HOWARD & HOWARD ATTORNEYS PLLC

IN THE SUPREME COURT
OF THE STATE OF NEVADA

IN THE MATTER OF ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1991

BRIAN HOLIDAY,

Appellant,

vs.

PATRICIA L. HORST, Trustee of the ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1999; ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1999,

Respondents.

Electronically Filed
Jan 28 2020 12:21 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

No.: 77964

Eight Judicial District Court Case No: P-18-095314-T (In the Matter of the Ella E. Horst Revocable Living Trust u/a/d 05/21/1991)

JOINT APPENDIX
Volume I of II

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Docket 77964 Document 2020-03877

INDEX TO JOINT APPENDIX
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Petition to Assume *In Rem* Jurisdiction Over Trust; Petition to Confirm Trust; Petition to Confirm Trustee; Petition for Instructions; and Petition for Removal of In Rem Jurisdiction Over Trust	Vol. I Bates No. 00001-00053
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Notice of Appearance and Request Pursuant to E.D.C.R. 4.08 to Have the Matter Heard Before a Probate Judge	Vol. I Bates No. 00056-00058
Court Minutes re: Referral to Probate Judge	Vol. I Bates No. 00059-00060
Order Scheduling Status Check dated May 31, 2018	Vol. I Bates No. 00061-00062
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Objection to Patricia L. Horst's Petition to Confirm Trustee; Petition for Instructions, and Petition for Removal of *In Rem* Jurisdiction Over Trust and Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) for Instructions	Vol. I Bates No. 00064-00153
Affidavit of Mailing of (a) Notice of Hearing on Brian Holiday's Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) for Instructions; and (b) Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) for Instructions	Vol. I Bates No. 00154-00156
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Notice of Entry of Order Granting Petition to Confirm Trust	Vol. II Bates No. 00328-00336

Amended Notice of Entry of Order Granting Petition to Confirm Trust	Vol. II Bates No. 00337-00345
Notice of Appeal	Vol. II Bates No. 00346-00348

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HOWARD & HOWARD ATTORNEYS PLLC

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Amended Notice of Entry of Order Granting Petition to Confirm Trust	Vol. I Bates No. 00337-00345
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Electronically Filed
5/9/2018 10:06 AM
Steven D. Grierson
CLERK OF THE COURT

PETN
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Attorney for Petitioner, Patricia L. Horst

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the ELLA E. HORST REVOCABLE TRUST u/a/d 05/21/1991	Hearing Date: Friday, May 25, 2018 Hearing Time: 9:30 a.m. Case No.: P-18- P-18-095314-T Dept. No.: PC1

PETITION TO ASSUME *IN REM* JURISDICTION OVER TRUST;
PETITION TO CONFIRM TRUST;
PETITION TO CONFIRM TRUSTEE;
PETITION FOR INSTRUCTIONS; AND
PETITION FOR REMOVAL OF *IN REM* JURISDICTION OVER TRUST

[*Pursuant to NRS §§164.010(1) and (3), 164.015(1), 164.030(1) and* 153.031(1)(b) and (d)]

Patricia L. Horst, as successor Trustee of the Ella E. Horst Revocable Trust, u/a/d 01/01/1991, (hereinafter referred to as the "Petitioner"), by and through the law firm of CREST KEY, PROF., L.L.C., hereby petitions this Honorable Court to assume jurisdiction over the Trust as a proceeding *In Rem* thereof and to confirm co-trustees pursuant to NRS §164.010(1), confirm the Trust and Trustee, confirm Settlor's distribution of property from the Trust pursuant to NRS §164.030(1), and to release *In Rem* jurisdiction over Trust pursuant to NRS §164.010(3). Petitioner respectfully declares and states as follows:

Jurisdiction

1. Ella E. Horst (the "Deceased") died on October 26, 2016. At the date of death, she was resident of Clark County, Nevada. A copy of the Death Certificate is attached hereto and incorporated herein as Exhibit "1".

2. Deceased served as Trustee of the Trust until her death.

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Tel: (702) 202-4153 Fax: (702) 837-1879

Case Number: P-18-095314-T

3. Deceased as Settlor, a resident of the state of Nevada, created a trust named "Ella E. Horst Revocable Trust" on May 21, 1991, (hereinafter referred to as the "Trust"). The Trust was amended on March 6, 1998, March 16, 2004 and September 26, 2005. A copy of the Trust and all amendments are attached hereto and incorporated herein as Exhibit "2".

Standing

4. Petitioner is nominated as the successor Trustee and as such she possesses standing under NRS §§153.031, 164.010, and 164.015, to bring this Petition.

Interested Person

5. The name and address of the interested person pursuant to NRS §132.185 of the Trust are as follows:

Name and Address	Age	Relationship
Patricia L. Horst 7475 W. Rosada Way Las Vegas, NV 89149	Adult	Grandchild/Petitioner Successor Trustee
William "Bill" R. Horst 7475 W. Rosada Way Las Vegas, NV 89149	Adult	Grandson
Kristi Horst 1000 S. Williams St., #35 Westmont, IL 60559	Adult	Granddaughter
Robert Holiday 6878 W. Ainsley Circle Highland, UT 85002	Adult	Son-in-Law
Blaine Holiday 1747 Orchard Dr. Woodbury, MN 55125	Adult	Grandson
Jill Holiday Linford 1298 Eastridge Circle Logan, UT 84321	Adult	Granddaughter
Gail Holiday Herr 10630 E. Realgar Place Tucson, AZ 85747	Adult	Granddaughter
Kent Holiday 2402 Cedar Court Cody, WY 82414	Adult	Grandson

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Craig Holiday 2299 Orange Cove Avenue La Crascenta, CA 91214	Adult	Grandson
Brian Holiday P.O. Bo 104 Ten Sleep, WY 82442	Adult	Grandson
Dawn Holiday Blanchard 3247 E. 81st N. Idaho Falls, ID 83401	Adult	Granddaughter
Blake Holiday 5403 Rise Bend Lane Katy, TX 77494	Adult	Grandson
Steven Holiday 602 N. Beaufort Ave., Unit B Lubbock, TX 79416	Adult	Grandson
Nathan Holiday 45 Radiance Lane Las Flores, CA 92688	Adult	Grandson

Petition to Assume *In Rem* Jurisdiction Over Trust / NRS §164.010(1)

6. *In Rem* Jurisdiction of this Honorable Court is proper in this case because: (i) on the date of death of Deceased and Trustee, she was a resident of Clark County, State of Nevada, (ii) the situs of the *res* of the Trust is located in Clark County, Nevada, (iii) Petitioner desires to administer the Trust in Nevada.

Petition to Confirm Trust / NRS §164.010(1)

7. Deceased created the Trust on May 21, 1991.

8. Deceased, on her own volition, selected an estate planning attorney to assist her in creating her Trust and amendments thereto.

9. Petitioner believes the Deceased was competent and was not under the influence of other persons when she established the Trust, and therefore believes the Court should confirm the Trust.

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Petition to Confirm Trustee / NRS §164.010(1)

10. Article VIII of the Second Amendment dated May 16, 2004 of the Trust provides: "If ELLA E. HORST shall for any reasons cease to act as Trustee, then her granddaughter, PATRICIA LYNN HORST shall act as Successor Trustee."

11. Petitioner is over the age of majority and has never been convicted of a felony.

12. Petitioner believes that she is qualified in every respect to act as Trustee of the Trust and is competent and capable in acting as such and consents to act as Trustee of the Trust.

13. Petitioner recorded on January 27, 2017, with the Clark County Recorder, an Affidavit of Successor Trustee as Instrument No. 20170127, in Book 0002212. Petitioner has served as Trustee of the Trust since January 27, 2017.

14. Thus, Petitioner believes this Honorable Court's confirmation of her as Trustee is appropriate.

Petition for Instructions / NRS §164.030(1)

16. 15. NRS §164.030(1) provides "any trustee...may petition the court for instructions in the administration of the trust or for a construction of the trust instrument."

17. NRS §153.031(1)(b) and (d) provides that Petitioner as trustee "may petition the court regarding any aspect of the affairs of the trust, including:

. . .
(b) Determining the construction of the trust instrument;
(d) Determining the validity of a provision of the trust;
. . . .

18. On April 12, 2002, the real property at 7475 West Rosada Way, Las Vegas, Nevada 89149 (herein the "Property"), was acquired and the Trust owned 50%, Patricia Horst owned 25%, and Stella P. Adkins owned 25%. The Recorded Deed is attached hereto as Exhibit "3".

19. In the Second Amendment to the Trust dated March 16, 2004, the instruction under A. Specific Gifts reads, "1. Distribute to Settlor's granddaughter, Patricia Lynn Horst, the undivided one-half (50%) interest of the trust in and to that certain real property located at 7475 West Rosada Way, Las Vegas, NV 89149."

20. On March 28 and 29, 2005, the 50% owned by the Trust was transferred to Ella Horst and back to the Trust.

21. On February 29, 2008, Stella P. Adkins transferred her 25% of the Property to the Trust causing the Trust to own 75% and Patricia Horst to own 25% of the Property. The Recorded Deed is attached hereto as Exhibit "4".

22. On October 11, 2011, Ella E. Horst handwrote a letter to the Trust which reads, "I purchased Stella Adkins interest in the property at 7475 W Rosada Way – Las Vegas Nevada 89149. This share is to be added to my other share and go to Patricia Horst." This letter was witnessed by Elizabeth A. Mendre. The letter is attached hereto as Exhibit "5".

23. Petitioner believes the letter is an amendment to the Trust, because it refers to the Trust, describes the Property subject to the Trust, and describes the distribution of the Property.

24. Thus, Petitioner believes this Honorable Court's confirmation of the addition of the one-quarter (25%) acquired interest to the original one-half (50%) interest to create a three-quarter (75%) interest in the Property and distribution to Patricia Lynn Horst of the undivided three-quarter (75%) interest of the trust in and to the Property is appropriate.

Petition for Removal of *In Rem* Jurisdiction Over Trust / NRS §164.010(3)

25. NRS §164.010(3) provides "[a]t any time, the trustee may petition the court for removal of the trust from continuing jurisdiction of the court."

26. The Petition for the Court to assume *in rem* jurisdiction is for the limited purpose of reviewing and confirming the trust instrument, confirm the trustee of the Trust, and declaring assets of the Trust.

27. Therefore, if the Court confirms all requested in the petitions herein, then all will be accomplished to allow the Trust to be administered. Petitioner requests the Court to release the jurisdiction over the Trust.

Prayer For Relief

Based upon the above discussed matters, and upon other pleadings that may be filed herein and oral argument that may be allowed at the hearing, Petitioner believes the best interests of the Trust and its beneficiaries will be best served and thus prays this Honorable Court will:

1. Assume *In Rem* jurisdiction over the Ella E. Horst Revocable Trust, u/a/d 05/21/1991;

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2. Review and confirm the trust instrument of the Ella E. Horst Revocable Trust, u/a/d 05/21/1991.

3. Confirm Patricia L. Horst as successor Trustee of the Ella E. Horst Revocable Trust, u/a/d 05/21/1991.

4. Confirm the distribution to Patricia Horst of the 75% ownership in the real property located at 7475 West Rosada Way, Las Vegas, NV 89149.

5. Release *In Rem* jurisdiction over of the Ella E. Horst Revocable Trust, u/a/d 05/21/1991; and

6. Order such other and further relief as the Court finds proper in the circumstances.

Dated this 7th day of May, 2018.

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Nevada Bar # 14112
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VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Patricia L. Horst, being first duly sworn on oath, according to law, deposes and says:

1. I am the Petitioner named in the foregoing "Petition To Assume *In Rem* Jurisdiction Over Trust; Petition To Confirm Trust; Petition To Confirm Trustee; Petition For Instructions; And Petition For Removal Of *In Rem* Jurisdiction Over Trust."

2. I have read the same and know the contents thereof, and the same are true to the best of my own personal knowledge, except for those statements made therein upon information and belief, and as to those statements, I believe them to be true.

Patricia L. Horst, Petitioner

Subscribed and sworn to before me
this 7th day of May, 2018.

BARBARA BURNS
Notary Public, State of Nevada
Appointment No. 99-59643-1
My Appt. Expires Mar 17, 2021

NOTARY PUBLIC in and for said County
and State

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Exhibit "1"

STATE OF NEVADA

CERTIFICATION OF VITAL RECORD

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
VITAL STATISTICS
CERTIFICATE OF DEATH

CASE FILE NO. 392801

2016019498
STATE FILE NUMBER

TYPE OR PRINT IN PERMANENT BLACK INK

DECEDENT

1a DECEASED NAME (FIRST, MIDDLE, LAST, SUFFIX): Ella Elizabeth HORST
2. DATE OF DEATH (Mo/Day/Year): October 26, 2016
3e. COUNTY OF DEATH: Clark
3b. CITY, TOWN, OR LOCATION OF DEATH: Las Vegas
3c. HOSPITAL OR OTHER INSTITUTION - Name (If not either, give Street and Number): Centennial Hills Hospital Medical Center
3e. If Hosp. or Inst. indicate DOA, OP/Emer. Rm., Inpatient (Specify): Inpatient
4. SEX: Female
5. RACE (Specify): White
6. Hispanic Origin? Specify No, Non-Hispanic
7a. AGE - Last Birthday (Years): 96
7b. UNDER 1 YEAR: MOS. / DAYS
7c. UNDER 1 DAY: HOURS / MINS
8. DATE OF BIRTH (Mo/Day/Yr): September 18, 1920
9a. STATE OF BIRTH (If not US/CA, name country): Colorado
9b. CITIZEN OF WHAT COUNTRY: United States
10. EDUCATION: 12
11. MARITAL STATUS (Specify): Widowed
12. SURVIVING SPOUSE'S NAME (Last name prior to first marriage):
IF DEATH OCCURRED IN INSTITUTION SEE HANDBOOK REGARDING COMPLETION OF RESIDENCE ITEMS
13. SOCIAL SECURITY NUMBER:
14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Homemaker
14b. KIND OF BUSINESS OR INDUSTRY: Own Home
Ever In US Armed Forces? No

PARENTS

15a. RESIDENCE - STATE: Nevada
15b. COUNTY: Clark
15c. CITY, TOWN OR LOCATION: Las Vegas
15d. STREET AND NUMBER: 7475 W. Rosada Way
15e. INSIDE CITY LIMITS? (Yes or No): No
16. FATHER/PARENT - NAME (First Middle Last Suffix): William Robert SMOCK
17. MOTHER/PARENT - NAME (First Middle Last Suffix): Eunice Andrea PETERSON
18a. INFORMANT - NAME (Type or Print): Patricia Lynne HORST
18b. MAILING ADDRESS (Street or R F D No, City or Town, State, Zip): 7475 W. Rosada Way Las Vegas, Nevada 89149

