any claim, or any cause of action against the Trustee arising from any matter or thing done or omitted to be done in connection with this agreement or any trust hereby created, during any period in respect of which the account of the Trustee shall have been so settled.

- B. At any time and from time to time after the death or incapacity of the Grantor, the beneficiary or a majority of the beneficiaries to whom or to whose use the current net income of the trust estate is at the time authorized or required to be paid or applied and who shall at the time be at least eighteen (18) years of age may, by a written instrument signed and acknowledged by him or them, as the case may be, and delivered to the Trustee, similarly settle the account of the Trustee with respect to principal or to income, or with respect to both principal and income, and release and discharge the Trustee of and from any and every claim, demand, accountability, and liability of every nature, arising from any matter or thing done or omitted to be done, in connection with this agreement or any trust hereby created, during the period in respect of which the account of the Trustee shall have been so settled.

Any such settlement, excepting only for actions of the Trustee which are found by a court of competent jurisdiction to be willfully or intentionally fraudulent, shall have the same effect in respect of the period covered by the account so settled (which period may cover any time prior to as well as after the death or incapacity of the Grantor) as would a settlement made by the Grantor in respect of a period prior to the Grantor's death or incapacity as hereinabove provided.

- C. The failure of any person to object in writing to the Trustee to such an account within thirty (30) days after the delivery of the same to such person hereunder shall be final and binding to the same extent as the written approval hereinabove provided.

7. SUCCESSOR TRUSTEE. The following provisions shall govern the addition, removal and succession of the Trustee:

- A. The Grantor may, during Grantor's lifetime, add any additional Trustee, or remove any Trustee hereunder and appoint a successor Trustee.
- B. If either Judith E. Tierno or Daniel E. Healy shall be unable or unwilling to serve in the capacity of Trustee for any reason, then the Grantor's attorney, Scott W.


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LaPointe, Esq., currently, practicing in Epping, New Hampshire, shall serve as Successor Trustee.

The last serving Trustee may, by a written instrument signed and acknowledged by him or her, appoint a successor Trustee; provided, however, that said successor Trustee shall be an attorney or an accountant. Such successor shall hold and maintain licenses and certifications appropriate to his or her or its profession, in good standing, in the State of New Hampshire while serving as successor Trustee hereunder.

- C. If the last-serving Trustee fails to appoint a successor Trustee as provided herein, and there shall be no successor Trustee able or willing to serve in the capacity of Trustee, then a majority of the beneficiaries to whom or for whose use the current net income of the trust estate is at the time authorized or required to be paid or applied, either,

1. acting individually, if then eighteen (18) years of age, or,
2. by his or her natural parent, or natural guardian, or Court appointed guardian or Court appointed conservator, if then under guardianship or conservatorship,

shall appoint a successor Trustee; provided, however, that said successor Trustee shall be an attorney, an accountant, a certified financial planner or a corporation or financial institution having a trust department capable of rendering financial advice concerning the investments of the trust estate. Such successor shall hold and maintain licenses and certifications appropriate to his or her or its profession, in good standing, in the State of New Hampshire while serving as successor Trustee hereunder.

- D. In the event that any beneficiary of the trust, other than the Grantor, shall serve in the capacity of co-Trustee, then the discretionary powers to determine whether income or principal is to be distributed to said beneficiary or to any person to whom said beneficiary owes an obligation of support shall be exercisable only by the remaining Trustee.

It is the Grantor's intention by this sub-paragraph to prohibit said beneficiary from benefiting himself or herself as beneficiary in any way by the exercise of such discretionary powers vested in the Trustee as a group.

- E. In the event that a corporation or financial institution shall be serving as Trustee hereunder, a majority of the beneficiaries to whom or for whose use the current net income of the trust estate is at the time authorized or required to be paid or applied and who shall at the time be at least eighteen (18) years of age may by a written instrument signed and acknowledged by them and delivered to such corporation or financial institution remove said Trustee and appoint as its


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successor Trustee, any corporation or financial institution having a trust department capable of rendering financial advice concerning the investments of the trust estate.

- F. Each Trustee hereunder (whether originally designated herein or appointed as successor) shall have the right to resign at any time by giving thirty (30) days written notice to that effect to the current income beneficiary (or beneficiaries) of the trust.

Thereafter, such beneficiary (or a majority of such beneficiaries) who shall at the time be at least eighteen (18) years of age shall have the right within such thirty (30) day period to appoint a successor Trustee, subject to the provisions hereinabove, and shall notify the resigning Trustee of such appointment.

In the event that a corporation or financial institution shall be appointed as successor Trustee hereunder, such successor Trustee shall be a trust company or bank qualified to act as such, possessing trust powers.

In the event the current income beneficiary (or beneficiaries) shall fail to designate a successor Trustee within the time specified, the then-acting Trustee shall appoint a successor Trustee as herein provided.

- G. In the event that any beneficiary of the trust, other than the Grantor, shall serve in the capacity of sole Trustee and the Trustee has discretionary powers to distribute income or principal to himself, herself, or to any person to whom he or she owes an obligation of support, then such distributions of income or principal shall be exercisable by the sole Trustee. The maximum amount that may be withdrawn annually by each such beneficiary under this sub-paragraph, however, shall not exceed the maximum amount over which an individual may have a power of withdrawal without its lapse in such year being deemed to be a release of such power under Section 2514(e) of the Internal Revenue Code of 1986, as amended and any corresponding Sections of any future Internal Revenue Code.
- H. No successor Trustee shall be liable or responsible in any way for any actions or defaults of any predecessor Trustee, nor for any loss or expense from or occasioned by anything done or neglected to be done by any predecessor Trustee. Any successor Trustee shall have, from and after its appointment or succession to office hereunder and without any assignment or other action by any person, all the rights, interests, and powers, including discretionary rights and powers, which are by the provisions of this trust agreement granted to and vested in the Trustee named herein.

8. FIDUCIARIES. No person dealing with the Trustee shall be responsible for the application of any money, securities, or other property paid or delivered, and the receipt of the Trustee shall be a full discharge; and no person dealing with the Trustee, and no issuer, transfer agent, or other agent of any issuer of any securities shall be under any obligation to ascertain or


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inquire into the power of the Trustee to purchase, sell, exchange, transfer, mortgage, pledge, create a security interest in, lease, distribute, or otherwise dispose of or deal with any money, securities, or other property.

The Trustee shall not at any time be held liable for any action taken or not taken, including any action intended to lessen or eliminate the impact of estate or generation-skipping transfer taxes with respect to any generation or beneficiary, whether or not such action is successful in achieving the results sought and without regard to its effect on other beneficiaries in the same or different generations, or for any loss or depreciation in the value of any property in any trust created herein, whether due to an error of judgment or otherwise, where the Trustee has exercised good faith and ordinary diligence in the exercise of its duties.

The Trustee shall receive reasonable compensation for its services in the administration of the trusts created herein, including reimbursement for amounts reasonably expended for bookkeeping services, investment services and advice, and other professional or para-professional services. In addition to the compensation herein provided, the Trustee shall receive reasonable compensation for any legal services provided for the benefit of the trust estate, such as handling any litigation involving the trust, preparing state or federal income tax returns, and transferring any real estate.

9. PERPETUITIES. The trusts created hereunder shall be perpetual to the fullest extent permitted by the governing law. If any trust created hereunder is deemed to be subject to the law of a jurisdiction (including, but only to the extent applicable to real property) that has a rule against perpetuities or similar rule which limits the period during which property can be held in trust, then such trust (other than a trust created by the exercise of a power of appointment conferred hereunder which exercise commences a new rule against perpetuities period under the law of such jurisdiction) shall terminate in all events upon the expiration of the longest period that property may be held in trust under this trust agreement under the law of such jurisdiction (including any applicable period in gross, such as 21 years, 90 years or 110 years); provided, however, that if the jurisdiction has a rule against perpetuities or similar rule which applies only to certain types of property, such as real property, the provisions of this paragraph shall apply only to such property. If under the law of such jurisdiction the longest period that property may be held in trust may be determined (or alternatively determined) with reference to the death of the last survivor of a group of individuals in being upon the date of this trust agreement, those individuals shall consist of all of the descendants of the Grantor's parents who were in being on the date of this trust agreement. Upon termination of a trust pursuant to the provisions of this paragraph, the trust property shall be transferred, conveyed and paid over to the persons then eligible to receive or have the benefit from the trust in the proportions in which they are eligible thereto, or if their interests are indefinite, then in equal shares. This provision is intended to comply with New Hampshire RSA 564:24, and accordingly, the Grantor specifically authorizes the Trustees to sell, mortgage, or lease property for any period of time beyond the period that is required for an interest created under this instrument to vest in order to be valid under the rule against perpetuities, as measured by the period that is twenty-one (21) years after the date of the death of the Grantor, and all of the Grantor's descendants who are alive on the date of this trust agreement.


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10. SPENDTHRIFT PROVISION. Except as herein otherwise provided, the interest of any beneficiary hereunder, either as to income or principal, shall not be anticipated, alienated or in any other manner assigned or pledged or promised by such beneficiary, and shall not be reached by, or be subject to, any legal, equitable or other process, including any bankruptcy or divorce proceeding, or be subject to the interference or control of creditors or others in any way or manner, and all payments to, or the interest of, any beneficiary shall be free from the control or claim of any parent or spouse or former spouse or any other third party. Moreover, no power of appointment or power of withdrawal shall be subject to involuntary exercise. Provided, however, this spendthrift provision shall not restrict the exercise of a disclaimer or the exercise of a power of appointment or withdrawal right granted by this trust agreement.

11. TAX PROVISION. The trust estate shall not be charged with the payment of any estate, inheritance, legacy, death taxes or duties of any nature (state or federal), or any interest or penalty thereon, except to the extent that the other assets in the Grantor's estate (excluding any assets which may be exempted from the payment of such taxes by the last will of the Grantor) shall be insufficient to discharge such taxes, interest or penalties or shall be insufficiently liquid to satisfy the same. The Trustee may rely conclusively upon written certification from the executor of the Grantor's estate, or if no probate administration of the Grantor's estate is required under applicable law, upon request of the person or persons nominated as executor under the Grantor's will or upon any other evidence, as to the existence of such insufficiency and the amount thereof; provided, however, that the Trustee shall not pay any additional tax imposed under Section 2032A or 2057 of the Internal Revenue Code of 1986, or any provision successor thereto, or any generation-skipping transfer taxes imposed under Chapter 13 of the Internal Revenue Code of 1986, or any provision successor thereto, imposed by reason of the Grantor's death.

If the Trustee shall be required to pay any such taxes, they shall be charged against the principal of the trust estate as an expense without apportionment.

Provided that in the event that no probate administration of the Grantor's estate is required under applicable law, the Trustee shall have all the powers and authority given the executor under the Grantor's will in relation to such taxes, including all elections and allocation of the generation-skipping transfer tax exemption under Section 2631 of the Internal Revenue Code of 1986, or any provision successor thereto.

12. DEBTS AND EXPENSES. The trust estate shall not be charged with the payment of legal debts of the Grantor's estate, funeral expenses or expenses of administration of the Grantor's estate except to the extent that the other assets in the Grantor's estate shall be insufficient to discharge such debts and expenses, or shall be insufficiently liquid to satisfy the same. The Trustee may rely conclusively upon written certification from the executor of the Grantor's estate, or if no probate administration of the Grantor's estate is required under applicable law, upon request of the person or persons nominated as executor under the Grantor's will, or upon any other evidence, as to the existence of such insufficiency and the amount thereof. If the Trustee shall be required to pay any such debts and expenses, the same shall be treated as debts and expenses of the trust estate (to the extent the assets of the Grantor's estate are


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insufficient to satisfy the same) or as loans to the Grantor's estate (to the extent the liquid assets of the Grantor's estate are insufficient to satisfy the same) if any such debts and expenses are deducted for federal estate tax purposes in computing the value of the Grantor's taxable estate under Section 2053 of the Internal Revenue Code of 1986, or any provision successor thereto.