DISPOSITION

19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify): Removal/Burial
19b. CEMETERY OR CREMATORY - NAME: Pierce Brothers Valhalla Memorial Park
19c. LOCATION City or Town State: North Hollywood California 91606
20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such): DAVID E HOLT SIGNATURE AUTHENTICATED
20b. FUNERAL DIRECTOR LICENSE NUMBER: 866
20c. NAME AND ADDRESS OF FACILITY: Palm Mortuary Cheyenne 7400 W Cheyenne Las Vegas NV 89129

TRADE CALL

TRADE CALL - NAME AND ADDRESS: Pierce Brothers Valhalla 10621 Victory Blvd North Hollywood CA 91606

CERTIFIER

To Be Completed by CERTIFYING PHYSICIAN
21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title): SIGNATURE AUTHENTICATED CHARLES J HU DO
21b. DATE SIGNED (Mo/Day/Yr): October 31, 2016
21c. HOUR OF DEATH: 13:28
21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print):

To Be Completed by CORONER'S OFFICE
22a. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title)
22b. DATE SIGNED (Mo/Day/Yr):
22c. HOUR OF DEATH:
22d. PRONOUNCED DEAD (Mo/Day/Yr):
22e. PRONOUNCED DEAD AT (Hour):

23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print): Charles J Hu DO 6900 N Durango Dr Las Vegas, NV 89149
23b. LICENSE NUMBER: DO1961

REGISTRAR

24a. REGISTRAR (Signature): NANCY BARRY SIGNATURE AUTHENTICATED
24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr): October 31, 2016
24c. DEATH DUE TO COMMUNICABLE DISEASE: YES ☐ NO ☒

CAUSE OF DEATH

25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).)
PART I
(a) Cardiopulmonary Arrest — Interval between onset and death:
DUE TO, OR AS A CONSEQUENCE OF:
(b) Acute ischemic Cerebral vascular accident — Interval between onset and death:
DUE TO, OR AS A CONSEQUENCE OF:
(c) Atherosclerosis — Interval between onset and death:
DUE TO, OR AS A CONSEQUENCE OF:
(d) Hypertension — Interval between onset and death:

CONDITIONS AND WITH GAVE RISE TO IMMEDIATE CAUSE STATING THE UNDERLYING CAUSE LAST

PART II OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not resulting in the underlying cause given in Part 1.
26. AUTOPSY (Specify Yes or No): No
27. WAS CASE REFERRED TO CORONER (Specify Yes or No): Yes
28a. ACC., SUICIDE, HOM., UNDET. OR PENDING INVEST. (Specify)
28b. DATE OF INJURY (Mo/Day/Yr)
28c. HOUR OF INJURY
28d. DESCRIBE HOW INJURY OCCURRED
28e. INJURY AT WORK (Specify Yes or No)
28f. PLACE OF INJURY- At home, farm, street, factory, office building, etc. (Specify)
28g. LOCATION STREET OR R.F.D. No. CITY OR TOWN STATE

LOCAL REGISTRAR

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA." This copy was issued by the Southern Nevada Health District from State certified documents authorized by state Board of Health pursuant to NRS 440.175.

VRS-Rev-20120523a

332868

332868

DATE ISSUED: NOV 04 2016

Registrar of Vital Statistics
By:

This copy not valid unless prepared on watermarked security paper displaying date, seal and signature of Registrar.
SOUTHERN NEVADA HEALTH DISTRICT • P.O. Box 3902 • Las Vegas, NV 89127 • 702/759-1010 • Tax ID # 88-0151573

00009

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Exhibit "2"

ELLA E. HORST

REVOCABLE DECLARATION OF TRUST

ELLA E. HORST as trustee ("Trustee" herein) declares that ELLA E. HORST as Settlor ("Settlor" herein) has transferred and delivered to the Trustee or does hereby transfer and deliver to the Trustee, without consideration, the property described in the attached Schedule A. The Trustee agrees to accept, hold, administer and distribute the property described in Schedule A, and any additions thereto, for the purposes and on the terms, conditions and limitations set forth below. Property subject to this Declaration of Trust is referred to as the "Trust Property."

ARTICLE I

REVOCATION AND AMENDMENT

During the lifetime of the Settlor, this Trust may be revoked in whole or in part by a written instrument signed by the Settlor and delivered to the Trustee. On revocation, the Trustee shall promptly deliver to the Settlor all or the designated portion of the Trust Property. If this Trust is revoked with respect to all or a major portion of the Trust Property and if the Settlor is not then acting as Trustee, the Trustee shall be entitled to retain assets reasonably determined to be sufficient to secure payment of liabilities lawfully incurred in the administration of the Trust, including Trustee's fees that have been earned, unless the Settlor shall indemnify the Trustee against loss or expense.

The Settlor may at any time during the Settlor's lifetime amend any of the terms of this Declaration of Trust by a written instrument signed by the Settlor and delivered to the Trustee. No amendment shall substantially increase the duties or liabilities of the Trustee nor change the Trustee's compensation without the Trustee's consent. The Trustee shall not be obligated to act under an amendment unless the Trustee accepts it. If a Trustee is removed, the Settlor shall pay to the Trustee any sums due and shall indemnify the Trustee against liability lawfully incurred in the administration of the Trust.

Upon the death of the Settlor, this Declaration of Trust shall become irrevocable and may not be amended or revoked by any person.

The powers of the Settlor to revoke or amend this Declaration of Trust are personal to the Settlor and shall not be exercisable on the Settlor's behalf by any guardian, conservator, fiduciary or other person, unless the revocation or amendment is authorized, after notice to the Trustee, by the Court that appointed the guardian or conservator, or unless revocation or amendment is by the holder of a durable power of attorney expressly authorizing the holder to revoke or amend the Declaration of Trust.

An amendment or revocation of this Declaration of Trust shall not affect a person without actual knowledge of the amendment or revocation. Any person dealing with the Trust or the Trustee, shall be entitled to rely upon a certificate in writing, signed by the current Trustee or by the Trust's attorney as to what, if any, amendment or revocation has been made in this Declaration of Trust.

ARTICLE II
DISTRIBUTION OF INCOME AND PRINCIPAL DURING SETTLOR'S LIFETIME

During the lifetime of the Settlor, the Trustee shall pay to or for the benefit of the Settlor from the Trust Property as much of the net income and principal as is appropriate, in the Trustee's discretion, for the Settlor's proper health, education, support, maintenance, comfort, and welfare. The Trustee shall construe this power liberally and shall exercise it in a liberal and generous manner. The rights of the remaindermen in the Trust shall be considered of secondary importance. Any good faith determination by the Trustee concerning the exercise of the power shall be binding and conclusive upon all persons. Any undistributed income for each taxable year shall be added to and become a part of the principal of the Trust, as the case may be.

The Trustee shall also distribute such amount of Trust Property to the Settlor as the Settlor may direct in writing.

ARTICLE III

DEATH OF SETTLOR

After the death of the Settlor, the Trustee shall continue to hold, administer and distribute the balance of the Trust Property (including principal and any accrued or undistributed income), together with any additions to the Trust Property under the Survivor's Will or otherwise, as follows.

A. Specific Gifts. If at the time of the Settlor's death, the Trust Property includes a Note, secured by a deed of trust, received by the Settlor in the 1990 sale of a parcel of residential real property in the state of Nevada, County of Clark, commonly known as 1621 Ogden Avenue, Las Vegas, Nevada 89101 ("the Note"), the Trustee shall distribute twenty-thousand dollars ($20,000) to the Settlor's Granddaughter Patricia H. Powers out of the proceeds of the Note.

Such gift shall be made without reduction or deduction for any debts, expenses, administrative costs or taxes arising by reason of the Settlor's death.

If at the time of the Settlor's death, the Trust Property does not include the Note, then this specific bequest to Ms. Powers shall be adeemed.

B. Divide into Shares. After the satisfaction of specific gifts as provided in Paragraph A of this Article, the Trustee shall divide the balance of the Trust Property into shares as follows:

On the date of execution of this Declaration of Trust, the Settlor has two living children, namely, WILLIAM ARTHUR HORST, born on October 31, 1936, and DONNA JEAN H. HOLIDAY, born on December 12, 1941.

If both children, WILLIAM ARTHUR HORST and DONNA JEAN H. HOLIDAY, survive the Settlor by thirty (30) days, then the Trustee shall divide the remaining Trust Property in equal shares to the children of the Settlor.

If WILLIAM ARTHUR HORST does not survive the Settlor by thirty (30) days and DONNA JEAN H. HOLIDAY does survive the Settlor by thirty (30) days, then the Trustee shall divide the remaining Trust Property, fifty percent (50%) to DONNA JEAN H. HOLIDAY, twenty-five percent (25%) to the group composed of the then living issue of WILLIAM ARTHUR HORST and twenty-five percent (25%) to the group composed of the then living issue of DONNA JEAN H. HOLIDAY.

If DONNA JEAN H. HOLIDAY does not survive the Settlor by thirty (30) days and WILLIAM ARTHUR HORST does survive the Settlor by thirty (30) days, then the Trustee shall divide the remaining Trust Property, fifty percent (50%) to WILLIAM ARTHUR HORST, seven and one-half percent (7.5 %) to the group composed of the then living issue of WILLIAM ARTHUR HORST and forty-two and one-half percent (42.5%) to the group composed of the then living issue of DONNA JEAN H. HOLIDAY.

If neither WILLIAM ARTHUR HORST nor DONNA JEAN H. HOLIDAY survives the Settlor by thirty (30) days, then the Trustee shall divide the remaining Trust Property among the then living issue of the deceased children of the Settlor as follows: one equal share shall be allocated to each living child of the deceased children of the Settlor (hereinafter referred to as a "grandchild") and one equal share shall be allocated to each group composed of the then living issue, by right of representation, of a deceased grandchild.

C. Fund the Shares. The Trustee shall fund the shares created pursuant to Paragraph B of this Article, as follows:

All assets of which the Settlor is the transferor for generation skipping transfer tax ("GST") purposes shall be allocated first to the share(s) for the living issue of a deceased child and then to the share(s) for the living children.

D. Divide Shares into Exempt and Non-Exempt Trusts.

If any of the Settlor's "Unused GST Exemption" (defined below) is allocated to a beneficiary's share and the net value of that beneficiary's share exceeds the amount of the Settlor's

Unused GST Exemption so allocated, then the Trustee shall further divide that beneficiary's share into two separate shares before establishing that beneficiary's trust. The Trustee shall instead establish two separate trusts, identified as the Exempt Trust and the Non-Exempt Trust in the name of that beneficiary. That beneficiary's Exempt Trust shall consist of the assets equal in value to the amount of the Settlor's Unused GST Exemption allocated to that beneficiary's share. That beneficiary's Non-Exempt Trust shall consist of the balance of that beneficiary's share. This division of that beneficiary's share into two separate trusts shall result in that beneficiary's Exempt Trust having an "Inclusion Ratio" (as defined in Section 2642(a) of the Code) of zero (0) and that beneficiary's Non-Exempt Trust having an Inclusion Ratio of one (1) for GST purposes.

"Unused GST Exemption" means the amount of the Settlor's GST exemption under Section 2631(a) of the "Code" (defined below) available at her death and not otherwise allocated by her or her Personal Representative (as defined in Section 58 of the California Probate Code, as amended from time to time and any successor provisions thereto) to other transfers of property by the Settlor during her lifetime or as a result of her death.

The "Code" refers to the Internal Revenue Code of 1986, as amended from time to time, and a reference to any section of the Code in this Declaration of Trust includes any successor statute or amendment to such section.

After payment of that beneficiary's pro-rata share of any debts, expenses, administrative costs and Death Taxes as provided in the Article entitled, "PAYMENT OF DEBTS, EXPENSES AND TAXES", the Trustee shall hold, administer and distribute the assets allocated to that beneficiary's Exempt Trust and to that beneficiary's Non-Exempt Trust as separate trusts for the benefit of that beneficiary in accordance with the provisions of the Article entitled, "DISTRIBUTION TO LINEAL DESCENDANTS."

References to that beneficiary's trust in this Trust or in the Settlor's Will or Codicil thereto shall also collectively

refer to such separate trusts. Each such separate trust shall have the same provisions as set forth in said Article for that beneficiary's trust.

If any of the Settlor's Unused GST Exemption is allocated to a beneficiary's share and the net value of that beneficiary's share is equal to or less than the amount of the Settlor's Unused GST Exemption so allocated, then the Trustee shall assign to the trust of that beneficiary the entire share of that beneficiary, which trust shall be exempt from GST and have an Inclusion Ratio of zero (0). After payment of that beneficiary's pro-rata share of any debts, expenses, administrative costs and Death Taxes as provided in the Article entitled, "PAYMENT OF DEBTS, EXPENSES AND TAXES", that beneficiary's trust shall be held, administered and distributed in accordance with the provisions of the Article entitled, "DISTRIBUTION TO LINEAL DESCENDANTS."

ARTICLE IV

PAYMENT OF DEBTS, EXPENSES & TAXES

Except as otherwise expressly provided in this Trust or in the Settlor's Will or Codicil thereto, after the death of the Settlor, the Trustee shall pay each beneficiary's pro-rata portion of the valid, current debts of the Settlor (except debts secured by mortgages, deeds of trust or other security instruments), the last illness, funeral and burial expenses of the Settlor, all attorney's fees and other costs incurred in the administration and distribution of the Settlor's estate, and all Death Taxes (defined below) arising by reason of the Settlor's death, with respect to any property, whether included in or passing outside of the Settlor's probate estate, out of that beneficiary's Non-Exempt Trust to the extent that such beneficiary's Non-Exempt Trust has sufficient assets, provided such payment does not increase the Inclusion Ratio of that beneficiary's Exempt Trust. To the extent that the assets in that beneficiary's Non-Exempt Trust are insufficient to pay such debts, expenses, administrative costs and Death Taxes or that such payment would increase the Inclusion Ratio of that

beneficiary's Exempt Trust, then such debts, expenses, administrative costs and Death Taxes may be paid out of that beneficiary's Exempt Trust.

A. Death Taxes Defined. "Death Taxes" shall mean all domestic and foreign estate, gift, or other transfer taxes, including any interest and penalties thereon, arising by reason of the death of a Settlor. The term, however, shall not include the following:

1. Generation skipping transfer taxes ("GST"), except those classified as taxes on direct skip transfers with respect to which the Settlor is the transferor;

2. Any estate taxes imposed pursuant to Section 2032A of the Code, which taxes are to be apportioned to, borne by, and paid out of the special use property and by the qualified heirs; and

3. Any estate taxes imposed by Section 4980A(d)(1) of the Code, which taxes are to assessed to and borne by the person receiving the property against which that tax has been imposed, except to the extent that the Settlor has made an election under Section 4980A(d)(5) of the Code.

B. Apportionment of Death Taxes. Except as otherwise expressly provided in this Trust or in the Settlor's Will or Codicil thereto, each beneficiary of the Settlor's estate shall pay his or her pro-rata portion of the Death Taxes.