If any such debts and expenses are either not so deducted or deductible under Section 2053 of the Internal Revenue Code of 1986, or any provision successor thereto, however, the same shall be charged against the principal of the trust estate as an expense without apportionment.

This provision shall confer no rights upon anyone except the executor of the Grantor's estate.

13. SURVIVAL REQUIREMENT. No person shall be deemed to have survived the Grantor, or any other person or event under the terms of this trust, unless such person survives the end of the period commencing with the close of the calendar day of the Grantor's death, the death of such other person or on which such event occurs, and ending with the close of the thirtieth (30th) calendar day thereafter.

14. DISTRIBUTIONS TO MINORS. In any case where property or funds become distributable to a minor, then the Trustee shall have the additional power to distribute the same in any one or more of the following ways: (1) by distribution directly to the minor; (2) by distribution to the legal guardian of the minor; (3) by distribution to a parent, relative or friend of the minor for the minor's support in reasonable comfort, education and maintenance in health; (4) by applying the same directly for the minor's support in reasonable comfort, education and maintenance in health; (5) by depositing the same in a bank account in the name of the minor or by transferring property to or purchasing property in the name of a custodian for his or her benefit under a Uniform Law relating to transfers or gifts to minors; or (6) by holding the same hereunder in trust or in custody for the minor's support in reasonable comfort, education and maintenance in health and by distributing the remainder thereof to the minor upon coming of age or otherwise to the minor's estate in case of the death of the minor. The receipt of the person to whom property or funds are actually distributed in accordance with any of the foregoing provisions shall fully discharge the Trustee from further accountability therefor.

15. GOVERNING LAW AND SITUS. The Grantor declares that this agreement and the trust created hereby shall be construed under and regulated by the laws of the State of New Hampshire and that the validity and effect of this agreement and of this trust shall be determined in accordance with the laws of that State and that the Trustee shall not be chargeable in any court other than one of the courts of that State.

The Trustee, at any time and from time to time, in its discretion, may (1) remove all or part of the trust estate and hold and administer the same in any other jurisdiction, (2) change the situs of administration of any trust from one jurisdiction to another jurisdiction, and (3) elect that the law of such other jurisdiction shall thereafter govern the trust to such extent as may be necessary and appropriate, whereupon the courts of such other jurisdiction shall have the power to effectuate the purposes of this trust agreement to such extent. The determination of the


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Trustee as to any such removal of assets or change of situs shall be conclusive and binding on all persons interested in such trust.

16. AMENDMENT AND REVOCATION. The Grantor reserves the right at any time or from time to time without the consent of any person and without notice to any person other than the Trustee to revoke or modify the trust hereby created, in whole or in part, to change the beneficiaries hereof, or to withdraw the whole or any part of the trust estate by filing notice of such revocation, modification, change, or withdrawal with the Trustee.

The terms of this agreement may not be modified by the Grantor in such manner as to increase the obligations or alter the rates of the commissions of the Trustee without its written consent.

17. CONTEST OF THE GRANTOR'S WILL OR THIS REVOCABLE TRUST. It is the Grantor's will and direction that if any beneficiary under the Grantor's will or this trust shall, directly or indirectly institute, conduct or in any manner whatsoever take part in or aid in any proceedings to oppose the probate of the Grantor's last will, or any codicil thereto, or the administration of this trust, or any amendment thereto, or impair, invalidate or set aside the same, or any of its provisions, then, in such event, the provision herein made for the benefit of such person or persons shall thereupon be revoked. Such person or persons shall thereafter be excluded from any participation under this trust, whether under this trust or through intestacy of the Grantor's estate, and shall, thenceforth, cease to have any right, title or interest in or to any portion of this trust and any property or distribution to such person or persons shall fall into and become a part of the remaining trust estate, subject to the forfeiture provisions above.

Nothing contained herein shall be construed to prevent the executor under the Grantor's will or the Trustee under this trust, or their successors, from instituting or bringing any action, suit, or proceeding for the construction or interpretation of the Grantor's will, or of any codicil thereto, nor to prevent any beneficiary herein named from disclosing relevant information in a proceeding for the administration or construction of this trust.

18. DEFINITIONS. Whenever used in this trust agreement, the words "child," "children," or "issue" are intended to include not only persons who are descendants by blood, but also persons and issue of persons who have been adopted according to law prior to their attaining the age of eighteen (18) years.

Masculine, feminine and neuter pronouns shall each include all genders, and the singular shall include the plural and vice versa, where the context or facts so admit.

The captions and paragraph headings of this trust agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this agreement, nor in any way affect this agreement.

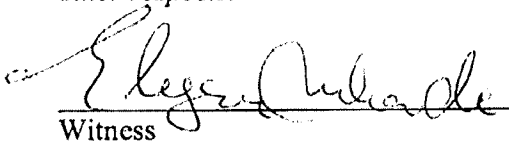
19. EXECUTION. This trust agreement, and any amendments hereto, shall be effective when executed by the Grantor, notwithstanding that the signature of the Trustee is

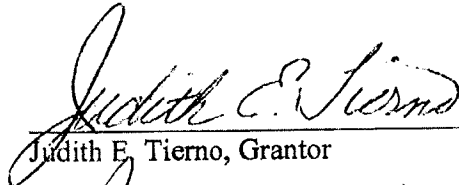

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provided for, the Trustee's signature being intended to denote the acceptance of the Trustee to serve in that capacity only.

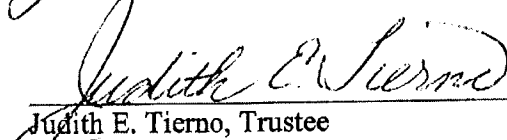
This trust agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

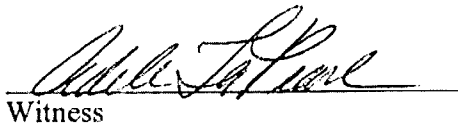
2. I hereby ratify, confirm, republish and restate said TRUST AGREEMENT in all other respects.

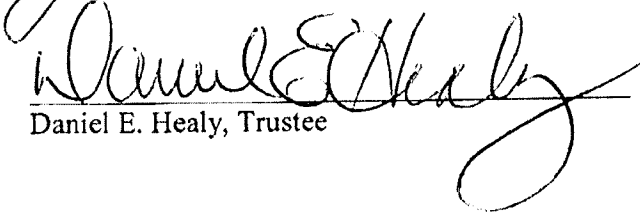

Witness




Judith E. Tierno, Grantor


Witness

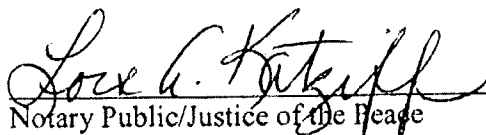

Judith E. Tierno, Trustee


Witness


Daniel E. Healy, Trustee

STATE OF 
COUNTY OF 

The foregoing instrument was acknowledged before me on 9/3/, 2009,
by Judith E. Tierno.


Notary Public/Justice of the Peace

My Commission Expires:
9/17/2011
(Seal)


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STATE OF Ma
COUNTY OF Middlesex

The foregoing instrument was acknowledged before me on 9/3/, 2009,
by Daniel E. Healy.

Paul G. Katzoff
Notary Public/Justice of the Peace

My Commission Expires: 9/17/2011

(Seal)

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EXHIBIT 2

Affidavit of John E. Hughes, Esq.

STATE OF NEW HAMPSHIRE

TENTH CIRCUIT - BRENTWOOD

PROBATE DIVISION

In Re: The Judith E. Tierno Revocable Trust of 2003

Docket No. _____

AFFIDAVIT OF JOHN E. HUGHES, ESQ. IN SUPPORT OF THE PARTIALLY ASSENTED
TO PETITION TO VALIDATE THE THIRD AMENDMENT AND RESTATEMENT OF THE
JUDITH E. TIERNO REVOCABLE TRUST OF 2003

I, John E. Hughes, Esq., having been duly sworn, do under oath depose and state as follows:

1. I am an attorney at law licensed in the State of New Hampshire.
2. I represented Ms. Judith E. Tierno ("Ms. Tierno") late of Portsmouth, New Hampshire, with respect to her estate planning matters beginning in 2003 and extending until the time of her death.
3. At Ms. Tierno's instruction, I drafted The Judith E. Tierno Revocable Trust of 2003 established by trust instrument dated June 19, 2003.
4. At Ms. Tierno's instruction, I drafted the First Amendment to the Trust, dated June 29, 2007 and the Second Amendment and Restatement to the Trust dated September 3, 2009.
5. On September 28, 2012, at Ms. Tierno's instruction, Daniel E. Healy, Co-Trustee of the Trust contacted me regarding Ms. Tierno's desire to amend the Trust and specifically discussed the changes to be made to the Trust as had been made known to Daniel E. Healy by Ms. Tierno. Specifically, Daniel E. Healy communicated to me Ms. Terno's desire to appoint Enterprise Bank as Co-Trustee and eliminate pecuniary distributions to her nieces and nephews: Nathan N. Stubbart, Sherry A. Stubbart, Charles F. Stubbart, III, and Ethan T. Stubbart, which had been provided in the Second Amendment and Restatement to the Trust. Daniel E. Healy expressed to me that Ms. Tierno had lost contact with her nieces and nephews after making significant gifts to them in recent years, and no longer wished to make provisions for them in the Trust.

6. On October 9, 2013, I visited with Ms. Tierno personally at Whittier Rehabilitation Center and discussed Ms. Tierno's desire to amend the Trust. Ms. Tierno specifically described the changes that she wished to make to the Trust. Specifically, Ms. Tierno communicated to me her desire to appoint Enterprise Bank as Co-Trustee and eliminate pecuniary distributions to her nieces and nephews: Nathan N. Stubbart, Sherry A. Stubbart, Charles F. Stubbart, III, and Ethan T. Stubbart, which had been provided in the Second Amendment and Restatement to the Trust. Ms. Tierno expressed to me that she had lost contact with her nieces and nephews after making significant gifts to them in recent years, and no longer wished to make provisions for them in the Trust. Ms. Tierno confirmed to me that she had shared these same intentions and her desire to amend the Trust with the Daniel E. Healy.
7. On October 11, 2012, I drafted the Third Amendment and Restatement to Ms. Tierno's Trust.
8. On October 12, 2012, I presented the Third Amendment and Restatement to Ms. Tierno at Whittier Rehabilitation Center for her signature.
9. Due to prescribed medications taken by Ms. Tierno on the morning of October 12, 2012, I determined that Ms. Tierno temporarily lacked legal capacity to execute the Third Amendment and Restatement at that time, and thought it best to obtain her signature when the effects of the medication were not so debilitating.
10. I returned to Whittier Rehabilitation Center on the afternoon of October 12, 2012. When I returned to Whittier Rehabilitation Center, Ms. Tierno was again suffering from the effects of her medication and was unable to execute the Third Amendment and Restatement.
11. Ms. Tierno passed away on October 17, 2013, without having signed the Third Amendment and Restatement.
12. On or about July 15, 2013, I received a copy of a letter from Attorney Leahey to Enterprise advising it not to accept the Co-Trusteeship absent a judicial declaration that the unsigned Third Amendment is valid and operative.
13. I received a letter dated September 25, 2013 from Attorney Leahey indicating that Enterprise would accept the position of C-Trustee "if and when the Rockingham Probate Court approved this Petition" and after all appeal periods have expired."
14. As of the date of this Affidavit, no successor Trustee is serving with Mr. Healey.

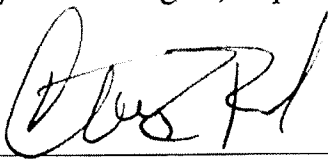
Witness my hand and seal this 17 day of October, 2013.



John E. Hughes, Esq.

STATE OF NEW HAMPSHIRE
HILLSBOROUGH, SS

Subscribed and sworn to before me, by John E. Hughes, Esq. this 17th day of
October, 2013.



Notary Public
My commission expires: _____

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CHRISTOPHER R. PAUL, Notary Public
My Commission Expires November 30, 2016

EXHIBIT 3.