ARTICLE V

DISTRIBUTION TO LINEAL DESCENDANTS

After the payment of debts, expenses, administrative costs and Death Taxes, as provided in the Article entitled, "PAYMENT OF DEBTS, EXPENSES AND TAXES," the Trustee shall hold, administer and distribute the trusts created for the Settlor's beneficiaries under the provisions of the Article entitled, "DEATH OF SETTLOR," as follows.

A. Outright Distribution for Beneficiaries Over 21 Years. The remaining Trust Property in any trust(s) for a

beneficiary who is over the age of twenty-one (21) years shall be distributed to such beneficiary outright and free of trust.

B. Trusts for Beneficiaries Under 21 Years. Each trust created for a beneficiary who is under the age of twenty-one (21) years, whether an Exempt Trust or a Non-Exempt Trust for GST purposes, shall be held, administered and distributed as follows:

The Trustee shall, from time to time, pay to or for the benefit of each beneficiary during the continuance of such beneficiary's trust, as much of the net income and principal of the trust as the Trustee, in said Trustee's discretion, shall deem appropriate for that beneficiary's health, education, maintenance and support, in accordance with that beneficiary's accustomed manner of living, after taking into consideration, to the extent the Trustee shall deem advisable, all other resources available to that beneficiary or available to those who have a legal obligation of support of that beneficiary, outside this trust, known to the Trustee, and all other circumstances and factors which the Trustee considers pertinent.

The term "education" shall be construed to include study at a private school at the elementary and secondary levels, study at a university or college, post-graduate and professional study, or attendance at a certified trade or technical school, so long as pursued to advantage by the beneficiary, at an institution of the beneficiary's choice. The term shall also include service as a full-time missionary for the Church of Jesus Christ of Latter-day Saints. In determining payments to be made for education, the Trustee shall take into consideration and pay the beneficiary's related living expenses to the extent they are reasonable.

All such discretionary invasions of income and principal to a beneficiary shall be made out of that beneficiary's Non-Exempt Trust to the extent that such beneficiary's Non-Exempt Trust has sufficient assets, provided such payment does not increase the Inclusion Ratio of that beneficiary's Exempt Trust. To the extent that the assets in that beneficiary's Non-Exempt Trust are

insufficient to pay such discretionary invasions of income and principal or that such payment would increase the Inclusion Ratio of that beneficiary's Exempt Trust, then such payments may be made out of that beneficiary's Exempt Trust.

The Trustee shall not be required to distribute income currently. Any income not distributed on or prior to the last day of each taxable year may be segregated by the Trustee and thus retain its characterization as income, or may be added to and become a part of the principal of the trust, at the option of the Trustee.

The Trustee shall not be held accountable to any beneficiary if part or all of the principal shall be depleted. The Trustee shall exercise the discretionary power to pay income and to invade principal of a beneficiary's trust to or for the benefit of that beneficiary, and the rights of the remaindermen in the beneficiary's trust shall be considered of secondary importance. Any determination made by the Trustee in good faith as to the manner in which or the extent to which the powers in this subparagraph shall be exercised shall be binding and conclusive upon all persons who might then or thereafter have or claim any interest in the Trust Property.

When each beneficiary reaches the age of twenty-one (21) years, the Trustee shall distribute outright and free of trust to said beneficiary all of the beneficiary's Trust Property as then constituted.

If a beneficiary survives the Settlor, but dies before reaching the age of twenty-one (21), the Trustee shall distribute such portion to such one or more persons and entities, including that beneficiary's own estate, and on such terms and conditions, IN TRUST OR OTHERWISE, as that beneficiary shall have appointed in a Will or Codicil thereto duly admitted to probate specifically referring to and exercising this general testamentary power of appointment. If this general testamentary power of appointment is not exercised, such portion shall be held, administered and/or distributed as follows.

If a beneficiary shall die before reaching the age of twenty-one (21) years without exercising the aforesaid general testamentary power of appointment, the undistributed balance of the Trust Property of that beneficiary's trust, including undistributed or accrued income, shall thereupon be distributed, free of trust, to his or her then living issue, by right of representation, or, if there are none, to the Settlor's then living issue, by right of representation; provided, however, that if any part of that Trust Property would otherwise be distributed to another beneficiary of the Settlor for whose benefit a trust is or trusts are then being administered under this Declaration of Trust, the Trustee may divide and allocate such Trust Property to said trust or trusts in such a manner as to avoid recalculation of the inclusion ratio in such beneficiary's Exempt Trust. Such Trust Property shall thereafter be administered according to the terms of said trust or trusts. If there are living issue of the Settlor, the remaining balance shall be distributed according to the Article entitled "ULTIMATE DISTRIBUTION."

ARTICLE VI

ULTIMATE DISPOSITION

If the Trustee is directed to distribute Trust Property in accordance with this ARTICLE or if at any time before full distribution of the Trust Property both the Settlor and all the Settlor's issue are deceased and no other disposition of the property is directed by this Declaration of Trust, the Trust Property shall then be distributed to the legal heirs of the Settlor, their identity and respective shares to be determined in all respects as though the death of the Settlor had occurred thirty (30) days after the date of the event requiring distribution and shall be determined according to the laws of succession of the State of California then in force relating to separate property not acquired from a parent, grandparent, or previously deceased spouse.

ARTICLE VII

PERPETUITIES SAVING PROVISION

Unless terminated earlier by its own provisions, all Trusts created by this Declaration of Trust or by the exercise of a power of appointment conferred hereunder shall terminate twenty-one (21) years after the last to occur of (a) the death of the Settlor and (b) the death of the last to die of the Settlor's issue living at the date of the death of the Settlor. The Trust Property of a terminated Trust shall vest in and be distributed to the then living issue of the Settlor, by right of representation, who are the income beneficiaries of that Trust.

ARTICLE VIII

SUCCESSOR TRUSTEE - NOMINATION

If ELLA E. HORST shall for any reason cease to act as Trustee, then her children, WILLIAM ARTHUR HORST and DONNA JEAN H. HOLIDAY, shall serve as Successor Co-trustees. If for any reason WILLIAM ARTHUR HORST or DONNA JEAN H. HOLIDAY shall fail or refuse to serve or complete service as Successor Co-trustees, then the other shall serve as sole successor trustee.

A Successor Co-trustee may act alone on behalf of the Trust with the written authorization of the other Co-trustee.

The income beneficiaries of any Trust or their legal representative shall have the power by unanimous vote and written notice to remove any then serving Trustee and to appoint a Successor Trustee as long as the Successor Trustee is a bank or trust company having total capital, undivided profits and surplus of not less than Fifty Million ($50,000,000) Dollars, if the exercise of such power does not cause the Trust Property of the Trust to be included in the estate of any beneficiary for federal estate tax purposes.

If at any time, as certified in writing by a licensed physician, an individual Trustee has become physically or mentally incapable of continuing to act as Trustee, whether or not a court of competent jurisdiction has declared said Trustee

incompetent, mentally ill, or in need of a conservator, that Trustee shall cease to act as Trustee.

No Successor Trustee shall have any responsibility for the acts or omissions of any prior Trustee and no duty to audit or investigate the accounts or administration of any such Trustee.

No bond shall be required of any person serving as a Trustee of any Trusts created hereunder for the faithful performance of their duties as Trustee, whether acting jointly or individually.

The term "Trustee" as used in this Declaration of Trust shall include any Trustee named in this Declaration of Trust or in accordance with the terms of this Trust.

ARTICLE IX

SPECIAL GST PROVISIONS

A. GST Elections. The Settlor intends by this Trust to fully utilize her Unused GST Exemption in order to minimize the GST liability associated with the Trust Property and her estate. Accordingly, the Settlor directs the Trustee to make any and all tax elections, such as the Election Regarding the Allocation of the GST Exemption, with respect to all or any part of the Trust Property in order to accomplish this purpose.

If it is unnecessary to probate any property of a Settlor, such tax elections shall be made by the Trustee. If it is necessary to probate any property of a Settlor, such elections shall be made by the Settlor's Personal Representative. If such elections will be made by the Settlor's Personal Representative, then the Trustee shall consult with the Personal Representative and shall assign Trust Property to trusts consistent with such elections made by the Personal Representative. Such elections shall be made with respect to all Trust Property assigned to a trust.

In making the election under Section 2632(a) of the Code to allocate the Settlor's Unused GST Exemption, the Settlor's Personal Representative or the Trustee may include in or exclude from that allocation any property of which the Settlor is the transferor for GST purposes, including property transferred prior

to such Settlor's death. These decisions may be based on transfers, gift tax returns and other information known to the Settlor's Personal Representative or the Trustee, with no requirement that such allocations benefit the various transferees or beneficiaries of such property equally, proportionally or in any other particular manner.

B. Power to Combine and Divide. In exercising the discretionary authority to combine and divide shares or trusts, the Trustee may take account of efficiencies of administration, GST and other transfer tax considerations, income tax factors affecting the various trusts and their beneficiaries, the need or desirability of having the same or different trustees for various shares or trusts, and any other considerations the Trustee may deem appropriate to the exercise of such discretion. Property allocated to a share or trust may be divided between separate and independent shares or trusts if necessary to permit tax elections to be made with respect to all of the property assigned to the share or trust or if necessary to preserve the exempt and non-exempt character (for GST purposes) of the property assigned to the share or trust, even if this requires the establishment of additional separate trusts with the same terms and provisions. When a trust is so divided, whether into exempt and non-exempt trusts as provided in other provisions of the Trust or otherwise into separate trusts, each such trust shall have the same provisions as the original trust from which it is established, and references in this Trust to the original trust shall collectively refer to the separate trusts derived from it. The Trustee shall divide property between or among shares or trusts according to the value of the property at the time of such division.

The Trustee may combine any share(s) or trust(s) created or administered under this Declaration of Trust with any other share(s) or trust(s) having the same Inclusion Ratios, including trusts established (during life or at death) by the Settlor, provided that such combination preserves the exempt (i.e.,

Inclusion Ratio of zero (0)) or the non-exempt (i.e, Inclusion Ratio of one (1)) character for GST purposes of the Trust Property of such share(s) or trust(s). The Trustee may establish separate shares in a combined trust if and as needed to preserve the rights and protect the interests of the various beneficiaries if the trusts combined do not have identical terms, or if separate shares are otherwise deemed desirable by the Trustee.

C. Trustee's Investment Powers. Without limiting the foregoing, the Settlor specifically authorizes (but does not require) the Trustee, in administering different trusts wholly or in part for the benefit of a particular beneficiary or group of beneficiaries, to adopt different investment patterns and objectives for different trusts based on the Inclusion Ratios of the trusts, and to prefer making distributions to beneficiaries who are skip persons (as defined in Section 2613(a) of the Code) from trusts that are exempt for GST purposes and to beneficiaries who are non-skip persons (as defined in Section 2613(b) of the Code) from trusts that are non-exempt for GST purposes.

D. Trustee's Exoneration. The Settlor expressly exonerates the Trustee from any liability arising from any exercise or failure to exercise these powers, provided the actions (or inactions) of the Trustee are taken in good faith.

E. Apportionment of GST. Except as otherwise expressly provided in this Trust or in the Settlor's Will or Codicil thereto, all GST attributable to transfers under this Declaration of Trust shall be paid as provided in Section 2603(a) of the Code.

ARTICLE X

POWERS OF TRUSTEE

In order to carry out the provisions of the trusts created by this Declaration of Trust, the Trustee shall have these powers, as to each respective trust, in addition to those now or hereafter conferred by law, subject to any other specific provisions contained in this Declaration of Trust.

A. To invest and reinvest funds in every kind of property, real, personal or mixed, and every kind of investment, foreign or domestic, specifically including, but not limited to, interest-bearing accounts, corporate obligations of every kind, stocks, preferred or common, margin accounts, options, shares of investment trusts, investment companies, and mutual funds or common trust funds, including those of a trustee, and mortgage participations, that persons of prudence, discretion and intelligence acquire for their own account, including any common trust fund administered by a Trustee.

The aggregate return on all investments from time to time shall be reasonable in light of then existing circumstances.

B. To continue to hold any property, including any shares of a Trustee's own stock, and to operate at the risk of the Trust Property any business that the Trustee receives or acquires under the Trust as long as the Trustee deems advisable.

C. To have all the rights, powers, and privileges of an owner with respect to the securities held in trust, including, but not limited to, the powers to vote, give proxies and pay assessments; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers and liquidations, and incident to such participation, to deposit securities with and transfer title to any protective or other committee on such terms as the Trustee may deem advisable; and to exercise or sell stock subscription or conversion rights.

D. To manage, control, grant options on, sell (for cash or on deferred payments within or beyond the term of the Trust), convey, exchange, partition, divide, improve, and repair Trust Property.

E. To lease Trust Property for terms within or beyond the term of the trust for any purpose, including exploration for and removal of gas, oil and other minerals; and to enter into community oil leases, pooling and unitization agreements.

F. To sell property to or purchase property from and to borrow from or lend money to the personal representative under the Will of the Settlor or the Trustee of any trust created by the Settlor, and to enter into transactions, including acquisition or sale of trust assets, between the Trustee as Trustee of this Trust and the Trustee as principal or as agent of any other person or entity, or as Trustee of any other trust for which said Trustee is acting. Any such sales or purchases shall be made at the fair market value of the property. Any such borrowing or loans shall be adequately secured and shall be at the prevailing rates and terms of interest for similar loans. The powers authorized herein may be exercised although the

Executor and Trustee, or the Trustee of two or more trusts, may be the same.

G. To borrow money for any Trust purpose from any person or entity upon such terms and conditions as the Trustee may deem advisable, and to encumber or hypothecate Trust Property for any Trust purpose by mortgage, deed of trust, pledge or otherwise. No lender need inquire into the need for or the propriety of such loans nor see to the application of funds so borrowed. During the time that the Settlor is living, to encumber or hypothecate Trust Property by mortgage, deed of trust, pledge or otherwise to facilitate borrowing by the Settlor. To guarantee borrowing undertaken by the Settlor.

H. To commence or defend, at the expense of the Trust, such litigation with respect to the Trust or any Trust Property as the Trustee may deem advisable, and to compromise or otherwise adjust any claims or litigation against or in favor of the Trust.

I. To carry insurance of such kinds and in such amounts as the Trustee deems advisable, at the expense of the Trust, to protect the Trust Property and the Trustee personally against any hazard.

J. To withhold from distribution, in the Trustee's discretion, all or any part of the property to be so distributed, as long as the Trustee shall determine in the Trustee's discretion that such property may be subject to conflicting claims, to tax deficiencies, or to liabilities, contingent or otherwise, properly incurred in the administration of the Trust Property.

K. Whenever the Trustee is directed to make a distribution of Trust Property or a division of Trust Property into separate trusts or shares on the death of the Settlor, the Trustee may, in the Trustee's discretion, defer such distribution or division until six (6) months after the Settlor's death.

When the Trustee defers distribution or division of the trust assets, the deferred division or distribution shall be made as if it had taken place at the time prescribed in this instrument in the absence of this subparagraph, and all rights given to the beneficiaries of such trust assets under other provisions of this Declaration of Trust shall be deemed to have accrued and vested as of such prescribed time.

L. To partition, allot and distribute the Trust Property, on any division or partial or final distribution of the Trust Property, in undivided interests or in kind, or partly in cash and partly in kind, or entirely in cash, at fair market value as determined by the Trustee, and to sell such property as the Trustee may deem necessary to make such division or distribution.

Absent a specific direction to the contrary in this Declaration of Trust, in making any division into shares or partial or final distribution of the Trust Property, the Trustee shall be under no obligation to make a pro rata division, or to distribute the same assets to beneficiaries similarly situated. Rather, the Trustee may, in the Trustee's discretion, make a non-pro rata division between shares and non-pro rata distributions to such beneficiaries, as long as the respective assets allocated to separate shares, or distributed to such beneficiaries, have equivalent or proportionate fair market value.

M. To decline to accept any property or interest in property as Trust Property or to abandon any property or interest in property belonging to the Trust, when, in the Trustee's discretion, such action is in the best interest of the Trust and its beneficiaries.

N. To perform inspections of proposed Trust Property, to regularly inspect and monitor Trust Property for environmental compliance and to undertake cleanup of Trust Property in order to comply with environmental laws at the expense of the Trust, when, in the Trustee's discretion, such action is in the best interest of the Trust and its beneficiaries.

O. To employ and compensate from the Trust Property agents, attorneys, accountants, auditors, investment counselors, other experts, corporate fiduciaries, depositories and proxies to assist the Trustee in the administration of the Trust and to rely on the advice given by these agents, provided, however, that nothing contained herein shall authorize or empower a Trustee to delegate any fiduciary obligations imposed by this Declaration of Trust or by law. Reasonable compensation for all services performed by any such agents shall be paid from the Trust Property and shall not decrease the compensation to which the Trustee is entitled.

P. To purchase in the Trustee's discretion at less than par obligations of the United States of America that are redeemable at par in payment of any federal estate tax liability of the Settlor in such amounts as the Trustee deems advisable. If the Trustee has reason to believe that the Settlor is in substantial danger of death, the Trustee may borrow funds for the purchase of such obligations and give security for that purchase. The Trustee shall resolve any doubt concerning the desirability of making the purchase and its amount in favor of making the purchase and of purchasing a larger, even though somewhat excessive, amount. The Trustee shall not be liable to the Settlor or any beneficiary under this Declaration of Trust for losses resulting from purchases made in good faith.

Notwithstanding anything in this Declaration of Trust to the contrary, the Trustee is directed to pay the federal estate tax due on the Settlor's death in an amount not less than the par value plus accrued interest of such obligations, without apportionment or charge against any beneficiary of the Trust Property or transferee of property passing outside of the Trust Property, and the Trustee in determining income payable to any beneficiary of any trust hereunder shall exclude from said income the income accrued on Treasury bonds redeemed in payment of the Settlor's federal estate tax.

Q. To open, maintain and terminate bank accounts in the name of the Trustee with any bank, trust company, and savings and loan association and to designate the persons or agents to conduct banking by giving written notice of such designation to the bank, trust company, and savings and loan association in question; and such bank, trust company or savings and loan association shall be protected in relying upon such designation.

R. The Trustee may continue to hold in the form in which received (or the form to which changed by reorganization, split-up, stock dividend, or other like occurrence) any securities or other property the Trustee may at any time acquire under this Trust, it being the Settlor's express desire and intention that the Trustee shall have full power to invest and reinvest the Trust Property without being restricted to forms of investment that the Trustee may otherwise be permitted to make by law; and the investments need not be diversified.

S. As to any trust created herein, in the event that the Trust Property has, at any time, in the opinion of the Trustee, become sufficiently small in value or the administration thereof is no longer economically desirable, or the cost thereof is disproportionate to the value of the assets or the continuation thereof is no longer in the best interest of the beneficiary, the Trustee may or may not, in the Trustee's discretion, terminate the Trust, and regardless of the age of the beneficiary, distribute the principal and any accrued or undistributed net income to the beneficiary, to be said beneficiary's absolutely and free of any trust, or if a minor, to the guardian of said beneficiary's estate either as a guardian or as custodian under a Uniform Gifts to Minors Act, a Uniform Transfers to Minors Act or a similar statute, as shall be determined by the Trustee.

T. As clarification of the Trustee's power "to invest," but not by way of limitation thereto, it is expressly provided that the Trustee is authorized to buy, sell and trade in securities of any nature (including "short" sales) and including puts, calls, straddles and other options of every kind, on margin, and for such purpose may maintain and operate margin accounts with brokers and may pledge any securities held or purchased by them with such brokers as security for loans and advances made to the Trustee.

ARTICLE XI

MISCELLANEOUS PROVISIONS

The following miscellaneous provisions shall also apply to guide the Trustee of this Declaration of Trust.

A. In any case in which the Trustee is required or permitted to divide Trust Property into trusts or shares, the Trustee shall not be required physically to divide any of the investments or other property, but may keep the same or any part thereof in one fund in which the separate and distinct trusts and shares shall have undivided interests. The Trustee shall keep separate accounts for each such trust.

B. Except as otherwise specifically provided in this Declaration of Trust, the determination of all matters with respect to what is principal and income of the Trust Property and the apportionment and allocation of receipts and expenses between these accounts shall be governed by the provisions of the California Revised Uniform Principal and Income Act from time to time existing. Any such matter not provided for either in this Declaration of Trust or in the California Revised Uniform Principal and Income Act shall be determined by the Trustee in the Trustee's discretion.

While the Settlor is living and is acting as Trustee, there shall be no requirement to conform to the provisions of this Paragraph B.

C. After the death of the Settlor and except as otherwise specifically provided in this Declaration of Trust, the Trustee's powers shall be subject to the Trustee's duty to treat income beneficiaries and remaindermen equitably, and the following requirements shall be observed by the Trustee.

(1) A reasonable reserve for depreciation of all income-producing depreciable real and personal property, and for capital improvements and extraordinary repairs of income-producing property (i.e., new roof/new plumbing system), shall be charged to income from time to time;

(2) A reasonable reserve for depletion of all depletable natural resources, including, but not limited to, oil, gas,

and mineral and timber property, shall be charged to income from time to time;

(3) Distributions by mutual funds and similar entities of gains from the sale or other disposition of property shall be credited to principal;

(4) A reasonable reserve for amortization of all intangible property having a limited economic life, including, but not limited to, patents and copyrights, shall be charged to income from time to time;

(5) All premiums paid and all discounts received in connection with the purchase of any bond or other obligation shall be amortized by making an appropriate charge or credit to income as the case may be.

D. Unless otherwise specifically provided in this Declaration of Trust, the Trustee shall be required to make adjustments in the rights of any beneficiaries, and among the principal and income accounts, to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that the Trustee believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others.

E. Income accrued or unpaid on Trust Property when received into the Trust shall be treated as any other income. Income accrued or held undistributed by the Trustee at the termination of any Trust created herein shall go to the next beneficiaries of the Trust in proportion to their interest in it, except as may otherwise be provided for in this Declaration of Trust. This provision shall not apply to income on Treasury bonds redeemed in payment of either Settlor's federal estate tax.

F. Unless the Trustee shall have received actual written notice of the occurrence of an event affecting the beneficial interests of this Trust, the Trustee shall not be liable to any beneficiary of any Trust for distribution made as though the event had not occurred.

G. No beneficiary of any trust shall have any right, power or authority to sell, assign, pledge, mortgage or in any other manner to encumber, alienate, transfer or impair all or any part of his interest in the Trust or in the principal or income of the Trust. The beneficial and legal interest in and the principal and income of the Trust and every part of it shall be free from the interference or control of any creditor of any beneficiary of the Trust and shall not be subject to the claims of any such creditor nor liable to attachment, execution, bankruptcy or any other process of law.

The income and principal of the Trust shall be paid over to the beneficiary in person or, in the event of the minority or incompetency of any beneficiary, to the guardian of the person of

that beneficiary, or to or for the benefit of that beneficiary, in such manner as in the Trustee's discretion seems most advisable at the time and in the manner provided by the terms of the Trust, and not upon any written or oral order nor upon any assignment or transfer by the beneficiary nor by operation of law.

H. The validity of this Trust and the construction of its beneficial provisions shall be governed by the laws of the State of California in force from time to time. This Paragraph shall apply regardless of any change of residence of the Trustee or any beneficiary or the appointment or substitution of a Trustee residing or doing business in another state.

I. The term "issue" and the term "lineal descendant" used anywhere in this Declaration of Trust, unless otherwise specifically provided herein, shall include descendants and issue of all degrees, including adopted (if adopted prior to eighteen (18) years of age) and posthumous descendants and issue, and descendants and issue born after the signing of this Declaration of Trust, and unless otherwise specifically provided herein, distribution to lineal descendants or issue shall be made per stirpes, that is, in accordance with the principle of representation.

J. As used in this Declaration of Trust, the masculine, feminine or neuter gender, and the singular or plural number, shall each include the others whenever the context so indicates.

K. No person paying money or delivering property to the Trustee shall be responsible for its application.

L. Any person who is both a beneficiary and a Trustee of any Trust hereunder shall exercise all rights and powers granted to the Trustee only in the capacity of a fiduciary.

M. The Trustee shall not be required to file any periodic accounting with respect to any trust created herein, but this shall not prevent the Trustee from having said Trustee's accounts judicially settled at any time or times, if said Trustee should deem it advisable to do so. At the time that the Settlor is not serving as Trustee, the Trustee shall account annually to each income beneficiary who has attained the age of eighteen (18) years and to the parent or guardian of any income beneficiary who has not attained the age of eighteen (18) years.

N. The Trustee may hold any and all stocks, bonds, notes, mortgages or other property in bearer form, in the Trustee's own name, or in the name of said Trustee's duly appointed nominee, with or without disclosing the fiduciary relationship, and the Trustee's liability shall be neither increased nor decreased thereby.

O. No individual acting as Trustee under this Trust shall be liable to any beneficiary for the Trustee's acts or failure to act, except for willful misconduct or gross negligence.

P. Any Trustee, other than the Settlor, shall be entitled to receive from time to time, without prior court order, reasonable compensation for services rendered as Trustee. Any Trustee, including the Settlor, shall be entitled to have the Trust pay, or reimburse the Trustee for, expenses, including travel expenses, incurred in connection with the administration of the trust estate.

Q. Any Trustee may delegate to any other Trustee any right or power under this Declaration of Trust, except as otherwise provided herein.

R. If any beneficiary under this Trust contests or attacks this trust or any of its provisions, or any will of the Settlor, any share of the Trust given to that beneficiary is revoked and shall be disposed of as if that beneficiary had predeceased Settlor without issue.

S. Notwithstanding anything in this instrument to the contrary, the Trustee shall not pay any death taxes, including interest or penalties, last-illness and funeral expenses, attorney's fees, administration expenses, debts, or other obligations of the Settlor's estate from proceeds of insurance policies on the Settlor's life which are excluded from the Settlor's estate for federal estate tax purposes. However, the Trustee, in the Trustee's discretion, may but shall be under no obligation to use insurance proceeds for such payments.

ARTICLE XII

RELEASE OF POWER

Any Trustee shall have the right and power to release or to restrict the scope of any power that said Trustee may hold in connection with any trust created under this Declaration of Trust, whether this power is expressly granted in the Declaration of Trust or implied by law. The Trustee shall exercise this right in a writing and notify the Settlor or, if the Settlor is deceased, to any income beneficiary who has attained eighteen (18) years of age and to the parent or guardian of any income beneficiary who has not attained the age of eighteen (18) years, specifying the powers to be released or restricted and the nature of the restriction. Any released power shall pass to and be

exercisable by the other then acting Trustee or Successor Trustee or, if there is none, by a Successor Trustee nominated by the Probate Court in the county wherein the Surviving Settlor died.

ARTICLE XIII

POWER IN TRUSTEE

Notwithstanding anything contained to the contrary, upon the termination of any trust created herein, if pursuant to the provisions of this Declaration of Trust all or any part of the corpus of the Trust shall become distributable to a minor and shall vest in absolute ownership in said minor, the Trustee is authorized and empowered in said Trustee's uncontrolled discretion to hold said principal so vested in such minor, or any part thereof, in a separate fund for the benefit of such minor. The fund may be property that consists of investments not authorized by law for trust funds. The Trustee may invest and reinvest the same, collect the income therefrom, and, during the minority of such minor, apply net income thereof to the support, education, and maintenance of such minor as the Trustee shall see fit. The Trustee may accumulate, invest, and reinvest the balance of the income until such minor shall attain majority, and thereupon pay over the corpus, together with any accumulated and undistributed income, to the minor. If such minor shall die before attaining majority, the corpus, together with any accumulated and undistributed income, shall be paid over to the estate of the minor. The authority conferred upon the Trustee by this ARTICLE shall be construed as a power only, and shall not operate to suspend the absolute ownership of such property by such minor or to prevent the absolute vesting thereof in such minor. All the powers and discretion herein conferred upon the Trustee by this Declaration of Trust shall apply with respect to the administration of any property subject to this ARTICLE.

All the above provisions of this ARTICLE shall also apply in full to any adult beneficiary who is under a mental or legal disability, as determined by the Trustee in said Trustee's sole

discretion, during the period of time that such beneficiary is so disabled.

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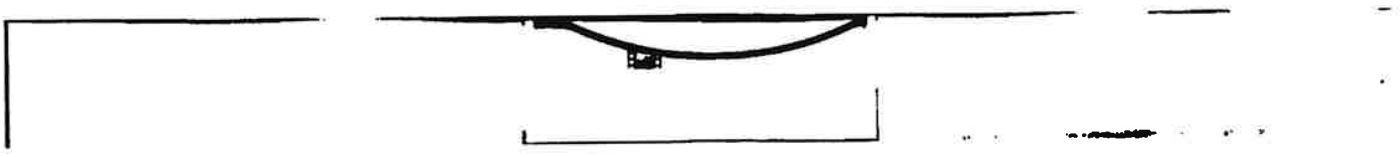

ARTICLE XIV

NAME AND EXTRACT

This trust shall be known as the Ella E. Horst Revocable Trust. Any person in any way dealing with the Trust or the Trustee shall always be entitled to rely upon an Extract of terms of this Trust, which Extract need not include the dispository provisions of the Trust, signed by any then serving Trustee or the attorney for the Trust.

EXECUTED on MAY 21, 1991 at Los Angeles, California.