Third Amendment and Restatement of The Judith E. Tierno Revocable Trust of 2003



THIRD

AMENDMENT AND RESTATEMENT

OF

THE

JUDITH E. TIERNO

REVOCABLE TRUST OF 2003

DATED: June 19, 2003

WHEREAS, I, JUDITH E. TIERNO, of Portsmouth, New Hampshire, executed a TRUST AGREEMENT on June 19, 2003 entitled THE JUDITH E. TIERNO REVOCABLE TRUST OF 2003 of which I am the Grantor and of which I, JUDITH E. TIERNO, of Portsmouth, New Hampshire and my friend and business associate, DANIEL E. HEALY, serve as co-Trustees; and

WHEREAS, Paragraph 17 of said TRUST AGREEMENT expressly reserved the right in the Grantor to modify said TRUST AGREEMENT, in whole or in part; and

WHEREAS, pursuant to said right reserved to the Grantor, I have previously modified said TRUST AGREEMENT by FIRST AMENDMENT dated June 29, 2007 and by SECOND AMENDMENT AND RESTATEMENT dated September 3, 2009; and

WHEREAS, Paragraph 16 of said TRUST AGREEMENT, as amended and restated, now expressly reserves the right in the Grantor to modify said TRUST AGREEMENT, in whole or in part.

NOW, THEREFORE, pursuant to said right now reserved to the Grantor, I hereby modify said TRUST AGREEMENT further as follows:

1. The introductory narrative provisions and Paragraphs 1. through 19., inclusive, of said TRUST AGREEMENT, as amended and restated, and all sub-paragraphs thereto, and all references thereto, are deleted entirely and the following are substituted therefor:

TRUST AGREEMENT, made on June 19, 2003, between JUDITH E. TIERNO, residing in Portsmouth, New Hampshire (herein called the "Grantor"), and JUDITH E. TIERNO, residing in Portsmouth, New Hampshire, and the Grantor's friend and business associate, DANIEL E. HEALY, (herein individually and collectively called the "Trustee").

The Grantor's children are SCOTT A. TIERNO and LAURIE A. TIERNO.

1. TRUST PROPERTY. All property transferred and delivered to the Trustee, which the Trustee may, at any time, hold or acquire, including cash, securities, or other property, shall be referred to collectively as the "trust estate" and held and administered and disposed of by the Trustee for the uses and purposes, and upon the terms and conditions, herein set forth.

2. DISPOSITIVE PROVISIONS: LIFETIME. The Trustee shall hold, manage, invest and reinvest the trust estate, and shall collect the income thereof and dispose of the net income and principal as follows:

- A. Pay such parts of the income, if any, and such parts of the principal of this trust to, or for the benefit of, the Grantor as the Grantor directs from time to time for the Grantor's support in reasonable comfort, education (including college, graduate and professional education), and maintenance in health (including medical, dental, hospital, nursing and nursing home expenses). Any income accrued or accumulated at the time of the Grantor's death shall be paid and transferred to principal, to be administered according to the terms hereinafter provided.
- B. In addition, during the lifetime of the Grantor, if the Grantor becomes so incapacitated that the Grantor cannot exercise the Grantor's rights under subparagraph 2.A. above, and there are sufficient assets in this trust to do so, the Trustee is authorized to pay such parts of the income, if any, and such parts of the principal of this trust to, or for the benefit of, the Grantor and the Grantor's children as it deems advisable for their support in reasonable comfort, education (including college, graduate and professional education), and maintenance in health (including medical, dental, hospital, nursing and nursing home expenses), taking into consideration the amount of their income from sources other than this trust.

It is the Grantor's intention that the support in reasonable comfort, education (including college, graduate and professional education), and maintenance in health (including medical, dental, hospital, nursing and nursing home expenses) of the Grantor shall be of primary concern, and the Trustee shall exercise its discretion in using principal for the Grantor, considering all other beneficiaries to

be secondary and without liability to any other beneficiary for the use of principal for the Grantor.

- C. Further, the Trustee is authorized to give, transfer or convey any of the trust estate to charities and persons of the Grantor's natural affection to whom the Grantor would normally consider making such gifts, transfers or conveyances, whether outright or in trust, having in mind the ultimate objective of such gifts, transfers or conveyances is the qualification for state or federal medical, welfare or other assistance programs for the Grantor's benefit and the reduction of the state and federal estate, inheritance, transfer, legacy and succession taxes and any interest and penalties thereon imposed by reason of the Grantor's death.
- D. So long as the Grantor's brother, CHARLES F. STUBBERT, survives the Grantor, then the Trustee shall have the discretion to provide said CHARLES F. STUBBERT with an annual payment of TWENTY-FOUR THOUSAND DOLLARS (\$24,000) for each calendar year, pro rated for any partial calendar year, for the remainder of said CHARLES F. STUBBERT's life.

Said TWENTY-FOUR THOUSAND DOLLARS (\$24,000) annual payment may, at the Trustee's sole and uncontrolled discretion, be increased at a rate of three percent (3%) each year to compensate for the annual increase in the cost of living.

3. DISPOSITIVE PROVISIONS: AFTER-DEATH. Upon the death of the Grantor, the trust estate shall be held and administered and disposed of as follows:

- A. The Trustee shall distribute certain items of the Grantor's tangible personal property and household effects which are then part of the trust estate, including furniture, clothing, jewelry, silver, books, pictures, china, automobiles and their equipment, other vehicles and their equipment, and other articles of personal and household use or ornament, in accordance with a "Memorandum of Wishes" which the Grantor shall or may leave in writing and shall be incorporated by reference into this Trust or otherwise legally binding, in which the Grantor will direct the distribution, limited to tangible personal property and household effects, to the Grantor's beneficiaries.

The remainder of the Grantor's tangible personal property and household effects shall be distributed, outright and free of trust, to the Grantor's issue who survive the Grantor, such issue to take per stirpes.

The Grantor expresses the hope that said beneficiaries will dispose of said items of tangible personal property and household effects according to the Grantor's wishes, however said wishes may be made known to them.

If a division of the property under this distribution is required among the beneficiaries, such division shall be made by the beneficiaries, in appropriate shares, as they may amicably agree.

The Grantor prefers that said beneficiaries shall agree upon the manner in which said property is to be divided, but should they not agree among themselves as to the division thereof within ninety (90) days after the Grantor's death, the Trustee shall have full power and authority to divide said property among said beneficiaries, in appropriate shares, and its determination with respect thereto shall, insofar as permitted by law, be binding and conclusive upon such beneficiaries.

B. Thereafter, if the trust estate shall include real property located on Marshal Point Road, Port Clyde, Maine, the Trustee shall hold and administer such real estate for the benefit of the Grantor's issue, as follows:

1. The Trustee shall, to the extent possible, hold and manage said real estate for the exclusive use and occupancy of the Grantor's children and further issue.

During such time as the Trustee shall hold the property, each living child and grandchild of the Grantor shall, subject to the sole and absolute discretion of the Trustee, have the right to the use of such property for their personal enjoyment.

- a. The Trustee shall, to the extent possible, make such distributions from the trust estate to satisfy any and all liens, mortgages or other encumbrances, then outstanding on said real estate. Said distributions may be taken from the trust estate administered in accordance with sub-paragraph 3.D. hereinbelow in amounts and proportions as the Trustee shall determine in its sole and absolute discretion.
- b. The Trustee may make distributions from the trust estate for the payment of any and all costs and expenses associated with said real estate, including, but not limited to, real estate taxes, normal costs of maintenance and upkeep of said real estate, including fire and casualty insurance, utilities, fuel, electricity, etc., and costs and expenses of repairs to keep said real estate in the same condition said real estate is in at the commencement of said use (reasonable wear and tear excepted).

- c. Notwithstanding the foregoing, however, it is the Grantor's intention that the support in reasonable comfort, education (including college, graduate and professional education), and maintenance in health (including medical, dental, hospital, nursing and nursing home expenses) of the Grantor's children shall be of primary concern, and the Trustee shall exercise its discretion in using income or principal for the payment of the obligations and expenses associated with said real estate.
- d. At any time after the death of the Grantor, if the Trustee shall determine, in its sole and uncontrolled discretion, it necessary to sell any parcel of real estate as described hereinabove, then each living issue of the Grantor shall have the right of first refusal to purchase said real estate, pursuant to the provisions hereinbelow:
 - i. The Trustee shall give notice in writing to Grantor's living issue who have reached the age of twenty-one (21) years, of their right to purchase said real estate at its then fair market value, without conditions or contingencies other than the normal seller's obligation to convey good and marketable title and deliver the premises free and clear of liens and parties in possession ("Notice of Purchase").
 - ii. The fair market value shall be established by a qualified independent appraiser selected by the Trustee.
 - iii. A living issue of the Grantor shall exercise the right to purchase by giving written notice to the Trustee of his or her intent to exercise the right within thirty (30) days of receipt of the Notice of Purchase ("Right of Purchase").

The Right of Purchase shall lapse and be deemed released if:

- (a) a living issue gives written notice of his or her decision not to exercise the Right to Purchase within thirty (30) days of the receipt of Notice of Purchase ("Waiver"); or
- (b) a child or grandchild fails to notify Trustee of his or her desire to purchase the real estate within thirty (30) days of receipt of the Notice of Purchase ("Release").

Further, said Right to Purchase shall be personal to each said issue of the Grantor, and shall lapse in the event said issue shall predecease the Grantor.

- iv. In the event more than one living issue of the Grantor shall exercise this Right to Purchase, then the living issue with priority shall be determined by lottery supervised by the Trustee.
- v. In the event a living issue of the Grantor exercises said Right to Purchase, then the closing shall take place within one hundred and eighty (180) days of the living issue exercising his or her Right of Purchase. The Trustee shall add the net proceeds from the sale of said residential real estate to the remaining trust estate, to be held and administered and disposed of in accordance with the provisions of sub-paragraph 3.D. hereinbelow.

- e. The decisions of the Trustee under this sub-paragraph 3.B. shall be binding and conclusive upon all beneficiaries and parties of interest.

- C. Thereafter, if the Grantor's brother, CHARLES F. STUBBERT, survives the Grantor, then the Trustee shall set aside a sum of money sufficient to provide said CHARLES F. STUBBERT with an annual payment of TWENTY-FOUR THOUSAND DOLLARS (\$24,000) for each calendar year, pro rated for any partial calendar year, for the remainder of said CHARLES F. STUBBERT's life. Said TWENTY-FOUR THOUSAND DOLLARS (\$24,000) annual payment may, at the Trustee's sole and uncontrolled discretion, be increased at a rate of three percent (3%) each year to compensate for the annual increase in the cost of living.

The Trustee's determination of the amount of funds necessary to be set aside to satisfy this annual payment shall be final and conclusive.

The Trustee shall not be liable for any errors made when making such determination except in the case of willful intent or gross negligence.

Notwithstanding said provisions, in no event shall the assets to be set aside by the Trustee for said CHARLES F. STUBBERT exceed TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000).

Upon the death of CHARLES F. STUBBERT, the remaining principal and

accumulated income, if any, shall be administered and disposed of in accordance with the provisions of sub-paragraph 3.D.

- D. Thereafter, the Trustee shall apportion the remaining trust estate into equal shares as follows:

one (1) such share to each of the Grantor's living children, and

one (1) such share allocated, per stirpes, to the living issue of any child of the Grantor who is then deceased.

Said equal shares and parts of share shall be held and administered and disposed of as follows:

1. In the case of each share apportioned to a living child of the Grantor, the Trustee may, in each and every year beginning with the date of said apportionment, pay over to said child or use, apply or expend for said child's direct or indirect benefit, so much or all of the net income of said share and so much or all of the principal of said share as the Trustee may, in its sole, absolute, and uncontrolled discretion, deem wise and safely consistent with said child's support in reasonable comfort, education (including college, graduate and professional education), and maintenance in health (including medical, dental, hospital, nursing and nursing home expenses).
 - a. The Trustee may also pay over to or use, apply or expend for the direct or indirect benefit of said child's issue who are from time to time living during said period, or pay to said child for their benefit, so much or all of the net income or principal of said trust share as the Trustee may deem proper or necessary for their support in reasonable comfort, education (including college, graduate and professional education), and maintenance in health (including medical, dental, hospital, nursing and nursing home expenses).
 - b. It is the Grantor's intention that the support in reasonable comfort, education (including college, graduate and professional education), and maintenance in health (including medical, dental, hospital, nursing and nursing home expenses) of said child shall be of primary concern, and the Trustee shall exercise its discretion in using income or principal for said child, considering all other beneficiaries to this trust share to be secondary and without liability to any other beneficiary for the use of income or principal for said child.