Ella E. Horst
Ella E. Horst, Settlor

IN THE PRESENCE OF:

Jonathan E. Johnson

Ella E. Horst
Ella E. Horst, Trustee

IN THE PRESENCE OF:

Jonathan E. Johnson

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

On MAY 21, 1991, before me, a Notary Public in and for the State of California, personally appeared Ella E. Horst, proved to me by satisfactory evidence to be the Settlor and the Trustee of the Trust created by the above instrument and to be the person whose name is subscribed to the instrument, and Ella E. Horst acknowledged that she executed the same as Settlor and Trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Joan McCalation
Notary Public

(Seal)

OFFICIAL SEAL
JOAN McCALATION
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Comm. Expires June 20, 1994

5/13/91

FIRST AMENDMENT
TO THE ELLA E. HORST REVOCABLE TRUST
DATED MAY 21, 1991

I, ELLA E. HORST, hereby declare this to be the First Amendment to the ELLA E. HORST REVOCABLE DECLARATION OF TRUST dated May 21, 1991 (the "Declaration of Trust") establishing the ELLA E. HORST REVOCABLE TRUST (the "Trust").

Pursuant to power reserved to me as the Settlor as set forth in Article I of the Declaration of Trust, I have the authority to amend any of the terms of the Declaration of Trust at any time during my lifetime. With that authority, I hereby amend the Declaration of Trust, as follows:

FIRST: The name "Patricia H. Powers" found at the end of the seventh and at the beginning of the eighth lines of Section A. of Article III of the Declaration of Trust shall be changed to read "Patricia L. Horst; and the name "Powers" at the beginning of the third line of the third paragraph in said Section A shall be changed to read "Horst."

SECOND: Section A. (entitled "Specific Gifts") of ARTICLE III - Death of Settlor, shall have the following paragraphs added thereto:

"If the Settlor's son, William Arthur Horst, survives the Settlor, the Trustee shall distribute to him (1) the real property held in trust herein and located at 2631 Corinth Avenue, Los Angeles, California; (2) any automobile that is held in trust herein or owned by the Settlor which is to be distributed to the Trustee or Trust by Settlor's will; and (3) the 1979 Lazy Daze motor home held in trust herein or which is to be distributed to the Trustee or Trust by Settlor's will or otherwise.

If settlor's son, William Arthur Horst fails to survive the Settlor the foregoing paragraph shall be void and the assets set forth therein shall become part of the residual of the trust estate."

THIRD: Section B (entitled "Divide into Shares") shall be deleted in its entirety and in its stead, the following shall be inserted:

"B. Division into Shares. After the satisfaction of the specific gifts as provided

in Paragraph A of this Article, the Trustee shall divide the balance of the Trust Property into two equal shares as follows:

(1) One share shall be distributed free of trust to Settlor's son, WILLIAM ARTHUR HORST, and if he is then deceased, his share shall be distributed free of trust in equal portions to Patricia Lynne Horst, William Robert Horst, Kristy Marie Horst and Tara Lynne Horst, or their issue by right of representation.

(2) The other share shall be distributed free of trust in equal portions to Robert Kent Holiday, Blaine Charles Holiday, Jill Holiday Linford, Gail Holiday Herr, Kent Robert Holiday, Craig Donald Holiday, Brian James Holiday, Dawn Holiday Blanchard, Blake William Holiday, Steven John Holiday and Nathan Dean Holiday, or their issue by right of representation."

In all other respects, the Declaration of Trust shall remain in effect as originally written and executed.

Dated: 6 March, 1998 Ella E. Horst

STATE OF UTAH)
) ss
COUNTY OF Davis)

On Mar. 6th, 1998, before me, ~~Ella E. Horst~~ Corlynn Tingey, a Notary Public, personally appeared ELLA E. HORST, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument entitled "First Amendment To The Ella E. Horst Revocable Declaration of Trust Dated May 21, 1991" and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person who executed the instrument.

WITNESS, my hand and official seal.
Signature: Corlynn Tingey

NOTARY PUBLIC
CORLYNN TINGEY
200 East Pages Lane
Centerville, Utah 84014
My Commission Expires
April 1, 2001
STATE OF UTAH

Address: 200 E. Pages Ln.
Centerville, Ut 84014

My Commission Expires: 04-01-2001

SECOND AMENDMENT

TO THE

ELLA D. HORST REVOCABLE DECLARATION OF TRUST

DATED MAY 1, 1991

Ella E. Horst, as Trustee of the Ella E. Horst Revocable Declaration of Trust, Dated May 1, 1991, as amended by a First Amendment dated March 6, 1998 (the "Trust"), pursuant to powers reserved to the Settlor in Article I of the Trust, hereby amends the Trust as follows:

FIRST: Settlor's first amendment to the trust, which was signed on March 6, 1998 and entitled: "FIRST AMENDMENT TO THE ELLA E. HORST REVOCABLE TRUST DATED MAY 31, 1991" is revoked in its entirety.

SECOND: Section A of Article III of the original trust dated May 1, 1991, entitled "Specific Gifts," is hereby deleted in its entirety, and in its place the following new Section A is inserted in stead thereof:

"A. Specific Gifts. As soon as practicable, the Trustee shall:

"1. Distribute to Settlor's granddaughter, Patricia Lynn Horst, the undivided one-half (50%) interest of the trust in and to that certain real property located at 7475 West Rosada Way, Las Vegas, Nevada 89149, subject to taxes and liens on said property. In the event Patricia Lynn Horst does not survive the Settlor by thirty (30) days, the trustee shall distribute one-half (50%) of the undivided one-half (50%) of the trust (25% of the undivided total) to Stella Adkins, provided she survives the Settlor by thirty (30) days. This gift shall be subject to t axes and liens on said property. In addition, if Patricia Lynn Horst does not survive the Settlor, Stella Adkins shall have the right to purchase the remaining one-fourth (1/4) interest of the trust in said real property. The purchase price shall be based upon the reasonable value of said property at that time, less a proportionate amount for unpaid balances of mortgages and or other liens against the property. The purchase by Stella Adkins may be for cash, or by mortgage or a note secured by a deed of trust, or part of each, at the election of Stella Adkins. Any mortgage or note secured by a deed of trust shall be at an interest rate not to exceed five percent (5%) per annum and the term of the mortgage or note shall not exceed fifteen years. If Stella

Adkins does not elect to purchase the remaining one-fourth interest in said property, that remaining one-fourth (1/4) interest shall become part of the residue of the trust estate.

"2. Distribute to Settlor's son, William Arthur Horst, provided he survives the Settlor by thirty (30) days, (a) the real property located at 2631 Corinth Avenue, Los Angeles, California, subject to any taxes and liens on said property; and (b) any automobile that is held in trust herein or owned by the Settlor which is to be distributed to the Trust or Trustee pursuant to Settlor's will. In the event William Arthur Horst does not survive the Trustee by thirty (30) days, the described real property and auto shall become part of the residue of the trust estate."

THIRD: Section B of Article III of the original trust, entitled "Divide into Shares," is hereby deleted in its entirety and in its stead the following is inserted:

"B. Distribution of Remainder. After satisfaction of the specific gifts as provided in Paragraph A of this Article III and payment of settlor's last illness and just debts (excluding any taxes or other liens on real property) as provided in Article IV, below, the residue of the trust estate shall be divided equally among and distributed to:

William A. Horst
William R. Horst
Kristi Horst
Robert K, Holiday
Blaine C. Holiday
Jill Linford
Gail Herr
Kent R. Holiday
Brian Holiday
Craig Holiday
Dawn Holiday Blanchard
Blake Holiday
Steven Holiday
Nathan Holiday

"If William A. Horst does not survive the Settlor by thirty (30) days, his share of the residue of the estate shall be distributed to Patricia Lynn Horst. If any other beneficiary in this Paragraph B predeceases the Settlor, his or her share shall be distributed to his or her issue by

right of representation. If such beneficiary leaves no issue, his or her share shall be distributed equally among the other beneficiaries."

FOURTH: Article V of the original trust, entitled "DISTRIBUTION TO LINEAL DESCENDANTS" is amended by adding the following paragraph "C" at the end of Article V:

"C. TERMINATION WHEN SHARE IS SMALL. If the trust share held for any beneficiary who is under 21years has a total value at the end of any calendar year of less than $10,000, the trustee, in the trustee's sole discretion, may distribute the entire trust share of that beneficiary to the beneficiary, provided however, if the beneficiary is under the age of 18, the trustee may, in the trustee's discretion, distribute the share to the beneficiary's parent or guardian under the Uniform Transfers to Minor's Act or similar legislation, to be held until the beneficiary attains age 18, and the trustee may then terminate the trust for that beneficiary."

FIFTH: Article VIII of the original trust, entitled "SUCCESSOR TRUSTEE – NOMINATION" is deleted in its entirety and in its stead the following is inserted:

"ARTICLE VIII
SUCCESSOR TRUSTEES

"If ELLA E. HORST shall for any reasons cease to act as Trustee, then her granddaughter, PATRICIA LYNN HORST shall act as Successor Trustee. If for any reason PATRICIA LYNN HORST shall fail or refuse to serve or complete service as Successor Trustee, ELLA E. HORST'S grandson, BLAINE HOLIDAY shall serve as Successor Trustee.

"If at any time, as certified in writing by a licensed physician, an individual Trustee has become physically or mentally incapable of continuing to act as Trustee, whether or not a court of competent jurisdiction has declared said Trustee incompetent, mentally ill, or in need of a conservator, that Trustee shall cease to act as Trustee.

"In the event both of the aforenamed Successor Trustees fail to act or are disqualified pursuant to the previous paragraph, the beneficiaries set forth in Section B of Article III shall have the power by MAJORITY vote to name one or more of such beneficiaries (but not

more than three) to serve as Successor Trustee(s). If more than one such Successor Trustee is elected by the majority vote of the beneficiaries, all decisions made and acts taken shall be by a MAJORITY of such Successor Trustees.

"No Successor Trustee shall have any responsibility for the acts or omissions of any prior Trustee and no duty to audit or investigate the accounts or administration of any such Trustee.

"No bond shall be required of any person serving as a Trustee of any Trusts created hereunder for the faithful performance of their duties as Trustee, whether acting jointly or individually.

"The term "Trustee" as used in this Declaration of Trust shall include any Trustee named in this Declaration of Trust or in accordance with the terms of this Trust."

In all other respects, the Trust as originally executed is hereby reaffirmed.

Dated: 3/16, 2004

Ella E Horst settlor
Ella E. Horst, Settlor

State of Utah)
) ss
County of Utah)

On this the 16 day of March, 2004 before me, Ella E Horst the undersigned Notary Public, personally appeared Ella E. Horst personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument

WITNESS my hand and official seal.

Barbara Lewis Palfreyman
Notary's Signature

BARBARA LEWIS PALFREYMAN
Notary Public
State of Utah
My Comm. Expires Jan 28, 2006
[illegible]

THIRD AMENDMENT

TO THE

ELLA E. HORST REVOCABLE DECLARATION OF TRUST

DATED MAY 1, 1991

Ella E. Horst, as Trustee of the Ella E. Horst Revocable Declaration of Trust, Dated May 1, 1991, as amended by a First Amendment dated March 6, 1998 (which was subsequently revoked) and a Second Amendment dated May 1, 2004 (the "Trust"), pursuant to powers reserved to the Settlor in Article I of the Trust, hereby amends the Trust as follows:

Paragraph 2 of Section A of Article III of the Trust (as amended), Section A being entitled "Specific Gifts," is hereby deleted in its entirety, and the following new Paragraph 2 is inserted in the stead thereof:

"2. Settlor's rental real property, located at 7125 Village Shore Court, Las Vegas Nevada (the "Property") shall be held in trust and managed by Patricia Lynn Horst, hereinafter named as successor trustee of this Trust) as follows:

"a. All rental or other income from the Property, after payments of property taxes and assessments, insurance, maintenance, and other obligations due in the operation of the Property as a rental, including loan payments, if any, shall be used for the health, care and welfare of William Arthur Horst. The successor trustee shall have the power to sell the Property if, in the trustee's sole discretion, the net rents are not sufficient to provide for the health, care and welfare of William Arthur Horst, and to use the principal or income from the sale proceeds for his health, care and welfare. The successor trustee shall have all powers conferred in this Trust upon the Trustee and full discretion in regards the payment and use of such funds. No interest in the principal or income of any funds use for the benefit of William Arthur Horst shall be anticipated, assigned, encumbered or subjected to creditor's claim or legal process before actual personal receipt by the beneficiary. Upon the demise of William Arthur Horst, the trustee shall distribute the Property to Patricia Lynn Horst. Patricia Lynn Horst may sell the property and retain the proceeds therefrom or use the proceeds as she sees fit.

"b. The Property shall not be deemed part of the residue of the trust estate."

In all other respects, the Trust as previously amended is hereby reaffirmed.

Dated: Sept. 26, 2005

Ella E. Horst

Ella E. Horst, Settlor

State of Nevada)
) ss
County of Clark)

On this the 26 day of September, 2005 before me, Veronica Hochstetter the undersigned Notary Public, personally appeared Ella E. Horst personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument

WITNESS my hand and official seal.

Veronica Hochstetter (seal)
Notary's Signature

VERONIKA HOCHSTETTER
Notary Public, State of Nevada
Appointment No. 04-89051-1
My Appt. Expires May 3, 2008

CREST KEY, PROF., L.L.C.
6980 O' Bannon Drive, Suite 100
Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879

Exhibit "3"

20020412
01614

125-34-310-047

Affix R.P.T.T. $825.00
Escrow No 00235349-KMM
WHEN RECORDED MAIL TO AND MAIL TAX STATEMENTS TO:
Ella R. Horst and Patricia L. Horst and Stella P. Adkins
7475 W. Rosada Way
Las Vegas, NV 89149

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That: Ralph W. Liebermann and Ruth A. Liebermann, Trustees of the Ralph W. Liebermann and Ruth A. Liebermann Revocable Trust dated September 1, 1999 in consideration of $10.00 the receipt of which is hereby acknowledged, do hereby Grant, Bargain, Sell and Convey to Ella E. Horst as Trustee of the Ella E. Horst Revocable Trust, UDT DTD 5-21-91 as to an undivided 50% as all that real property situate in the County of CLARK State of Nevada, bounded and described as follows:
LOT TWO (2) OF THE CERTAIN PARCEL MAP ON FILE IN FILE 72, PAGE 40, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA AND RECORDED May 4, 1992 IN BOOK 920504 OF OFFICIAL RECORDS AS DOCUMENT NO. 00796.

as and Stella P. Adkins, an unmarried woman as to an undivided 25% and Patricia L. Horst, an unmarried woman as to an undivided 25%, all as tenants in common

SUBJECT TO:
1. Taxes for the current fiscal year, and any and all taxes (including supplemental taxes) and assessments levied or assessed after the recording date of this document.
2. Rights of way, reservations, restrictions, easements and conditions of record.
3. First Deed of Trust to record concurrently herewith.