- c. If said child dies prior to full distribution of his trust share, to the extent any portion thereof would otherwise be subject to payment of the Generation Skipping Transfer Tax imposed under Chapter 13 of the Internal Revenue Code if distributed to said child's issue or held in trust for the benefit of said child's issue under the terms of this trust, said child shall have a general power of appointment over such interest in the principal and accumulated income of his trust share, free of all trusts and exercisable by himself alone, by his last will, duly proved and allowed, or, if no probate administration of said child's estate is required, then as filed with the Probate Court, either in favor of his estate or of others, or in favor of his estate and of others, as said child shall choose; provided, however, that said general power of appointment shall be exercisable by said child by reference in his last will to said general power of appointment hereby created.

Thereafter, said child shall have a limited power of appointment over his entire interest in the remaining principal and accumulated income of said trust share, in favor of the Grantor's issue, in such shares, proportion, manner and amount, whether outright, in trust, or otherwise, as said child, by his last will, duly proved and allowed, may appoint, or, if no probate administration of said child's estate is required, then as filed with the Probate Court; provided, however, that this limited power of appointment is specifically referred to by the terms of said will; and provided, further, that in no event shall said limited power of appointment be exercisable in favor of said child, his estate, his creditors, or the creditors of his estate.

- d. Upon the death of said child, in the event said child fails to validly exercise the powers of appointment granted above, in whole or in part, the Trustee shall administer said child's remaining trust share for the benefit of said child's living issue, per stirpes, in the manner described below.
2. In the case of each part of a share allocated, per stirpes, to the living issue of a deceased child of the Grantor (hereinafter each individually called "issue"), the Trustee may, in each and every year beginning with the date of said allocation, pay over to said issue or use, apply, or expend for said issue's direct or indirect benefit, so much or all of the net income and so much or all of the principal from said part of a share as it may deem proper or necessary for said issue's support in reasonable comfort,

education (including college, graduate and professional education), and maintenance in health (including medical, dental, hospital, nursing and nursing home expenses).

- a. Final distribution shall be made of whatever shall remain of said part of a share to said living issue, free and clear of trust, at a time to be chosen by the Trustee, in the Trustee's sole, absolute, and uncontrolled discretion, but not later than the time when said issue attains the age of thirty (30) years.
- b. If said issue shall die before final distribution of said issue's per stirpes part of a share, then the part of a share in question shall be reallocated as follows:
 - i. per stirpes, among said deceased issue's own living issue, if any, and if none, then
 - ii. per stirpes, among the other parts of shares allocated to the remaining living issue of the same deceased child of the Grantor.

Each such reallocated part of a share shall continue to be held and administered in trust, or distributed free and clear of trust, as the case may be, in the manner provided for herein, for the benefit of persons then living, in accordance with the fortunes of the part of a share to which reallocation is made.

3. If at any time before the final distribution of any trust share described above in sub-paragraph 3.D.1. or 3.D.2. (after taking into consideration all provisions thereof) there shall be no person in existence who is eligible to have the benefit of such share, then the share in question shall be reapportioned in equal shares among the other shares of the trust estate apportioned pursuant to sub-paragraph 3.D. above, and each equal share shall continue to be held and administered in trust, or distributed free and clear of trust, as the case may be, to or for the benefit of persons then living, in accordance with the fortunes of the share to which reapportionment is made.
4. In making discretionary determinations, the Trustee shall honor and continue the Grantor's normal and usual past practices of benefiting her descendants.

In all events, the needs of the Grantor's children shall be of primary

importance, the needs of grandchildren shall be of secondary importance, and the needs of further generations shall be considered thereafter in a descending generation sequence of priority.

5. If, at any time before the final distribution of the all trust shares of the remaining trust estate there shall be no person in existence who is eligible to have the benefit of such trust estate, the Trustee shall distribute said trust shares then remaining, outright and free of trust, to those persons then living who would have taken the Grantor's estate, and in such shares thereof as they would have taken, had the Grantor then died intestate, domiciled in New Hampshire.

- E. The provisions contained hereinabove which require the Trustee to apportion the trust estate into shares and parts of shares are for purposes of computation only and shall not be construed to require the Trustee to make physical segregation of one share or a part of a share from the others, although the Trustee shall have full right to make such segregation if it thinks it better to do so.

Notwithstanding said provisions, the Trustee shall have the full right to regard the trust estate as one undivided estate for purposes of management and investment.

- F. If the Grantor or the executor of the Grantor's estate or any other individual (including any individual who shall transfer property in trust hereunder or the executor or administrator of the estate of such individual) has allocated any portion or all of any Generation Skipping Transfer ("GST") exemption provided by Section 2631(a) of the Internal Revenue Code of 1986, as amended, (and any corresponding sections of any future Internal Revenue Code) to any property to be held in trust hereunder, then notwithstanding anything to the contrary contained in this agreement, the Trustee is authorized to establish such number of separate trusts, with identical terms, to hold the property received in trust hereunder as it, in its sole discretion, shall deem advisable, bearing in mind the allocation of the said GST exemption and the desirability that any trust to which all or any portion of the said GST exemption is allocated shall, if practical, have an inclusion ratio of zero.

Further, the Trustee is authorized to allocate such trusts among the trust shares hereinabove created in order to minimize (or eliminate, if possible) any GST tax.

4. TRUSTEE'S POWERS. In the administration of the trust estate, the Trustee shall have all of the powers granted to trustees by New Hampshire common law and statutory authority (including, but not limited to, the Uniform Trustees' Powers Act, R.S.A. 564-A, and the Uniform Trust Code, R.S.A. 564-B, as they may be amended from time to time), without restrictions.

In addition to such power, and not in limitation thereof, the Trustee shall have the following powers, all of which shall be exercised in a fiduciary capacity and for the benefit of the beneficiaries:

- A. During the lifetime of the Grantor, the Trustee may retain as an investment, unless and until the Grantor by a writing delivered to the Trustee shall otherwise direct, all of the securities and other property originally assigned, transferred, or delivered to the Trustee hereunder or at any time forming a part of the trust estate, whether or not such securities or other property be of the character authorized by the laws of the State of New Hampshire for the investment of trust funds.

Upon the death or incapacity of the Grantor, the Trustee is authorized to purchase, sell, lease, or alter any investment by buy or sell orders transmitted by it, whether by telephone call, electronic facsimile transmission, computer message or other current non-written method of business communication.

- B. To buy, sell and trade in securities of any nature (but not on margin), and to pledge any securities held or purchased by it with such brokers as security for loans and advances made to the Trustee.
- C. To take and hold title to real estate, and to convey any interest in real estate and improvements thereon held in trust, and no purchaser or third party shall be bound to inquire whether the Trustee has said power or is properly exercising said power, or see to the application of any trust asset paid to the Trustee for a conveyance thereof.
- D. To have all of the necessary banking powers to open and manage financial accounts, including but not limited to, checking accounts, savings accounts, financial accounts and other related financial instruments and to conduct all necessary financial business in reference to the management of the financial assets of the trust.
- E. To rent a safe deposit box and to retain such assets in said box as the Trustee, in its sole, absolute, and uncontrolled discretion, determines appropriate.
- F. To borrow money, with or without security, and mortgage or pledge trust property for a period within or extending beyond the duration of the trust.
- G. To loan funds to the Grantor's estate upon such terms and conditions as to interest rates, maturities, and security as the Trustee shall determine.

- H. To make payments, transfers or conveyances, to the extent possible, to the estate of the Grantor (after exhaustion of the assets of the Grantor's estate) to satisfy legacies, bequests or devises, if any, made under the Grantor's will or included in the Grantor's estate for other purposes, if the Grantor's estate shall be insufficient to satisfy such legacies, bequests or devises.
- I. To invest in common trust funds.
- J. To select property, in its sole, absolute, and uncontrolled discretion, to be allocated to any trust hereunder or to be distributed in satisfaction of any gift provided for herein without respect to the income tax basis of such property, and the Trustee is specifically excused from any duty of impartiality with respect to the income tax basis of such property.

In the event that residential real estate is held in the trust estate, the Trustee may allocate said residential real estate to any trust created hereunder, to be held and administered and disposed of pursuant to the provisions thereof.

- K. If at any time during the Grantor's lifetime, there is delivered to the Trustee other than the Grantor, if any, or, if none, then to the successor Trustee, a written opinion, signed by a licensed physician, stating that the Grantor has become incompetent or incapacitated, then from and after the delivery of such written opinion the Trustee other than the Grantor, or the successor Trustee, as the case may be, shall have those powers and authorities with respect to the trust estate given to the Trustee in this trust agreement.
- L. Regardless of the extent of the authority that the Trustee holds to currently distribute income and/or principal of the trust estate to one or more beneficiaries of the trust, the Trustee shall have full power and authority, to be exercised in its sole, absolute, and uncontrolled discretion, to appoint any or all assets held in this trust estate to any other trust or trusts created under will, deed or otherwise, for the benefit of one or more of the beneficiaries hereunder.

This authority shall be subject to the limitations set forth in R.S.A. 564-B:4-418, as amended from time to time, provided that such appointment clause shall be null and void in the event there is a determination that the application of such clause shall result in the inclusion of any of the trust estate in the Grantor's gross estate under any provision of the Internal Revenue Code, including but not limited to Sections 2041 and 2042, which would not otherwise be includable in the Grantor's gross estate.

Provided further, however, that if this trust qualifies as a "trust instrument" under the Qualified Dispositions in Trust Act, R.S.A. 564-D, as amended from time to

time, then the Trustee may only appoint the assets of the trust estate to a new trust which will continue to qualify as a "trust instrument" under such Act and will provide similar protections to the assets held in this trust estate.

- M. If, at any time before the final distribution of the principal of any trust share hereinabove described, the value of the principal of said trust share shall be equal to, or less than, FIVE HUNDRED THOUSAND DOLLARS (\$500,000), then the Trustee may, in its sole discretion, terminate said trust share and distribute the principal of said trust share, and any accumulated and undistributed income thereof, outright and free of trust, to those persons then entitled to benefit from said trust share, and in the proportions in which they are then entitled to benefit from said trust share, notwithstanding any provisions of this trust to the contrary.
- N. To exercise all the powers, authorities and discretions herein conferred, after the termination of the trust hereunder, until the complete distribution of the trust estate.

5. ADDITIONAL PROPERTY. The Grantor may, by will, trust or during her lifetime, from time to time, transfer and deliver to the Trustee cash, securities, and other property acceptable to the Trustee, in addition to the property presently transferred and delivered, and such cash, securities, and other property shall be held, administered, and disposed of by the Trustee in accordance with the provisions of this agreement without the execution of any further instrument or declaration.

7. REPORTING BY TRUSTEE.

- A. At any time and from time to time, the Grantor shall have the power, by written instrument signed and acknowledged by the Grantor and delivered to the Trustee, to settle the report of the Trustee with respect to principal or income, or with respect to both principal and income, and to release and discharge the Trustee of and from any and every claim, demand, accountability, and liability of every nature, arising from any matter or thing done or omitted to be done, in connection with this agreement or any trust hereby created, during the period in respect of which the report of the Trustee shall have been so settled.

Every such settlement, release, and discharge shall be conclusive and binding upon, and shall be an absolute protection to the Trustee against all claims of any income beneficiaries, remaindermen, or other persons who might then or thereafter have or claim any interest under this agreement, and no such income beneficiary, remainderman, or other person shall have any right of accounting, reporting, any claim, or any cause of action against the Trustee arising from any matter or thing done or omitted to be done in connection with this agreement or

any trust hereby created, during any period in respect of which the report of the Trustee shall have been so settled.