Together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining.

Witness my/our hand(s) this 9 day of April, 2002.

The Ralph W. Liebermann and Ruth A. Liebermann Revocable Trust dated September 1, 1999

Ralph W. Liebermann, Trustee

Ruth A. Liebermann, Trustee

STATE OF ~~NEVADA~~ Tennessee
COUNTY OF ~~CLARK~~ Shelby

On, April 9, 2002 personally appeared before me, a Notary Public, Ralph W. Liebermann, Trustee, Ruth A. Liebermann, Trustee personally known (or proven) to me to be the person(s) whose name(s) is/are subscribed to the within instrument and who acknowledged that they executed the instrument.

Notary Public in and for said County and State.
Expiration Date - 6/12/04

CLARK COUNTY, NEVADA
JUDITH A. VANDEVER, RECORDER
RECORDED AT REQUEST OF:
LAND TITLE OF NEVADA
04-12-2002 13:50 MSH
OFFICIAL RECORDS
BOOK 20020412 INST 01614
FEE: 14.00 RPTT 825.00

20020412
.01614

State of Nevada
Declaration of Value

1. Assessor's Parcel Number(s)
   a) 125-34-310-047
   b)
   c)
   d)

FOR RECORDER'S OPTIONAL USE ONLY

Document/Instrument #: _____
Book: _____ Page: _____
Date of Recording: _____
Notes: _____

2. Type of Property:
   a) ☐ Vacant Land b) ☒ Single Fam. Res.
   c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
   e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   i) ☐ Other _____

3. Total Value/Sales Price of Property $ 330,000.00
   Deed in Lieu of Foreclosure Only (value of property) $ _____
   Transfer Tax Value $ 330,000.00
   Real Property Transfer Tax Due $ 825.00

4. If exemption Claimed:
   a. Transfer Tax Exemption, per NRS 375.090, Section _____
   b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: Ralph W. Liebermann Capacity: Trustee
Signature: Ralph W. Liebermann Capacity: Individual

SELLER (GRANTOR) INFORMATION (Required)		BUYER (GRANTEE) INFORMATION (Required)	
Print Name:	Ralph W. Liebermann	Print Name:	Ella R. Horst
Address:	1040 ROUNDTREE DR.	Address:	
City:	GALLATIN	City:	
State:	TENN. Zip: 37066	State:	Zip:

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: Land Title of Nevada, Inc. Escrow #: 00235349-KMM
Address: 720 S. Seventh Street
City: Las Vegas State: Nevada Zip: 89101

(AS A PUBLIC RECORD, THIS FORM MAY BE RECORDED/MICROFILMED)

Cont
1614

DECAVAL.wp 14/8

20020612
.01614

State of Nevada
Declaration of Value

1. Assessor's Parcel Number(s)
   a) 175-34-310-047
   b)
   c)
   d)

FOR RECORDER'S OPTIONAL USE ONLY

Document/Instrument #:
Book: Page:
Date of Recording:
Notes:

2. Type of Property:
   a) ☐ Vacant Land b) ☒ Single Fam. Res.
   c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
   e) ☐ Apt. Bldg. f) ☐ Comm'l/Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   i) ☐ Other

3. Total Value/Sales Price of Property $ 330,000.00
   Deed in Lieu of Foreclosure Only (value of property) $
   Transfer Tax Value: $ 330,000.00
   Real Property Transfer Tax Due: $ 825.00

4. If exemption Claimed:
   a. Transfer Tax Exemption, per NRS 375.090, Section
   b. Explain Reason for Exemption:

5. Partial Interest: Percentage being transferred: %

The undersigned declares and acknowledges under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature: Capacity: Trustee
Signature: Capacity: Individual

SELLER (GRANTOR) INFORMATION (Required)		BUYER (GRANTEE) INFORMATION (Required)	
Print Name:	Ralph W. Liebermann	Print Name:	Ella R. Horn
Address:		Address:	1621 E. OGDEN AV.
City:		City:	LAS VEGAS
State:	Zip:	State:	NEV Zip: 89101

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

Print Name: Land Title of Nevada, Inc. Escrow #: 00225349-KMM
Address: 720 S. Seventh Street
City: Las Vegas State: Nevada Zip: 89101

(AS A PUBLIC RECORD, THIS FORM MAY BE RECORDED/MICROFILMED)

1614

CREST KEY, PROF., L.L.C.
6980 O' Bannon Drive, Suite 100
Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879

Exhibit "4"

20080229-0001820

Fee: $15.00 RPTT: EX#004
N/C Fee: $25.00
02/29/2008 11:19:10
T20080034792
Requestor:
E HORST
Debbie Conway ADF
Clark County Recorder Pgs: 3

APN: 125-34-310-047
WHEN RECORDED MAIL TO and
MAIL TAX STATEMENT TO:

Ella Horst
1475 W ROSADA WAY
LAS VEGAS NV 89149

(C3-1)

GRANT, BARGAIN, SALE DEED

R.P.T.T. Exempt 04

THIS INDENTURE WITNESSETH: That

Stella P. Adkins, an unmarried woman

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, do(es) hereby Grant, Bargain, Sell and Convey to

Ella E. Horst, Trustee of the Ella E. Horst Revocable Trust UDT DTD 5-21-91

all that real property situated in the County of Clark, State of Nevada, described as follows:

For legal description of the real property, see Exhibit A attached hereto and made a part hereof.

SUBJECT TO: 1. Taxes for the fiscal year 07-08
2. Rights of Way, reservations, restrictions, easements, and conditions of record.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my hand this 21st day of Feb, 2008.

Stella P. Adkins

STATE OF Oklahoma }
COUNTY OF Creek } ss:

On Feb 21, 2008, personally appeared before me, a Notary Public in and for said County and State, Stella P. Adkins, who acknowledged to me that she executed the same.

WITNESS my hand and official seal.

RAE ANN YOUNG #05008252 NOTARY PUBLIC IN AND FOR STATE OF OKLAHOMA CREEK COUNTY

Rae Ann Young Creek County, Oklahoma
NOTARY PUBLIC in and for said County and State.
Exp Sept 2, 2009

Exhibit "A"

Lot Two (2) of that Certain Parcel Map on File in File 72, Page 40, in the Office of The County Recorder of Clark County, nevada and recorded May 14, 1992 in Book 920504 of Official Records as Document No. 00796.

TO: COMMONWEALTH LAND TITLE INSURANCE COMPANY

NOTARY AFFIDAVIT

(for out of office notary acknowledgement)

I hereby certify, under penalty of perjury, that I am authorized to act as a Notary Public, in and for the County of Creek, State of Oklahoma and that in performing my duties as a Notary Public I have complied with all applicable State and Local Laws.

I notarized the signature of: **Stella P. Adkins**

Date of Notary Acknowledgement: 02/26/08

Type of Identification used: Drivers License

Description of Document(s): Grant, Bargain, Sale Deed

PLEASE ATTACH A PHOTOCOPY OF THE ABOVE MENTIONED IDENTIFICATION.

If there are any questions and/or concerns regarding the notary acknowledgement, COMMONWEALTH LAND TITLE INSURANCE COMPANY Title may contact me, the undersigned Notary Public, at the following location:

Notary Public Name (please print): RaeAnn Young

Notary Public Mailing Address: PO Box 1408 Sapulpa OK 74056

Notary Public Daytime Phone: 918-227-8248

RAE ANN YOUNG #05008252 NOTARY PUBLIC IN AND FOR STATE OF OKLAHOMA CREEK COUNTY

WITNESS my hand and official seal.

RaeAnn Young Creek County Oklahoma
NOTARY PUBLIC in and for said County and State. exp. Sept 2, 2009

This form is a requirement of COMMONWEALTH LAND TITLE INSURANCE COMPANYto be used when escrow documents that require a Notary are signed OUTSIDE of our office by another party. DO NOT attach this form to the document, as it is for internal uses and purposes only and will not be recorded.

STATE OF NEVADA
DECLARATION OF VALUE

1. **Assessor Parcel Number(s)**
   a) 125-34-310-047
   b) _____
   c) _____
   d) _____

2. **Type of Property:**
   a) ☐ Vacant Land b) ☑ Single Fam Res
   c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
   e) ☐ Apt. Bldg f) ☐ Comm'l/Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   Other _____

FOR RECORDER'S OPTIONAL USE ONLY
Book:_____ Page:___
Date of Recording:____
Notes: Gift Deed

3. **Total Value/Sales Price of Property:** $_____
   Deed in Lieu of Foreclosure Only (value of property) ($_____)
   Transfer Tax Value per NRS 375.010, Section 2: $_____
   Real Property Transfer Tax Due: **$ 0.00**

4. **If Exemption Claimed**
   a. Transfer Tax Exemption, per NRS 375.090, Section Exempt 04
   b. Explain Reason for Exemption: Deed removing co-owner without consideration

5. Partial Interest: Percentage being transferred: 25 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. **Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.**

Signature Stella P. Adkins **Capacity** GRANTOR

Signature _____ **Capacity** GRANTEE

SELLER (GRANTOR) INFORMATION (REQUIRED)	**BUYER (GRANTEE) INFORMATION (REQUIRED)**
Print Name: Stella P. Adkins	Print Name: Ella E. Horst Revocable Trust
Address: 702 Overhill Dr.	Address: 7475 W. Rosada Way
City/State/Zip: Las Vegas, Nev 89129	City/State/Zip: Las Vegas, NV. 89149

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

1820

CREST KEY, PROF., L.L.C.
6980 O' Bannon Drive, Suite 100
Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879

Exhibit "5"

11 Oct 2011

Ella E. Horst as Trustee
of the Ella E. Horst Revocable Trust
WDT DTD 5/21/91

I purchased Stella Adkins interest in the property at 7475 W Nevada Way - Las Vegas Nevada 89147. This interest is to be added to my other shares and go to Patricia Horst.

Elizabeth A. Mendré
11 Oct 2011

Ella E. Horst
of the Ella E. Horst Revocable Trust
WDT DTD 5/21/91

Electronically Filed
5/10/2018 10:06 AM
Steven D. Grierson
CLERK OF THE COURT

CERT
Kirk D. Kaplan, Esq.
Nevada Bar No.: 005685
Crest Key, Prof., L.L.C.
6980 O'Bannon Drive, Suite 100
Las Vegas, Nevada 89117
Telephone: (702) 202-4153
Facsimile: (702) 837-1879
kirk@crestkey.com
Attorneys for Petitioner, Patricia L. Horst

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1991,	Date of Hearing: Friday, May 25, 2018 Time of Hearing: 9:30 a.m. Case No. P-18-095314-T Dept. No. PC1

CERTIFICATE OF MAILING

I HEREBY CERTIFY that service of the Notice of Hearing of "Petition To Assume *In Rem* Jurisdiction Over Trust; Petition To Confirm Trust; Petition To Confirm Trustee; Petition For Instructions; And Petition For Removal Of *In Rem* Jurisdiction Over Trust" and the "Petition To Assume *In Rem* Jurisdiction Over Trust; Petition To Confirm Trust; Petition To Confirm Trustee; Petition For Instructions; And Petition For Removal Of *In Rem* Jurisdiction Over Trust" was made this 10 day of May, 2018, by depositing a true and correct copy of the same in the U.S. Mail, postage prepaid, addressed to the following:

William "Bill" R. Horst 7475 W. Rosada Way Las Vegas, NV 89149	Kristi Horst 1000 S. Williams St., #35 Westmont, IL 60559	Robert Holiday 6878 W. Ainsley Circle Highland, UT 85002
Blaine Holiday 1747 Orchard Dr. Woodbury, MN 55125	Jill Holiday Linford 1298 Eastridge Circle Logan, UT 84321	Gail Holiday Herr 10630 E. Realgar Place Tucson, AZ 85747
Kent Holiday 2402 Cedar Court Cody, WY 82414	Craig Holiday 2299 Orange Cove Avenue La Crascenta, CA 91214	Brian Holiday P.O. Bo 104 Ten Sleep, WY 82442
Dawn Holiday Blanchard 3247 E. 81st N. Idaho Falls. ID 83401	Blake Holiday 5403 Rise Bend Lane Katv. TX 77494	Steven Holiday 602 N. Beaufort Ave., Unit B Lubbock, TX 79416

CREST KEY, PROF., L.L.C.
6980 O' Bannon Drive– Suite 100
Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879

Case Number: P-18-095314-T

Nathan Holiday
45 Radiance Lane
Las Flores, CA 92688

The Petition To Assume *In Rem* Jurisdiction Over Trust; Petition To Confirm Trust; Petition To Confirm Trustee; Petition For Instructions; And Petition For Removal Of *In Rem* Jurisdiction Over Trust was mailed to the above interested parties on May 10, 2018.

Dated this 10 day of May, 2018

Jason Sadler

An employee
of CREST KEY, PROF., L.L.C

CREST KEY, PROF., L.L.C.
6980 O' Bannon Drive - Suite 100
Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879

Electronically Filed
5/22/2018 9:17 AM
Steven D. Grierson
CLERK OF THE COURT

NOT
GWEN RUTAR MULLINS, ESQ.
Nevada Bar No. 3146
HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, Nevada 89169
Telephone: (702) 257-1483
Facsimile: (702) 567-1568
Email Address: grm@h2law.com
Attorneys for Brian Holiday

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1991	**CASE NO.: P-18-095314-T** **PROBATE DEPARTMENT PC1**

NOTICE OF APPEARANCE AND REQUEST PURSUANT TO E.D.C.R. 4.08 TO HAVE THE MATTER HEARD BEFORE A PROBATE JUDGE

NOTICE IS HEREBY GIVEN that BRIAN HOLIDAY, one of the residuary beneficiaries under the ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1991, by and through his attorney, Gwen Rutar Mullins, Esq. of HOWARD & HOWARD ATTORNEYS PLLC hereby enter makes a formal appearance before this Court and hereby requests that any contested matter in this case, including the hearing on the Petition to Assume In Rem Jurisdiction Over Trust, Petition to Confirm Trust; Petition to Confirm Trustee; Petition for Instructions; and Petition for Removal of In Rem Jurisdiction Over Trust, which is currently

///

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy, Ste. 1000
Las Vegas, Nevada 89169
(702) 257-1483
(702) 567-1569 Fax

scheduled before Probate Commissioner on May 25, 2018 at 9:30 a.m., be heard before the probate judge in accordance with E.D.C.R. Rule 4.08.

DATED this 17 day of May 2018.

HOWARD & HOWARD ATTORNEYS PLLC

GWEN RUTAR MULLINS, ESQ.
Nevada Bar No. 3146
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, NV 89169
Attorneys for Brian Holiday

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy, Ste. 1000
Las Vegas, Nevada 89169
(702) 257-1483
(702) 567-1569 Fax

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy, Ste. 1000
Las Vegas, Nevada 89169
(702) 257-1483
(702) 567-1569 Fax

CERTIFICATE OF MAILING

I hereby certify that on the 22nd day of May, 2018, I served a true and correct copy of the foregoing NOTICE OF APPEARANCE AND REQUEST PURSUANT TO E.D.C.R. 4.08 TO HAVE THE MATTER HEARD BEFORE A PROBATE JUDGE by placing the above referenced documents in the US Mail first class, postage prepaid, addressed to the following:

Kirk D. Kaplan, Esq.
Crest Key, Prof., L.L.C.
6980 O'Bannon Drive, Ste. 100
Las Vegas, NV 89117
Attorneys for Petitioner Patricia L. Horst

William "Bill" R. Horst
7475 W. Rosada Way
Las Vegas, NV 89149

Blaine Holiday
1747 Orchard Drive
Woodbury, MN 55125

Kent Holiday
2402 Cedar Court
Cody, WY 82414

Dawn Holiday Blanchard
3247 E. 81st N.
Idaho Falls, ID 83401

Kristi Horst
1000 S. Williams St. #35
Westmont, IL 60559

Jill Holiday Linford
1298 Eastridge Circle
Logan, UT 84321

Craig Holiday
2299 Orange Cove Avenue
La Crascenta, CA 91214

Blake Holiday
5403 Rise Bend Lane
Katv, TX 77494

Robert Holiday
6878 W. Ainsley Circle
Highland, UT 85002

Gail Holiday Herr
10630 E. Realgar Place
Tucson, AZ 85747

Steven Holiday
602 N. Beaufort Avenue, Unit B
Lubbock, TX 79416

Nathan Holiday
45 Radiance Lane
Las Flores, CA 92688

and that there is regular communication by mail between the place of mailing and the places so addressed.

An Employee of Howard & Howard Attorneys PLLC

4828-8698-9158, v. 2

DISTRICT COURT
CLARK COUNTY, NEVADA

Probate - Trust/Conservatorships | **COURT MINUTES** | May 25, 2018

P-18-095314-T In the Matter of the Trust of:
Ella E. Horst Revocable Trust

May 25, 2018 **9:30 AM** **Petition - HM**

HEARD BY: Yamashita, Wesley **COURTROOM:** RJC Courtroom 17A

COURT CLERK: Sharon Chun

PARTIES:

Brian Holiday, Other, not present
Ella E. Horst Revocable Trust, Trust, not present
Patricia Horst, Petitioner, not present

Gwen Rutar Mullins, Attorney, present
Kirk Kaplan, Attorney, present

Kirk Kaplan, Attorney, present

JOURNAL ENTRIES

- Petition to Assume In Rem Jurisdiction Over Trust; Petition to Confirm Trust; Petition to Confirm Trustee; Petition for Instructions; and Petition for Removal of In Rem Jurisdiction Over Trust

Pursuant to the "Notice of Appearance And Request Pursuant To EDCR 4.08 To Have the Matter Heard Before A Probate Judge", COMMISSIONER RECOMMENDED, MATTER REFERRED TO JUDGE STURMAN in Department 26.

Counsels were advised they will be notified of a hearing date by the Department 26 Judicial Executive Assistant.

CLERK'S NOTE: A "Referral To District Court Judge" has been distributed to Department 26 - Judge Sturman.

Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

P-18-095314-T

INTERIM CONDITIONS:

FUTURE HEARINGS: *Canceled: May 25, 2018 9:30 AM Petition - HM*

Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

DISTICT COURT
CLARK COUNTY, NEVADA
* * * *

In the Matter of the Trust of: Ella E. Horst Revocable Trust	Case No.: P-18-095314-T Department 26

ORDER SCHEDULING STATUS CHECK

TO: Kirk D. Kaplan; Gwen Rutar Mullins

YOU ARE HEREBY ORDERED TO APPEAR in District Court, 200 Lewis Avenue, Department 26, Courtroom 10D, **June 14, 2018, at 9:30AM** to give status regarding the Probate Commissioner's referral of Petition to Assume In Rem Jurisdiction Over Trust, Petition to Confirm Trust; Petition to Confirm Trustee; Petition for Instructions; and Petition for Removal of In Rem Jurisdiction Over Trust. Following the status report, Court will set the matter for oral argument.

DATED this 31st day of May, 2018.

GLORIA J. STURMAN,
DISTRICT COURT

I hereby certify that on the date filed, I e-served a copy to, or placed a copy in the attorney folder(s) of the following parties;

Kirk D. Kaplan
Gwen Rutar Mullins

Linda Denman
Judicial Executive Assistant

Pg 138

REFERRAL TO DISTRICT COURT JUDGE – Sturman

TODAY'S DATE: 5-25-18

CASE NO.: P: 095314 In the Matter of: Ella E. Horst Revocable Trust

Referred By Probate Commissioner Yamashita or _____

UPON REQUEST OF COUNSEL, PURSUANT TO EDCR 4.08, FOR THE DISTRICT COURT JUDGE TO HEAR:

☐ HEAR THE FOLLOWING SPECIFIC MATTER:

Please See Attached

☐ REFERRED ENTIRE CASE TO BE HEARD BY DISTRICT COURT JUDGE; DISCOVERY DISPUTES HEARD BY DISCOVERY COMMISSIONER

FOR DEPT USE ONLY:

CLERK'S CERTIFICATE

THE UNDERSIGNED CLERK HEREBY CERTIFIES THAT ON THE 25th DAY OF May, 2018, THEY ATTACHED A COPY OF THE MINUTES AND FORWARDED A COPY OF THIS REFERRAL TO THE ASSIGNED DISTRICT COURT JUDGE. THE CANARY YELLOW COPY WAS SCANNED AND LEFT SIDED INTO THE CASE.

STEVEN D. GRIERSON, Clerk of the Court

By: Sharon Chun
Deputy Clerk SHARON CHUN

NOTICE OF HEARING AND CERTIFICATE OF SERVICE

IT IS HEREBY ORDERED THAT:

The above referenced matter will be heard on the 14th day of June, 2018 at 9:30a.in Courtroom ~~3H~~ 10D of the Regional Justice Center before the Honorable Judge Gloria J. Sturman. All parties are required to appear.

ALL COURTESY COPIES ARE DUE TO CHAMBERS NO LATER
*****THAN 5 DAYS BEFORE THE HEARING *****

I hereby certify that on or about the date signed, a copy of this order was Electronically Served and/or Placed in the Attorney's Folders maintained by the clerk of the court and/or transmitted via Facsimile and/or Mailed, postage prepaid, by United States Mail to the proper parties as follows:

~~Rosalyn Navara~~, Judicial Executive Assistant

White: Department 26 Copy Cannary: Clerk's Copy Pink & Goldenrod: Parties Copy

DISTRICT COURT
CLARK COUNTY, NEVADA

Probate - Trust/Conservatorships **COURT MINUTES** **June 14, 2018**

P-18-095314-T In the Matter of the Trust of:
Ella E. Horst Revocable Trust

June 14, 2018 **09:30 AM** **Status Check**

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Shell, Lorna

PARTIES PRESENT:

Patricia L. Horst, Petitioner, Not Present **Kirk D Kaplan, Attorney, Present**

Ella E. Horst Revocable Trust, Trust, Not Present **Kirk D Kaplan, Attorney, Present**

Brian Holiday, Other, Not Present **Gwen Rutar Mullins, Attorney, Present**

JOURNAL ENTRIES

Ms. Mullins stated she needed 30 days to oppose the motion as her client was out of the country; however she would accept this Court taking jurisdiction over the trust.

Following colloquy, COURT ORDERED, Hearing SET.

Mr. Kaplan requested the Court not make and rulings until the hearing.

08/02/18 9:30 AM PETITION TO ASSUME IN REM JURISDICTION OVER TRUST; PETITION TO CONFIRM TRUST; PETITION TO CONFIRM TRUSTEE; PETITION FOR INSTRUCTIONS; AND PETITION FOR REMOVAL OF IN REM JURISDICTION OVER TRUST

INTERIM CONDITIONS:

FUTURE HEARINGS:

Aug 02, 2018 9:30AM Petition
RJC Courtroom 10D Sturman, Gloria

Notice: Journal Entries are prepared by the courtroom clerk and are not the official record of the Court.

Electronically Filed
7/16/2018 1:37 PM
Steven D. Grierson
CLERK OF THE COURT

OBJ
GWEN RUTAR MULLINS, ESQ.
Nevada Bar No. 3146
HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, Nevada 89169
Telephone: (702) 257-1483
Facsimile: (702) 567-1568
Email Address: grm@h2law.com
Attorneys for Brian Holiday

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of

ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1991

CASE NO.: P-18-095314-T

DEPARTMENT 26

OBJECTION TO PATRICIA L. HORST'S PETITION TO CONFIRM TRUSTEE; PETITION FOR INSTRUCTIONS, AND PETITION FOR REMOVAL OF *IN REM* JURISDICTION OVER TRUST AND COUNTER-PETITION TO (1) REMOVE PATRICIA L. HORST AS TRUSTEE AND APPOINT SUCCESSOR TRUSTEE; (2) COMPEL ACCOUNTING AND IMPOSE PERSONAL LIABILITY UNDER NRS 165.148; and (3) FOR INSTRUCTIONS

Date of Hearing: August 2, 2018
Time of Hearing: 9:30 a.m.

BRIAN HOLIDAY, one of the residuary beneficiaries under the ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1991 ("Trust"), by and through his attorney, Gwen Rutar Mullins, Esq. of HOWARD & HOWARD ATTORNEYS PLLC hereby files this Objection objecting, among other things, to Petitioner Patricia L. Horst's Petition to Confirm Trustee, Petition For Instructions and Petition For Removal Of In Rem Jurisdiction Over Trust, filed

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy, Ste. 1000
Las Vegas, Nevada 89169
(702) 257-1483
(702) 567-1569 Fax

Case Number: P-18-095314-T

on May 9, 2018 ("Petition") and Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148, and (3) for Instructions ("Objection and Counter-Petition).[1] In support of the Objection and Counter-Petition, Brian Holiday alleges as follows:

A. Factual Background

1. Ella E. Horst ("Ella") died on October 26, 2016. At the time of her death, Ella was a resident of Clark County, Nevada.

2. Ella was survived by her thirteen (13) grandchildren, namely, Brian Holiday ("Brian"), Patricia L. Horst ("Patricia"), William R. Horst, Kristi Horst, Blaine Holiday, Jill Holiday Linford, Gail Holiday Herr, Kent Holiday Craig Holiday, Dawn Holiday Blanchard, Blake Holiday, Steven Holiday and Nathan Holiday. Ella was also survived by her son-in-law, Robert Holiday.

3. On May 21, 1991, while a resident of the State of California, Ella created a revocable living trust, namely THE ELLA A. HORST REVOCABLE TRUST ("Trust").

4. Upon information and belief, Ella moved to Las Vegas, Nevada sometime in the summer or fall of 2001.

5. Upon information and belief, the Trust was amended on March 6, 1998 while living in Utah after her daughter's death and again on March 16, 2004 and September 26, 2005 after Ella moved to Las Vegas, Nevada and while residing with her granddaughter Patricia.

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy, Ste. 1000
Las Vegas, Nevada 89169
(702) 257-1483
(702) 567-1569 Fax

[1] Brian does not object to Patricia's Petition for this Court to assume i*n rem* jurisdiction over the Trust, confirm the trust, other than those amendments for which Brian is seeking instructions as to their validity under NRS 155.097 is sought or to confirm Patricia Horst as trustee in order to obtain personal jurisdiction over her so that relief sought in the Cross-Petition can be granted, including compelling Patricia to provide an accounting and then remove her as the trustee under the Trust and appoint a Successor Trustee for the Trust.

6. Upon information and belief, Ella had approximately Three Million Dollars in cash and assets in the Trust at the time when she moved to Las Vegas in 2001.

7. Brian found that during her entire life, his grandmother Ella was extremely frugal in nature. For the last 20 years of her life, Ella basically stayed at home, sitting in her chair either watching TV or working on crossword and jigsaw puzzles. Ella's favorite show was "Wheel of Fortune."

8. Upon information and belief, on April 12, 2002, Ella, through her Trust, along with Patricia and Patricia's then partner, Stella P. Adkins, purchased real property commonly known as 7475 West Rosada Way, Las Vegas, Nevada 89149 ("Property"). Upon the purchase, Ella, through her Trust, owned 50% of the Property, while Patricia and her partner Stella P. Adkins each owned 25% interest in the Property.

9. The Property became the residence for Ella, Patricia and Stella P. Atkins. After Stella P. Adkins and Patricia ended their relationship, Ella, through her Trust, acquired Stella P. Atkins's 25% interest and Ella and Patricia continued to reside there.

10. Upon information and belief, at least since September 8, 2008, Patricia's partner, Elizabeth A. Mendre resided at the Property with Ella, until Ella's death. *See* Affidavit of Plaintiff in Support of Request for Summary Disposition for Decree of Divorce, attached hereto as part of **Exhibit F**.

11. Upon information and belief, after Ella's death, Patricia and Elizabeth A. Mendre continued to and presently reside at the Property.

12. Upon information and belief, at the time of the purchase of the Property, Ella, through her Trust, paid fifty percent (50%) of the purchase price in cash. The balance of the purchase price, i.e. the amounts owed by Patricia and Stella P. Adkins for their respective 25% interests in the Property, was evidenced by a loan taken on the Property.

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy, Ste. 1000
Las Vegas, Nevada 89169
(702) 257-1483
(702) 567-1569 Fax

13. Based on Brian's discussions with his grandmother, the mortgage on the Property was to be the sole obligation of Patricia and Stella P. Adkins as it represented their respective portions of the purchase price for their respective 25% interests in the Property.

14. After Patricia and Stella P. Adkins' relationship ended, Stella P. Adkins transferred her 25% interest in the Property to the Trust. Upon such transfer, the Trust owned 75% interest in the Property and Patricia owned 25% interest in the Property.

15. At the time of Ella's death, the Property was owned 75% by the Trust and 25% by Patricia L. Horst.

16. After the purchase of the Property and while Ella and Patricia were living together, Ella amended her Trust on two separate occasions, namely the Second Amendment to the Ella E. Horst Revocable Trust Dated May 21, 1991 on March 16, 2004 ("Second Amendment")[2] and the Third Amendment to the Ella E. Horst Revocable Trust Dated May 21, 1991 on September 26, 2005 ("Third Amendment").

17. The Trust and the First Amendment that Ella made prior to living with Patricia basically treated all the grandchildren equally. On the other hand, both the Second Amendment and the Third Amendment, which were made after Ella moved to Las Vegas and lived with Patricia, are more favorable to Patricia than Ella's other grandchildren.