- B. After the death or incapacity of the Grantor, the Trustee may, at the Trustee's sole, absolute, and uncontrolled discretion, and shall, to the extent required by the Uniform Trust Code, R.S.A. 564-B, as it may be amended from time to time, render a Trustee's report as described in the Uniform Trust Code, as it may be amended from time to time, at such intervals as the Trustee may choose or at such times as required by the Uniform Trust Code.
- C. A recipient of such a report (or, if under guardianship or conservatorship, then by the Guardian or Conservator, or, if deceased, then by the Executor or Administrator), may, by a written instrument, assent to the report of the Trustee with respect to principal or to income, or with respect to both principal and income.

The assent of the recipient of such report (or, if under guardianship or conservatorship, then by the Guardian or Conservator, or, if deceased, then by the Executor or Administrator) shall make such report binding and conclusive upon all persons then having or who may thereafter have any interest, vested or contingent, in the income or principal of the trust estate and such assent shall forever release and discharge the Trustee of and from any and every claim, demand, accountability, and liability of every nature, arising from any matter or thing done or omitted to be done, in connection with this agreement or any trust hereby created, during the period in respect of which the report of the Trustee shall have been so settled.

- D. The failure of any person to object in writing to the Trustee to such a report within thirty (30) days after the delivery of the same to such person hereunder shall be final and binding to the same extent as the written assent hereinabove provided.
- E. Any person entitled to such a report, accounting, information, notice and the like (or, if under guardianship or conservatorship, then by the Guardian or Conservator, or, if deceased, then by the Executor or Administrator) may by a written instrument signed and acknowledged by him or her or them, as the case may be, and delivered to the Trustee, waive the right to said Trustee's report or to other information otherwise required to be furnished under the Uniform Trust Code, as it may be amended from time to time .

6. SUCCESSOR TRUSTEE. The following provisions shall govern the addition, removal and succession of the Trustee:

- A. The Grantor may, during Grantor's lifetime, add any additional Trustee, or remove any Trustee hereunder and appoint a successor Trustee.
- B. If either JUDITH E. TIERNO or DANIEL E. HEALY, shall be unable or unwilling to serve in the capacity of Trustee for any reason, then ENTERPRISE BANK & TRUST CO., a financial institution with places of business in New Hampshire and Massachusetts, or its successor, shall succeed him or her as Trustee.

The last serving Trustee may, by a written instrument signed and acknowledged by him or her, appoint an additional successor Trustee; provided, however, that said successor Trustee shall be an attorney or an accountant. Such successor shall hold and maintain licenses and certifications appropriate to his or her or its profession, in good standing, in the State of New Hampshire while serving as successor Trustee hereunder.

- C. After the Grantor's death, two (2) Trustees shall serve at all times.
- D. At any time when there shall be no Trustee who is able and willing to serve in the capacity of Trustee, then a majority of the beneficiaries to whom or for whose use the current net income of the trust estate is at the time authorized or required to be paid or applied, either,
 - 1. acting individually, if then eighteen (18) years of age, or,
 - 2. by his or her natural parent, or natural guardian, or Court appointed guardian or Court appointed conservator, if then under guardianship or conservatorship,

shall appoint a successor Trustee; provided, however, that said successor Trustee shall be an attorney, an accountant, a certified financial planner or a corporation or financial institution having a trust department capable of rendering financial advice concerning the investments of the trust estate. Such successor shall hold and maintain licenses and certifications appropriate to his or her or its profession, in good standing, in the State of New Hampshire while serving as successor Trustee hereunder.

- E. In the event that any beneficiary of the trust, other than the Grantor, shall serve in the capacity of co-Trustee, then the discretionary powers to determine whether income or principal is to be distributed to said beneficiary or to any person to whom said beneficiary owes an obligation of support shall be exercisable only by the remaining Trustee.

It is the Grantor's intention by this sub-paragraph to prohibit said beneficiary from benefiting himself or herself as beneficiary in any way by the exercise of such discretionary powers vested in the Trustee as a group.

- F. In the event that a corporation or financial institution shall be serving as Trustee hereunder, a majority of the beneficiaries to whom or for whose use the current net income of the trust estate is at the time authorized or required to be paid or applied and who shall at the time be at least eighteen (18) years of age may by a written instrument signed and acknowledged by them and delivered to such corporation or financial institution remove said Trustee and appoint as its successor Trustee, any corporation or financial institution having a trust department capable of rendering financial advice concerning the investments of the trust estate.
- G. Each Trustee hereunder (whether originally designated herein or appointed as successor) shall have the right to resign at any time by giving thirty (30) days written notice to that effect to the current income beneficiary (or beneficiaries) of the trust.

Thereafter, such beneficiary (or a majority of such beneficiaries) who shall at the time be at least eighteen (18) years of age shall have the right within such thirty (30) day period to appoint a successor Trustee, subject to the provisions hereinabove, and shall notify the resigning Trustee of such appointment.

In the event that a corporation or financial institution shall be appointed as successor Trustee hereunder, such successor Trustee shall be a trust company or bank qualified to act as such, possessing trust powers.

In the event the current income beneficiary (or beneficiaries) shall fail to designate a successor Trustee within the time specified, the then-acting Trustee shall appoint a successor Trustee as herein provided.

- H. In the event that any beneficiary of the trust, other than the Grantor, shall serve in the capacity of sole Trustee and the Trustee has discretionary powers to distribute income or principal to himself, herself, or to any person to whom he or she owes an obligation of support, then such distributions of income or principal shall be exercisable by the sole Trustee.

The maximum amount that may be withdrawn annually by each such beneficiary under this sub-paragraph, however, shall not exceed the maximum amount over which an individual may have a power of withdrawal without its lapse in such year being deemed to be a release of such power under Section 2514(e) of the

Internal Revenue Code of 1986, as amended and any corresponding Sections of any future Internal Revenue Code.

1. No successor Trustee shall be liable or responsible in any way for any actions or defaults of any predecessor Trustee, nor for any loss or expense from or occasioned by anything done or neglected to be done by any predecessor Trustee. Any successor Trustee shall have, from and after its appointment or succession to office hereunder and without any assignment or other action by any person, all the rights, interests, and powers, including discretionary rights and powers, which are by the provisions of this trust agreement granted to and vested in the Trustee named herein.

7. FIDUCIARIES. No person dealing with the Trustee shall be responsible for the application of any money, securities, or other property paid or delivered, and the receipt of the Trustee shall be a full discharge; and no person dealing with the Trustee, and no issuer, transfer agent, or other agent of any issuer of any securities shall be under any obligation to ascertain or inquire into the power of the Trustee to purchase, sell, exchange, transfer, mortgage, pledge, create a security interest in, lease, distribute, or otherwise dispose of or deal with any money, securities, or other property.

The Trustee shall not at any time be held liable for any action taken or not taken, including any action intended to lessen or eliminate the impact of estate or generation-skipping transfer taxes with respect to any generation or beneficiary, whether or not such action is successful in achieving the results sought and without regard to its effect on other beneficiaries in the same or different generations, or for any loss or depreciation in the value of any property in any trust created herein, whether due to an error of judgment or otherwise, where the Trustee has exercised good faith and ordinary diligence in the exercise of its duties.

The Trustee shall receive reasonable compensation for its services in the administration of the trusts created herein, including reimbursement for amounts reasonably expended for bookkeeping services, investment services and advice, and other professional or para-professional services. In addition to the compensation herein provided, the Trustee shall receive reasonable compensation for any legal services provided for the benefit of the trust estate, such as handling any litigation involving the trust, preparing state or federal income tax returns, and transferring any real estate.

8. PERPETUITIES. The trusts created hereunder shall be perpetual to the fullest extent permitted by the governing law. If any trust created hereunder is deemed to be subject to the law of a jurisdiction (including, but only to the extent applicable to real property) that has a rule against perpetuities or similar rule which limits the period during which property can be held in trust, then such trust (other than a trust created by the exercise of a power of appointment conferred hereunder which exercise commences a new rule against perpetuities period under the law of such jurisdiction) shall terminate in all events upon the expiration of the longest period

that property may be held in trust under this trust agreement under the law of such jurisdiction (including any applicable period in gross, such as 21 years, 90 years or 110 years); provided, however, that if the jurisdiction has a rule against perpetuities or similar rule which applies only to certain types of property, such as real property, the provisions of this paragraph shall apply only to such property. If under the law of such jurisdiction the longest period that property may be held in trust may be determined (or alternatively determined) with reference to the death of the last survivor of a group of individuals in being upon the date of this trust agreement, those individuals shall consist of all of the descendants of the Grantor's parents who were in being on the date of this trust agreement. Upon termination of a trust pursuant to the provisions of this paragraph, the trust property shall be transferred, conveyed and paid over to the persons then eligible to receive or have the benefit from the trust in the proportions in which they are eligible thereto, or if their interests are indefinite, then in equal shares. This provision is intended to comply with New Hampshire RSA 564:24, and accordingly, the Grantor specifically authorizes the Trustees to sell, mortgage, or lease property for any period of time beyond the period that is required for an interest created under this instrument to vest in order to be valid under the rule against perpetuities, as measured by the period that is twenty-one (21) years after the date of the death of the Grantor, and all of the Grantor's descendants who are alive on the date of this trust agreement.

9. **SPENDTHRIFT PROVISION.** Except as herein otherwise provided, the interest of any beneficiary hereunder, either as to income or principal, shall not be anticipated, alienated or in any other manner assigned or pledged or promised by such beneficiary, and shall not be reached by, or be subject to, any legal, equitable or other process, including any bankruptcy or divorce proceeding, or be subject to the interference or control of creditors or others in any way or manner, and all payments to, or the interest of, any beneficiary shall be free from the control or claim of any parent or spouse or former spouse or any other third party. Moreover, no power of appointment or power of withdrawal shall be subject to involuntary exercise. Provided, however, this spendthrift provision shall not restrict the exercise of a disclaimer or the exercise of a power of appointment or withdrawal right granted by this trust agreement.

10. **TAX PROVISION.** The trust estate shall not be charged with the payment of any estate, inheritance, legacy, death taxes or duties of any nature (state or federal), or any interest or penalty thereon, except to the extent that the other assets in the Grantor's estate (excluding any assets which may be exempted from the payment of such taxes by the last will of the Grantor) shall be insufficient to discharge such taxes, interest or penalties or shall be insufficiently liquid to satisfy the same. The Trustee may rely conclusively upon written certification from the executor of the Grantor's estate, or if no probate administration of the Grantor's estate is required under applicable law, upon request of the person or persons nominated as executor under the Grantor's will or upon any other evidence, as to the existence of such insufficiency and the amount thereof; provided, however, that the Trustee shall not pay any additional tax imposed under Section 2032A or 2057 of the Internal Revenue Code of 1986, or any provision successor thereto, or any generation-skipping transfer taxes imposed under Chapter 13 of the Internal

Revenue Code of 1986, or any provision successor thereto, imposed by reason of the Grantor's death.

If the Trustee shall be required to pay any such taxes, they shall be charged against the principal of the trust estate as an expense without apportionment.

Provided that in the event that no probate administration of the Grantor's estate is required under applicable law, the Trustee shall have all the powers and authority given the executor under the Grantor's will in relation to such taxes, including all elections and allocation of the generation-skipping transfer tax exemption under Section 2631 of the Internal Revenue Code of 1986, or any provision successor thereto.

11. DEBTS AND EXPENSES. The trust estate shall not be charged with the payment of legal debts of the Grantor's estate, funeral expenses or expenses of administration of the Grantor's estate except to the extent that the other assets in the Grantor's estate shall be insufficient to discharge such debts and expenses, or shall be insufficiently liquid to satisfy the same. The Trustee may rely conclusively upon written certification from the executor of the Grantor's estate, or if no probate administration of the Grantor's estate is required under applicable law, upon request of the person or persons nominated as executor under the Grantor's will, or upon any other evidence, as to the existence of such insufficiency and the amount thereof. If the Trustee shall be required to pay any such debts and expenses, the same shall be treated as debts and expenses of the trust estate (to the extent the assets of the Grantor's estate are insufficient to satisfy the same) or as loans to the Grantor's estate (to the extent the liquid assets of the Grantor's estate are insufficient to satisfy the same) if any such debts and expenses are deducted for federal estate tax purposes in computing the value of the Grantor's taxable estate under Section 2053 of the Internal Revenue Code of 1986, or any provision successor thereto.

If any such debts and expenses are either not so deducted or deductible under Section 2053 of the Internal Revenue Code of 1986, or any provision successor thereto, however, the same shall be charged against the principal of the trust estate as an expense without apportionment.

This provision shall confer no rights upon anyone except the executor of the Grantor's estate.

12. SURVIVAL REQUIREMENT. No person shall be deemed to have survived the Grantor, or any other person or event under the terms of this trust, unless such person survives the end of the period commencing with the close of the calendar day of the Grantor's death, the death of such other person or on which such event occurs, and ending with the close of the thirtieth (30th) calendar day thereafter.

13. DISTRIBUTIONS TO MINORS. In any case where property or funds become distributable to a minor, then the Trustee shall have the additional power to distribute the same in

any one or more of the following ways: (1) by distribution directly to the minor; (2) by distribution to the legal guardian of the minor; (3) by distribution to a parent, relative or friend of the minor for the minor's support in reasonable comfort, education and maintenance in health; (4) by applying the same directly for the minor's support in reasonable comfort, education and maintenance in health; (5) by depositing the same in a bank account in the name of the minor or by transferring property to or purchasing property in the name of a custodian for his or her benefit under a Uniform Law relating to transfers or gifts to minors; or (6) by holding the same hereunder in trust or in custody for the minor's support in reasonable comfort, education and maintenance in health and by distributing the remainder thereof to the minor upon coming of age or otherwise to the minor's estate in case of the death of the minor. The receipt of the person to whom property or funds are actually distributed in accordance with any of the foregoing provisions shall fully discharge the Trustee from further accountability therefor.

14. GOVERNING LAW AND SITUS. The Grantor declares that this agreement and the trust created hereby shall be construed under and regulated by the laws of the State of New Hampshire and that the validity and effect of this agreement and of this trust shall be determined in accordance with the laws of that State and that the Trustee shall not be chargeable in any court other than one of the courts of that State.

The Trustee, at any time and from time to time, in its discretion, may (1) remove all or part of the trust estate and hold and administer the same in any other jurisdiction, (2) change the situs of administration of any trust from one jurisdiction to another jurisdiction, and (3) elect that the law of such other jurisdiction shall thereafter govern the trust to such extent as may be necessary and appropriate, whereupon the courts of such other jurisdiction shall have the power to effectuate the purposes of this trust agreement to such extent. The determination of the Trustee as to any such removal of assets or change of situs shall be conclusive and binding on all persons interested in such trust.

15. AMENDMENT AND REVOCATION. The Grantor reserves the right at any time or from time to time without the consent of any person and without notice to any person other than the Trustee to revoke or modify the trust hereby created, in whole or in part, to change the beneficiaries hereof, or to withdraw the whole or any part of the trust estate by filing notice of such revocation, modification, change, or withdrawal with the Trustee.

The terms of this agreement may not be modified by the Grantor in such manner as to increase the obligations or alter the rates of the commissions of the Trustee without its written consent.

16. CONTEST OF THE GRANTOR'S WILL OR THIS REVOCABLE TRUST. It is the Grantor's will and direction that if any beneficiary under the Grantor's will or this trust shall, directly or indirectly institute, conduct or in any manner whatsoever take part in or aid in any proceedings to oppose the probate of the Grantor's last will, or any codicil thereto, or the administration of this trust, or any amendment thereto, or impair, invalidate or set aside the same,

or any of its provisions, then, in such event, the provision herein made for the benefit of such person or persons shall thereupon be revoked. Such person or persons shall thereafter be excluded from any participation under this trust, whether under this trust or through intestacy of the Grantor's estate, and shall, thenceforth, cease to have any right, title or interest in or to any portion of this trust and any property or distribution to such person or persons shall fall into and become a part of the remaining trust estate, subject to the forfeiture provisions above.

Nothing contained herein shall be construed to prevent the executor under the Grantor's will or the Trustee under this trust, or their successors, from instituting or bringing any action, suit, or proceeding for the construction or interpretation of the Grantor's will, or of any codicil thereto, nor to prevent any beneficiary herein named from disclosing relevant information in a proceeding for the administration or construction of this trust.

17. DEFINITIONS. Whenever used in this trust agreement, the words "child," "children," or "issue" are intended to include not only persons who are descendants by blood, but also persons and issue of persons who have been adopted according to law prior to their attaining the age of eighteen (18) years.

Masculine, feminine and neuter pronouns shall each include all genders, and the singular shall include the plural and vice versa, where the context or facts so admit.

The captions and paragraph headings of this trust agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this agreement, nor in any way affect this agreement.

18. EXECUTION. This trust agreement, and any amendments hereto, shall be effective when executed by the Grantor, notwithstanding that the signature of the Trustee is provided for, the Trustee's signature being intended to denote the acceptance of the Trustee to serve in that capacity only.

This trust agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. All counterparts shall be construed together and shall constitute one agreement.

2. *I hereby ratify, confirm, republish and restate said TRUST AGREEMENT in all other respects.*

TRUSTEE RECEIPT

Receipt of the foregoing THIRD AMENDMENT AND RESTATEMENT OF THE JUDITH E. TIERNO REVOCABLE TRUST OF 2003 is hereby acknowledged by DANIEL E. HEALY, Trustee.

_____, 2012

DANIEL F. HEALY, Trustee

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IN WITNESS WHEREOF, I, JUDITH E. TIERNO, the Grantor, hereunto set my hand
on _____, 2012.

Witness

JUDITH E. TIERNO, Grantor

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

On _____, 2012, before me, the undersigned notary public, personally appeared JUDITH E. TIERNO, proved to me through satisfactory evidence of identification, which was either photographic identification with signature issued by a federal or state governmental agency or personal knowledge of the undersigned, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.

Notary Public

My Commission Expires:

(Seal)

TRUSTEE RECEIPT

Receipt of the foregoing THIRD AMENDMENT AND RESTATEMENT OF THE JUDITH E. TIERNO REVOCABLE TRUST OF 2003 is hereby acknowledged by JUDITH E. TIERNO, Trustee.

_____, 2012



JUDITH E. TIERNO, Trustee

EXHIBIT 4.

In re Estate of Field, 953 A.2d 1281 (Pa. Super. Ct. 2008)



In re Estate of Field, 953 A.2d 1281 (2008)
2008 PA Super 167

953 A.2d 1281
Superior Court of Pennsylvania.

In re ESTATE OF Celina FIELD.

Argued May 14, 2008. | Filed July 25, 2008.

Synopsis

Background: Successor trustee filed petition seeking permission to distribute trust assets in accordance with unsigned trust amendment. The Court of Common Pleas, Monroe County, Civil Division No. 126 O.C.2004, Cheslock, J., concluded unsigned trust amendment was valid. Residuary beneficiary under original trust agreement appealed.

Holdings: The Superior Court, No. 2128 EDA 2007, Tamilia, J., held that:

[1] unsigned trust amendment was valid;

[2] orphans' court's factual finding that unsigned trust amendment was lodged in red binder containing executed trust agreement was supported by police detective's testimony;

[3] proponents of unsigned trust amendment were not required to produce clear and convincing evidence that amendment was valid; and

[4] extrinsic evidence could not be used to supersede the clear intent of settlor as embodied in the unambiguous language of trust agreement.

Affirmed.

West Headnotes (16)

- [1] **Trusts**
 --Undue Influence
Trusts
 --Modification

Trust amendment prepared by attorney, mailed to settlor, and placed, unsigned, in three-ring

binder containing executed trust agreement was valid, where trust agreement allowed for amendment delivered to the trustee in writing, and settlor was the trustee; trust was amended in accordance with its express terms, and there was nothing which tended to indicate that amendment was the by-product of questionable activity or undue influence.

- [2] **Courts**
 --Review and Vacation of Proceedings

The findings of a judge of the orphans' court division, sitting without a jury, must be accorded the same weight and effect as the verdict of a jury, and will not be reversed by an appellate court in the absence of an abuse of discretion or a lack of evidentiary support.

- [3] **Courts**
 --Review and Vacation of Proceedings

The rule that the findings of a judge of the orphans' court division, sitting without a jury, must be accorded the same weight and effect as the verdict of a jury is particularly applicable to findings of fact which are predicated upon the credibility of the witnesses, whom the judge has had the opportunity to hear and observe, and upon the weight given to their testimony.

- [4] **Courts**
 --Review and Vacation of Proceedings

In reviewing the Orphans' Court's findings, Superior Court's task is to ensure that the record is free from legal error and to determine if the Orphans' Court's findings are supported by competent and adequate evidence and are not

predicated upon capricious disbelief of competent and credible evidence.

requirements of a given trust agreement.

[5]

Courts

—Review and Vacation of Proceedings

The Superior Court, on review of an Orphans' Court decision, is not limited when it reviews the legal conclusions that Orphans' Court has derived from the facts before it.

[9]

Wills

—Necessity and Sufficiency in General

Wills

—Signing by Mark and Writing of Signature by Other Person

A will is only valid when signed, marked, or signed by a third-party at the direction of the testator. 20 Pa.C.S.A. § 2502.

[6]

Trusts

—Application of General Rules of Construction

A settlor's intent with respect to the power of amendment must be determined from the language contained within the four corners of the trust instrument, the scheme of distribution contemplated therein, and the circumstances surrounding the execution of the trust instrument.

[10]

Trusts

—Weight and Sufficiency

Orphans' court's factual finding that unsigned trust amendment was lodged in red binder containing executed trust agreement, as would support conclusion that trust amendment was valid, was supported by the unequivocal testimony of police detective that he discovered the red binder lying conspicuously on the settlor's kitchen table and pulled the amendment "out" of the binder.

[7]

Trusts

—Application of General Rules of Construction

Principles of trust construction will only be applied when the settlor's intent cannot be determined with reasonable certainty from the language of the trust instrument itself.

[11]

Trusts

—Evidence to Aid Construction

Orphans' court did not improperly use evidence of draft trust revisions to supersede the unambiguous language of the trust agreement, in finding that unsigned trust amendment was valid; rather, it relied on the draft revisions as support for its conclusion that the trust agreement was unambiguous and that the settlor had carried out the method for amendment provided by the agreement.

[8]

Trusts

—Evidence to Aid Construction

The settlor's intent to execute a proposed trust amendment cannot be offered into evidence for purposes of superseding the unambiguous

[12] **Trusts**
—Weight and Sufficiency

Finding that settlor amended her trust in accordance with method of amendment set forth in trust agreement could not be upset on the basis of extrinsic evidence that settlor failed to ratify trust amendment when she had the opportunity to do so at meeting with attorney who prepared the amendment.

[13] **Trusts**
—Weight and Sufficiency

Proponents of unsigned trust amendment were not required to produce clear and convincing evidence that amendment was valid absent evidence which would justify application of a heightened burden of proof.

[14] **Trusts**
—Evidence to Aid Construction

Extrinsic evidence of settlor's physical health, other draft revisions to trust agreement, and of settlor's conversations with attorney who prepared trust amendment could not be used to supersede the clear intent of settlor as embodied in the unambiguous language of trust agreement, which allowed for amendment delivered to the trustee in writing.

[15] **Evidence**
—Contracts in General

Parol evidence rule is narrow in that it only prohibits a party from offering oral evidence of preliminary negotiations, conversations and

verbal agreements which purport to add or subtract to a written, unambiguous, and integrated agreement.

[16] **Trusts**
—Modification

A revocable trust settled prior to December of 2006 can be amended only in accordance with the express terms of the underlying trust agreement.

Attorneys and Law Firms

*1283 Ronald J. Mishkin, Stroudsburg, for appellant.

Joseph P. Hanyon, Pocomo Summit, for Estate of Field, appellee.

BEFORE: BOWES, GANTMAN and TAMILIA, JJ.

Opinion

OPINION BY TAMILIA, J.:

¶ 1 The American Cancer Society (ACS) appeals the July 12, 2007, Decree ordering the distribution of assets in the Celina Field Living Trust in accordance with a trust amendment, the validity of which constitutes the genesis of this controversy.

¶ 2 On October 5, 2002, decedent Celina Field met with her attorney, Peter J. Gilbert, for purposes of executing a revocable living trust. *See* Record, No. 53, Request for Admission, at Attachment—The Living Trust. The trust named John Kolp a beneficiary in the amount of \$100,000 and named both the Cornell University Feline Research Laboratory and appellant ACS as equal beneficiaries of the trust residue. The trust designated the decedent herself as the trustee. During the meeting, Gilbert suggested to decedent, who had long suffered debilitating pain from a pre-existing injury, that she may want to consider altering the trust distribution to include gifts to various pain research foundations.

¶ 3 Decedent considered Gilbert's suggestion and on October 29, 2002, met with Gilbert a second time. N.T., 5/31/07, at 100. At the meeting, Gilbert provided decedent with a red binder containing various completed estate planning documents, including the executed living trust agreement, which Gilbert had retained for notarization after his initial meeting with decedent. *Id.* at 101–102. At the October meeting, decedent and Gilbert discussed various ways to amend the distribution trust contemplated by the living trust. *Id.* at 103.

¶ 4 Gilbert testified that on the following day, October 30, 2002, he drafted partial revisions to the trust. N.T. at 104. Gilbert testified these changes included reducing the amount to be gifted to John Kolp from \$100,000 to \$75,000; naming decedent's ex-husband Wael Hafez a beneficiary in the amount of \$75,000 and granting Hafez a life estate in decedent's residence; naming various cousins *per stirpes* beneficiaries of a \$100,000 gift; naming various unidentified pain research foundations the beneficiaries of three quarters of the trust residue; naming the Physicians' Committee for Responsible Medicine the beneficiary of one-eighth of the trust residue; and, finally, diminishing the gift to the Cornell University Feline Research Laboratory to one-eighth of the trust residue. *Id.* at 107; *see also* Record, No. 48, Joint Pretrial Memorandum, at Exb. J. Gilbert testified he never completed the drafted revisions and, therefore, never sent them to decedent. *Id.* at 113.

¶ 5 At some point between October 30, 2002, and January 29, 2003, Gilbert drafted a second set of trust revisions, which eventually came to be known as the Wagner Amendments. The Wagner Amendments include a distribution of \$50,000 to Kolp; a distribution of \$50,000 and the decedent's home to her cousin Eva Field-Colon; and a distribution of \$100,000 to be shared equally amongst decedent's surviving cousins. Record, No. 48, Joint Pretrial Memorandum, at Exb. A. More importantly for our purposes, the Wagner Amendments named four identified pain research foundations, the American Pain Foundation, the National Pain Foundation, the City of Hope National Medical Center, and the National Foundation for the Treatment of Pain, as beneficiaries of three-quarters of the trust residue; the Physicians' Committee for Responsible Medicine a one-eighth beneficiary of the trust residue; and the Cornell University Feline Research Laboratory *1284 as a one-eighth beneficiary of the trust residue. *Id.* The Wagner Amendments did not designate ACS as a beneficiary of the Celina Field Living Trust. According to Attorney Gilbert, the amendments were sent to decedent in January 2003; the documents were three-hole-punched so that

they could be inserted into the red binder. *See* Trial Court Opinion, Cheslock, J., 7/12/07, at 3; N.T. at 115–116.

¶ 6 In the spring of 2003, Gilbert prepared a third set of drafted revisions to the trust. N.T. at 116–117. He recalled preparing the revisions and due to difficulty in meeting with decedent, he recalled sending her the amendments in the form of replacement pages. He did not have any written documentation of this transaction. *Id.* Those draft revisions included a distribution of \$75,000 to Kolp; a distribution of decedent's residence to Field-Colon; and a distribution of \$50,000 to Hafez. *See* Record, No. 48, Joint Pretrial Memorandum, at Exb. K. The distribution of the trust residue contemplated by the spring 2003 draft revisions, however, remained identical to the distribution of the trust residue contemplated by the Wagner Amendments. *See id.*

¶ 7 On October 17, 2003, Hafez, decedent's ex-husband, contacted Pocono Township Police. Hafez told police he was concerned about decedent because he had not heard from her in days. Upon investigation, police found decedent's residence locked and no indication someone was inside the residence. Two days later, Pocono Township Police received a call from one of decedent's friends, who expressed reservations similar to Hafez's. After receiving this call, Detective Wagner was dispatched to decedent's residence to investigate. On arrival, again finding the residence locked, Detective Wagner removed an air conditioning unit from a window and climbed through to gain access to the residence. Once inside, and immediately being confronted with a fetid odor, Detective Wagner searched the residence room by room, finding nothing until he got to decedent's bathroom which was locked. Detective Wagner forced entry into the bathroom and found decedent had taken her own life. Decedent left handwritten notes behind stating she was no longer able to live with her physical pain. Record, No. 48, Joint Pre-Trial Memorandum, at Exb. B.

¶ 8 Detective Wagner immediately called the State Police Forensic Team to secure the scene. While assisting in securing the scene, Detective Wagner found a red binder left conspicuously on the kitchen table; he subsequently logged the binder into evidence at the police station. N.T. at 9–10. At some point, Detective Wagner removed the various documents contained in and with the binder, photocopied them, organized the copies into two packets, and then attempted to replace the originals in the red binder. *Id.* at 10–13. The first copied packet contained the original, executed living trust; the second contained the Wagner Amendments. *Id.* at 12. Detective Wagner testified he could not recall whether the various documents he photocopied were arranged loosely in the

red binder or whether they were actually placed through the three-hole rings. *Id.* at 23–24. He did, however, unequivocally testify that he pulled the Wagner Amendments “out” of the red binder. *Id.* Detective Wagner further testified that he did not find any other estate planning documents in decedent’s residence. *Id.* at 21.

¶ 9 On October 8, 2004, Eva Field–Colon commenced the underlying litigation by filing a petition requesting, *inter alia*, a declaratory judgment stating that the Wagner Amendments were valid and controlled the distribution of decedent’s trust assets. The Commonwealth, as *parens patriae*, *1285 filed an answer with new matter to Field–Colon’s petition on December 3, 2004. Three days later, estate executor and successor trustee Kolp, represented in his individual capacity by Gilbert, filed his own answer and conceded that the Wagner Amendments were valid. Record, No. 12, at ¶¶ 9, 11.

¶ 10 On September 30, 2005, Gilbert filed a first intermediate accounting of the decedent’s estate on both his own behalf as counsel for the estate and on Kolp’s behalf, in the latter’s capacity as successor trustee.¹ The Commonwealth filed objections to the accounting on December 1, 2005. On June 13, 2006, ACS filed an answer to Field–Colon’s still pending petition. Thereafter, Gilbert filed a petition asking the orphans’ court to allow him to complete the accounting of decedent’s estate and to permit final distribution, and on December 28, 2006, ACS filed an answer objecting to Gilbert’s petition. Approximately a month later, on January 29, 2007, the Commonwealth filed its own answer, which also objected to Gilbert’s petition.

¶ 11 On April 17, 2007, Colon–Fields withdrew her petition. The only outstanding issue, therefore, was whether Gilbert’s proposed distribution of the decedent’s estate and trust assets, which was predicated on the wishes memorialized in the Wagner Amendments, was proper. *See e.g.*, Record, No. 44, Amended Trustee’s Statement of Distribution.

¶ 12 A hearing was held on May 31, 2007, and the orphans’ court, after considering the testimony of both Attorney Gilbert and Detective Wagner among others, concluded the Wagner Amendments were valid. In doing so, the court noted that the living trust, first executed in October of 2002, allowed for amendment in accordance with the following provision:

d. Amend or Revoke the Trust

I shall have the absolute right to amend or revoke my trust, in whole or in part, at any time. *Any amendment*

or revocation must be delivered to my Trustee in writing.

This right to amend or revoke my trust is personal to me, and may not be exercised by any legal representative or agent acting on my behalf.

See Record, No. 53, Request for Admission, at Attachment–The Living Trust, at Art. 4, § 1d (emphasis added). The orphans’ court, noting that decedent had named herself as trustee, concluded:

[T]he factual situation in this case indicates that the Decedent/Trustee delivered the [Wagner] amendment to herself by placing it in or about the red binder in a conspicuous manner thereby amending the trust. In this manner, the Wagner Amendment completed sometime between October 30, 2002 and January 29, 2003 controlled the Trust document at the time of the Decedent’s demise. Although there were other amendments to the Trust, the amendment dated October 30, 2002, and the Spring amendment in 2003, there was no indication that these amendments were delivered and/or accepted by the Trustee.... A compelling reason to support our findings is that the Wagner Amendment was properly lodged in the red binder containing the Trust. We believe that the placement of the amendment with the *1286 Trust constituted an effective method of amendment as provided for in the Trust.

Trial Court Opinion, at 6–7.

^[1] ¶ 13 ACS filed a timely notice of appeal. On August 3, 2007, appellees American Pain Foundation and National Pain Foundation, both residual beneficiaries under the Wagner Amendments, petitioned the orphans’ court for a finding that the July 12, 2007, Decree was final. *See generally*, Pa.R.A.P. 342(1), **Orphans’ Court Orders Appealable. Orders Determining Realty, Personality and Status of Individuals or Entities. Orders Making Distribution.** That same day, the court issued a Rule 1925(b) Order with which the ACS complied in a timely fashion and on August 8, 2007, the orphans’ court certified the underlying Decree as final. ACS raises a single issue for our review:

Whether an amendment to an *inter vivos* trust was valid when the provisions of the trust require amendments to be in writing and reserve the authority to amend exclusively to the Settlor, and when the purported amendment was not signed, initialed or otherwise adopted by the Settlor as “her” intended amendment?

Appellant’s brief at 5.

[2] [3] [4] [5] ¶ 14 The standard and scope of our review is well-defined:

The findings of a judge of the orphans’ court division, sitting without a jury, must be accorded the same weight and effect as the verdict of a jury, and will not be reversed by an appellate court in the absence of an abuse of discretion or a lack of evidentiary support. This rule is particularly applicable to findings of fact which are predicated upon the credibility of the witnesses, whom the judge has had the opportunity to hear and observe, and upon the weight given to their testimony. In reviewing the Orphans’ Court’s findings, our task is to ensure that the record is free from legal error and to determine if the Orphans’ Court’s findings are supported by competent and adequate evidence and are not predicated upon capricious disbelief of competent and credible evidence. However, we are not limited when we review the legal conclusions that Orphans’ Court has derived from those facts.

In re Estate of Cherwinski, 856 A.2d 165, 167 (Pa.Super.2004), quoting *In re Estate of Schultheis*, 747 A.2d 918, 922 (Pa.Super.2000), appeal denied 563 Pa. 703, 761 A.2d 551 (2000).

[6] [7] [8] ¶ 15 The governing substantive rules of law which guide our inquiry are also well-defined. A settlor may only amend a trust pursuant to the express terms of the trust agreement. *In re Estate of Dotterer*, 397 Pa.Super. 103, 579 A.2d 952, 953 (1990), *appeal denied* 527 Pa.

611, 590 A.2d 297 (1991), *cross-appeal denied* 527 Pa. 610, 590 A.2d 297 (1991), citing *In re Trust of Kaufmann*, 460 Pa. 24, 331 A.2d 209, 211 (1975) (“[A] revocable or amendable trust can only be revoked or amended in accordance with the terms of the trust.”); see also *Scalfaro v. Rudloff*, 594 Pa. 210, 934 A.2d 1254 (2007). A settlor’s intent with respect to the power of amendment must be determined from the language contained within the four corners of the trust instrument, the scheme of distribution contemplated therein, and the circumstances surrounding the execution of the trust instrument. *Estate of Taylor*, 361 Pa.Super. 395, 522 A.2d 641, 643 (1987). This Court will only apply the principles of trust construction when the settlor’s intent cannot be determined with reasonable certainty from the language of the trust instrument itself. The settlor’s intent to execute a proposed amendment cannot be offered into evidence for purposes of superseding the unambiguous requirements of a given trust agreement. *1287 *In re Steinsapir*, 392 Pa.Super. 355, 572 A.2d 1270, 1273 (1990), *appeal denied* 527 Pa. 602, 589 A.2d 693 (1991).

¶ 16 ACS initially contends “the Pennsylvania Supreme Court has recognized that the principles applicable to the construction of trust instruments are essentially the same as those used in the construction of wills.” Appellant’s brief at 16. ACS points out that wills must be signed by the testator in order to have effect in the Commonwealth. *Id.*, citing 20 Pa.C.S.A. § 2502, **Form and execution of a will**. By analogy ACS contends a trust, such as the Celina Field Living Trust, which allows alteration by a “writing to amend” can only be amended when the amendatory writing, if prepared by a third-party, is “ratified or adopted by the Settlor in some fashion.” Appellant’s brief at 17. ACS concludes that since the decedent did not ratify or adopt the Wagner Amendments “by signature, initials, mark or otherwise,” these amendments are invalid. *Id.*

[9] ¶ 17 ACS’ attempt to analogize the law of wills with the law of trusts by resorting to general pronouncements is unpersuasive. ACS is correct in its assertion that a will is only valid when signed, marked, or signed by a third-party at the direction of the testator. 20 Pa.C.S.A. § 2502, *supra*. The issue of whether a will has been executed validly, nevertheless, has no bearing on the issue of whether a trust amendment is valid. There is no support in our caselaw for the proposition that a trust amendment must be signed by the settlor simply because “the right to amend ... is personal to the Settlor.” Appellant’s brief at 16. To the contrary, in 2002 and 2003, when decedent settled her living trust and when the various amendments thereto were drafted, personalty trust agreements themselves did not have to be written and signed, or

otherwise executed, to be effective. *Dotterrer, supra* at 954, citing *In re Estate of Trbovich*, 488 Pa. 583, 413 A.2d 379 (1980); cf. 20 Pa.C.S.A. § 7732, **Requirements for creation**. More to the point, the law governing how revocable trusts can be amended has been consistent throughout this Commonwealth's history, and nothing in this history requires a trust amendment to be executed before it is deemed valid. *Kaufmann, supra* at 211 ("[A] revocable or amendable trust can only be revoked or amended in accordance with the terms of the trust.").²

¶ 18 On July 7, 2006, this Commonwealth adopted the Uniform Trust Act (UTA). 2006 Pa. ALS 98. Title 20, section 7752, **Revocation or amendment of revocable trust**, (c) **How to revoke or amend**, of the UTA provides:

The settlor may revoke or amend a revocable trust only:

(1) by substantial compliance with a method provided in the trust instrument; or

(2) if the trust instrument does not provide a method or the method provided in the trust instrument is not expressly made exclusive, by a later writing, other than a will or codicil, that is signed by the settlor and expressly refers to the trust or specifically conveys property that would otherwise have passed according to the trust instrument.

Id.

¶ 19 Section 7752(c)(1) allows a settlor to revoke or amend a revocable trust by substantially complying with a method outlined *1288 in the trust instrument. The statute says nothing about the "method" being an executed writing; it is only when the trust agreement contains no "method" for amendment that an executed writing is required to amend.

¶ 20 The Celina Field Living Trust allowed for amendment by delivering it to the trustee in writing. Record, No. 53, Request for Admission, at Attachment—The Living Trust, at Art. 4, § 1d. The trust agreement says nothing about execution, signature, mark, or other method of affirmation aside from delivery; the language of the trust agreement is unambiguous and ACS does not contend otherwise. We may not engraft a requirement for amendment into the trust agreement the settlor herself did not see fit to impose. *See and cf. Steinsapir, supra* at 1273 ("[I]t is axiomatic that a trust agreement may be modified only by *strict* adherence to its express provisions."), citing *Kaufmann, supra* (emphasis in original).

^[10] ¶ 21 ACS next takes issue with the orphans' court's factual findings and the evidence upon which it relied in rendering these findings. ACS first asserts the court erred in finding the Wagner Amendments were properly lodged in the red binder. Appellant's brief at 17. The court's finding in this regard was predicated on its decision to credit the testimony of Detective Wagner, who discovered the binder and logged it into evidence. Trial Court Opinion at 5; *see also* N.T. at 22–24. Detective Wagner testified unequivocally that he discovered the trust agreement in the red binder lying on the decedent's kitchen table. *Id.* There is nothing in the certified record which would lead us to challenge Detective Wagner's veracity. Our standard of review does not allow us to disturb the orphans' court's credibility determinations without a provocative reason for doing so.

^[11] ¶ 22 ACS next asserts the orphans' court erred in considering extrinsic evidence of the various draft revisions, discussed in detail in the factual narrative of this case, as evidence that the decedent intended the Wagner Amendments to be valid. The court addressed the issue as follows: "Upon consideration of the evidence presented at hearing, we believe the three amendments to the Trust clearly indicate that the Decedent did not intend to make ACS a beneficiary of her Trust." Trial Court Opinion at 7.

¶ 23 The rule of law with respect to the use of extrinsic evidence in interpreting trust agreements was recently stated by our Supreme Court as follows: "A trust instrument that is unambiguous on a matter may not be superseded by extrinsic evidence of the settlor's intent." *Scalfaro, supra* at 1257, citing *Kaufmann, supra* at 212. It is clear the orphans' court did not use evidence of the draft trust revisions to "supersede" the unambiguous language of the trust agreement. Rather, it relied on the draft revisions as support for its conclusion that the trust agreement was unambiguous and that the decedent had carried out the method for amendment provided by the agreement.

^[12] ¶ 24 ACS next asserts that if the decedent wanted to ratify the Wagner Amendments, she had the opportunity to do so at the January 29, 2003, meeting with Attorney Gilbert and her failure to do so is dispositive evidence that she never intended to adopt the amendments. Again, we disagree. The trust agreement provided an unambiguous and lawful method of amendment and the orphans' court concluded decedent used this method to amend her trust. We cannot upset this finding on the basis of extrinsic evidence of what the decedent decided not to do.

¶ 25 ACS then asserts: "To argue that the Settlor did not

have to execute the *1289 written amendment would permit any person at any time to simply substitute new pages into the trust document, thereby replacing the original trust provisions and claim they received instructions from the Settlor to do so.” Appellant’s brief at 18–19. While fraud is unquestionably a relevant concern in the context of trusts, there is no evidence in this case which tends to indicate the decedent was induced, manipulated, or unduly influenced into amending her trust. Indeed, there is no evidence the pain research foundations, which were substituted for the ACS as beneficiaries, had any knowledge they were beneficiaries of the trust.

^[13] ¶ 26 ACS’ third primary contention is a veiled restatement of its first. ACS contends the court should have required appellees to produce clear and convincing evidence that the Wagner Amendments are valid. Appellant’s brief at 21, citing *In re Estate of Cornell*, 511 Pa. 475, 515 A.2d 555 (1986). ACS further contends the “evidence adduced by the Appellees did not raise to meet clear and convincing evidence of Settlor’s intent.” Appellant’s brief at 22.

¶ 27 ACS’ reliance on *Cornell*, *supra* is misplaced. In *Cornell*, a savings and loan association redeemed a certificate of deposit owned by a decedent for the executor of the decedent’s estate. *Id.* at 556. After the certificate was redeemed, the executor continued to receive interest payments made out to the decedent. Perplexed, the executor contacted the association. The association informed the executor that a second certificate of deposit was on the decedent’s account and then allowed the executor to redeem the certificate. Approximately five months later, the association contacted the executor and informed him the second certificate had been redeemed in error because it inadvertently had been issued to replace the first. The association brought claims against the estate for conversion and trespass. In analyzing whether this Court had erred in reversing the orphans’ court’s conclusion that the association was unable to carry its burden of proof in establishing its claim, our Supreme Court noted: “Having chosen to bring the claim against the decedent’s estate in the Orphans’ Court, it was the Appellee’s burden to establish and prove that claim by evidence which is clear, direct, precise and convincing.” *Cornell*, *supra* at 556, citing *Estate of Allen*, 488 Pa. 415, 412 A.2d 833 (1980).

¶ 28 *Cornell* provides neither factual nor legal guidance in this matter in that it involved a claim against a decedent’s estate by a creditor. Moreover, we are unaware of any case in this Commonwealth which sets forth the proposition that the validity of a trust amendment must be

proven by “evidence which is clear, direct, precise and convincing.” *Cornell*, *supra* at 556 (citation omitted). In short, ACS does not point to any evidence of record which would justify this Court’s application of a heightened burden of proof.

^[14] ¶ 29 Finally, ACS asserts that any evidence, either oral or written, introduced concerning the various draft trust revisions and the Wagner Amendments was inadmissible parol evidence. This contention suffers from a number of irreparable flaws.

^[15] ¶ 30 First, we are unaware of a case which applies the parol evidence rule, created for and applied in contractual disputes, to disputes over the validity of trust amendments. *See generally*, *Yocca v. Pittsburgh Steelers Sports, Inc.*, 578 Pa. 479, 854 A.2d 425, 436–437 (2004). Secondly, the parol evidence rule is narrow in that it only prohibits a party from offering oral evidence of “preliminary negotiations, conversations and verbal agreements” which purport to add or subtract to a written, unambiguous, and integrated agreement. *Id.* at 436. Trust amendments *1290 are, by their very nature, drafted after the underlying trust agreement is executed or otherwise formed. Moreover, it is clear from the substance of ACS’ argument that it is confusing the parol evidence rule with the rule that extrinsic evidence cannot be used to supersede the clear intent of a settlor as embodied in the unambiguous language of a trust agreement. *See e.g.*, appellant’s brief at 23 (“Moreover, the Supreme Court recognized that additional evidence of the Settlor’s intention to effectuate the proposed amendment cannot be introduced to explain or supersede the unambiguous requirements of the Trust Agreement.”) (citations omitted).

^[16] ¶ 31 Our case law is clear. A revocable trust settled prior to December of 2006 can be amended only in accordance with the express terms of the underlying trust agreement. The Celina Field Living Trust allowed for amendment in writing when a drafted revision was delivered to the trustee, decedent herself; no one disputes the Wagner Amendments were in writing. Further, Attorney Gilbert testified that the photocopy of the Amendments provided by Detective Wagner showed the original was “three-hole punched,” meaning it was ready for placement in decedent’s red binder. N.T., 5/31/2007, at 116. Detective Wagner testified he pulled the Amendments out of the red binder when he first discovered it. *Id.* at 23–24. Extrinsic evidence of the decedent’s physical health, other draft revisions to the trust, and of decedent’s conversations with Gilbert only serve to supplement the evidence of decedent’s intent, which is embodied in the unambiguous language of the

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trust agreement.

¶ 33 Decree affirmed.

¶ 32 The method of amendment decedent reserved to herself was lawful and, for purposes of this case, effective. While we are cognizant of ACS' concerns with the larger picture, there is nothing in this case which would tend to indicate the Wagner Amendments are the by-product of questionable activity or undue influence. As ACS has failed to establish reversible error, we affirm.

Parallel Citations

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Footnotes

- 1 To clarify, the record indicates Attorney Gilbert was representing executor and successor trustee Kolp both in his capacity as executor/trustee and as an individual. *See* Record, No. 12, Kolp's Answer; *see also* Record, No. 17–18, First Intermediate Accounting of John Kolp, Executor and Trustee. On February 13, 2007, Gilbert withdrew the appearance he previously had entered on Kolp's behalf. Record, No. 38.
- 2 *See also e.g., In re Estate of Devine*, 910 A.2d 699, 703 (Pa.Super.2006), *appeal denied* 592 Pa. 767, 923 A.2d 1174 (2007) (concluding a settlor effectively revoked a trust by granting herself, as trustee, and her successor trustees the authority to alienate the real property *corpus* free and clear of the trust and then exercising this authority).

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In Re: The Judith E. Tierno Revocable Trust of 2003

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