18. Pursuant to the Second Amendment to the Trust, Patricia was appointed Successor Trustee of the Trust. The Second Amendment further provides that "If for any reason PATRICIA LYNN HORST shall fail or refuse to serve or complete service as Successor Trustee, ELLA A. HORST'S grandson, BLAINE HOLIDAY shall serve as

[2] Although Ella was a resident of Las Vegas Nevada at the time of signing of the Second Amendment, for some reason Ella signed the Second Amendment in the State of Utah. Upon information and belief, since 2001 forward, Ella never resided in Utah.

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy, Ste. 1000
Las Vegas, Nevada 89169
(702) 257-1483
(702) 567-1569 Fax

Successor Trustee. *See* pg. 3 of the Second Amendment to the Ella D. Horst Revocable Declaration of Trust Dated May 1, 1991, attached as part of Exhibit 2 to the Petition.

19. Upon information and belief, on November 18, 2016, Patricia L. Horst accepted her appointment as Successor Trustee and executed an Affidavit of Successor Trustee. A copy of the Affidavit of Successor Trustee is attached hereto as **Exhibit A.**

20. Patricia L. Horst, as Successor Trustee, served a Notice to Beneficiaries, Heirs and Interested Persons of Irrevocable Trust on or about January 27, 2017, upon the beneficiaries of the Trust, including Brian. A copy of the Notice of Beneficiaries, Heirs and Interested Persons of Irrevocable Trust is attached hereto as **Exhibit B.**

21. Pursuant to the Notice to Beneficiaries, Heirs and Interested Persons of Irrevocable Trust, Patricia certified that the Trust was amended on three separate occasions, namely on March 6, 1998 (First Amendment), March 26,2004 (Second Amendment) and September 26, 2005 (Third Amendment).

22. The Notice to Beneficiaries, Heirs and Interested Persons of Irrevocable Trust certified that a "copy of the full Trust agreement and **all Amendments**" were attached to the Notice to Beneficiaries, Heirs and Interested Persons of Irrevocable Trust as Exhibit "A." *Emphasis added. See* **Exhibit B.**

23. Exhibit "A" attached to the Notice to Beneficiaries, Heirs and Interested Persons of Irrevocable Trust included a copy of the Trust, a copy of the First Amendment to the Ella E. Horst Revocable Trust Dated May 21, 1991, a copy of the Second Amendment to the Ella E. Horst Revocable Trust Dated May 21, 1991 and a copy of the Third Amendment to the Ella E. Horst Revocable Trust Dated May 21, 1991. *See* **Exhibit B.**

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24. Pursuant to NRS 165.030, within 75 days after appointment, Patricia, as Successor Trustee, was required to provide a copy of an Inventory of the Trust assets to the Trust's beneficiaries. More specifically, NRS 165.030 provides:

> **NRS 165.030 Inventory of trust property.** Within 75 days after a trustee receives possession of trust property, the trustee shall serve a copy of an inventory setting forth all the trust property which has come into the possession or knowledge of the trustee. The trustee shall serve the notice in the manner set forth in NRS 155.010 to each interested person and beneficiary to whom the trustee is required to account pursuant to this chapter.

25. Ella Horst died on October 26, 2016 and Patricia accepted and assumed the responsibilities of the Successor Trustee of the Trust on November 18, 2016. Accordingly, Patricia, as Successor Trustee would have presumably come into possession of the trust property of the Trust on November 18, 2016.

26. Pursuant to NRS 165.030, the Patricia as the Successor Trustee of the Trust was, therefore, required to serve a copy of the inventory of the assets of the Trust on the Trust's beneficiaries, including Brian, by no later than February 1, 2017.

27. Patricia did not serve a copy of an inventory as required pursuant to NRS 165.030. In fact, a copy of the Inventory was not provided until June 27, 2017 despite of numerous prior requests made by Brian. In fact, it was not until Brian retained counsel that a copy of Inventory was finally provided to him on June 27, 2017.[3] A copy of June 27, 2017 letter from Kristin M. Tyler of the law firm of Garman Turner Gordon, the Trust's counsel, along with a copy of the Trust's Inventory is attached hereto as **Exhibit C**.[4]

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[3] Based on the significant value of Ella's assets prior to moving to Las Vegas and in view of the fact that Ella's standard of living or frugality did not change after her move, Brian has grave concerns that the Inventory presented by Patricia does not accurately portray all of Ella's assets that she had at the time of her death due to Patricia's inexperience as a trustee and her inability to locate them. Alternatively, Brian wants to make sure that Ella's and/or Trust assets were not improperly transferred or spent by any undue influence of Patricia.

[4] Although the letter with Inventory was addressed to Brian Holiday's counsel only, upon information and belief, it appears that the remaining Trust beneficiaries were also provided with a copy of Trust's Inventory.

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28. Additionally, in a June 2, 2017 e-mail, Ms. Tyler indicated that the Trust accounting would be provided shortly after Ms. Tyler's meeting with Patricia on June 19, 2017. A copy of June 2, 2017 e-mail from Ms. Tyler is attached as **Exhibit D**.

29. Despite numerous requests being made, to date, no Trust Accounting has been provided by Patricia to Brian or to other beneficiaries under the Trust.

30. On May 9, 2018, Patricia filed her pending Petition asking this Court to assume in rem jurisdiction over the Trust, confirm Patricia as trustee for the sole reason of Patricia now asking the Court of find that the handwritten note, which was attached as Exhibit "5" to the Petition should be deemed as an amendment to the Trust and thereby she is entitled to receive the entire 75% interest in the Property. *See* ¶ 24, pg. 5 of the Petition.

B. The Court Should Assume In Rem Jurisdiction over the Trust.

31. Brian has no objection to this Court assuming in rem jurisdiction over the Trust. The Court has in rem jurisdiction pursuant to NRS 164.010. Therefore, pursuant to NRS 164.010, this Court should assume jurisdiction over the Trust.

C. Handwritten Letter Does Not Constitute a Valid Amendment to the Trust and the Court Should Instruct Patricia Accordingly.

32. In her Petition, just like in the Notice to Beneficiaries, Heirs and Interested Persons of Irrevocable Trust that she served on the Trust beneficiaries, Patricia asserts that the Trust was amended by Ella on three separate occasions, namely on March 6, 1998 (the First Amendment to the Trust), on March 16, 2004 (the Second Amendment to the Trust) and on September 26, 2005 (the Third Amendment to the Trust.)[5] *See* ¶ 3, pg. 2 of the Petition.

33. The Petition specifically states that "A copy of the Trust and **all amendments are attached hereto and incorporated herein as Exhibit "2").** E*mphasis added. Id.* The

[5] Brian seeks instructions from this Court as to whether Second Amendment and Third Amendment to the Trust are void pursuant to NRS Chapter 154. See Part C of this Objection and Counter-Petition.

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Notice to Beneficiaries, Heirs and Interested Persons of Irrevocable Trust (**Exhibit B**) also certified that a "copy of the full Trust agreement and **all Amendments**" were attached to the Notice to Beneficiaries, Heirs and Interested Persons of Irrevocable Trust as Exhibit "A." *Emphasis added.*

34. Despite the fact that the Notice to Beneficiaries, Heirs and Interested Persons of Irrevocable Trust, Petition and the Exhibit "2" to the Petition, which were all prepared by Patricia and/or her then-counsel, specifically state that the Trust was amended on three (3) occasions, Patricia, in her capacity as Successor Trustee, now seeks instructions from this Court asserting that the handwritten letter, a copy of which is attached hereto as **Exhibit E**,[6] is another amendment to the Trust[7] and that based thereon "distribution to Patricia Lynn Horst of the undivided three-quarter (75%) interest of the trust in and to the Property is appropriate." **See** Petition, ¶ 24, pg. 5.

35. At no time did the Notice Beneficiaries, Heirs and Interested Persons of Irrevocable Trust mention a handwritten letter, let alone include it as being an amendment to the Trust. Yet, now all of the sudden Patricia wants this Court to deem it as an amendment to the Trust. In fact, until this Petition was served, Brian, and presumably all other Trust beneficiaries, had no knowledge of existence such handwritten letter or the fact that Patricia, would now self-servingly assert that the handwritten letter constitutes an amendment of the Trust.

36. There are several grounds under which this Court can and should deny Patricia's request and find that the handwritten letter does not constitute valid amendment to the Trust or otherwise transfers 75% interest of the Property to Patricia as Patricia now

[6] The handwritten letter is also attached as Exhibit 5 to Patricia's Petition.

[7] Thus, Patricia now contends that the Trust was amended on four (4) and not three (3) occasions.

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asserts. For the most part, these same grounds substantiate the good faith and probable cause of the factual issues relating to the validity of the Second Amendment and Third Amendment to the Trust. However, these issues are not presented as a challenge to the Trust. The only request before this Court relative the Second and Third Amendment is simply a petition for instructions whether Second Amendment and Third Amendment are presumably void pursuant to NRS 155.097.

37. Pursuant to NRS 111.240, the handwritten letter, as it is clearly intended to affect an interest in the real property, to be a valid conveyance document, would have had to have been acknowledged by a Notary Public. More specifically, NRS 111.240 provides:

> **NRS 111.240 Acknowledgment of conveyances.** Every conveyance in writing whereby any real property is conveyed or may be affected must be acknowledged or proved and certified in the manner provided in this chapter and in NRS 240.161 to 240.169, inclusive.

38. The handwritten letter was not acknowledged as required under NRS 111.240.

39. Also, it is telling that in her Petition, Patricia fails to mention the fact that Patricia lived with Ella until Ella's death. It is telling that in her Petition, Patricia fails to provide any reason why Ella would "amend" the Trust with a handwritten letter rather than by a formal amendment as she have done in the past.

40. From prior amendments to the Trust, Ella was clearly aware of the procedure to be taken when amending her Trust. This procedure was followed by her with the prior amendments of the Trust. Thus, if it was her intent or desire to amend the terms of the Trust for Patricia to receive the Trust's 75% interest in the Property, as now being alleged by Patricia, Ella would have undoubtedly amended the Trust in the same manner as she had done

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in the past. Ella clearly had ample time to formally amend the Trust had she intended to do so.[8] She did not!

41. Furthermore, there are other grounds that make the handwritten letter suspect.

42. First, despite the fact that Patricia has accepted her appointment as successor trustee on November 18, 2016, Patricia fails to mention that the existence of the handwritten letter until the filing of this Petition on May 9, 2018, almost a year and a half later. It is highly suspicious that the handwritten letter "appeared" and contention that it is an amendment to the Trust was made by Patricia only after Brian inquired about the status of the loan(s) that were believed to have been made by Ella to Patricia[9] and only after Brian sought information from Patricia relative the mortgage on the Property and how the mortgage on the Property (which was the obligation of Patricia) was paid.

43. Second, Patricia fails to provide any reason whatsoever why the handwritten letter was not presented to the beneficiaries as an alleged amendment to the Trust prior to filing this Petition or the reason for the delay in presenting it to the Court as "evidence" of being an amendment to the Trust.

44. Third, Patricia fails to advise the Court that the handwritten letter that she asks this Court to find to be an amendment of the Trust was allegedly "witnessed" by Patricia's partner Elizabeth Mendre, who was, and upon information and belief is still, residing with Patricia and Ella at the time. Also, it appears suspect that Patricia would not have known about the handwritten letter before, as it is likely that she would have been also present at the

[8] The handwritten note was allegedly signed on October 11, 2011. Ella did not die until October 26, 2016. Ella had over five (5) years to formally amend the Trust, should that have been her desire. Clearly, Ella was aware on how to amend the Trust, as she had done so previously, and had she intended to amend the Trust she certainly would have reached out to her attorney as she had done in the past.

[9] During his visits, Ella on several occasions referenced the mortgage and the loan that she made to Patricia for her interest in the Property. However, although the Initial Inventory provided to Brian referenced an accounts receivable relating to Kent Holiday's loan, no such reference was made for the loan that Brian was told by Ella she made to Patricia.

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time of signing or at minimum would have access to all of Ella's documents immediately upon Ella's death as the handwritten letter would most likely be kept by Ella in her room on the Property, to which Patricia had unfettered access.

45. Moreover, as shown by Elizabeth Mendre's documents filed in her divorce proceedings attached as **Exhibit F** and incorporated herein by this reference, it is even suspect whether or not it is actually Elizabeth Mendre's signature on the handwritten letter. Elizabeth Mendre's signature on **Exhibit F**, which is her signature on file with the Court in her divorce proceeding, is clearly not the same as her signature on the handwritten letter that Patricia attached as Exhibit 5 to her Petition. *See* **Exhibit E.** The two signatures appear to be quite different.

46. Finally, the handwritten letter, even if it was meant to amend the Trust is presumed to be void pursuant to NRS 155.097.

47. NRS 155.097 provides in pertinent part as follows:

> **NRS 155.097 Validity; circumstances in which transfer is presumed void; rebuttable presumption; exceptions.**
>
> 1. **Regardless of when a transfer instrument is made, to the extent the court finds that a transfer was the product of fraud, duress or undue influence, the transfer is void and each transferee who is found responsible for the fraud, duress or undue influence shall bear the costs of the proceedings, including, without limitation, reasonable attorney's fees.**
>
> 2. Except as otherwise provided in subsection 4 and NRS 155.0975, **a transfer is presumed to be void if the transfer is to a transferee who is:**
>
> (a) The person who drafted the transfer instrument;
>
> (b) A caregiver of the transferor who is a dependent adult;
>
> (c) **A person who materially participated in formulating the dispositive provisions of the transfer instrument or paid for the drafting of the transfer instrument**; or
>
> (d) **A person who is related to, affiliated with or subordinate to any person described in paragraph (a), (b) or (c).**
>
> 3. The presumption created by this section is a presumption concerning the burden of proof and may be rebutted by proving, by clear

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and convincing evidence that the donative transfer was not the product of fraud, duress or undue influence.

Emphasis Added.

48. NRS 155.0955 provides:

> **NRS 155.0955 "Transfer instrument" defined. "Transfer instrument" means a legal document intended to effectuate a transfer of property for less than fair market value, whether such transfer becomes effective during the life of the transferor or on or after the transferor's death and includes, without limitation:**
>
> 1. A will;
> 2. **A trust;**
> 3. A deed; and
> 4. Any form, contract or other document which:
>
> (a) Creates, conveys or transfers any interest in property;
> (b) Creates any type of joint ownership;
> (c) Establishes a right of survivorship;
> (d) Designates a beneficiary;
> (e) Adds an authorized signer on any bank or brokerage account;
> (f) Creates or attempts to effectuate a nonprobate transfer to be effective upon the death of the transferor; or
> (g) **Is intended to amend, modify, eliminate, supersede or revoke any other transfer instrument.**

Emphasis Added.

49. NRS 155.0975 provides in pertinent part:

> **NRS 155.0975 Exceptions to presumption that certain transfers are void.** The presumption established by NRS 155.097 does not apply:
>
> 1. To the spouse of the transferor.
> 2. To a transfer of property which is triggered by the transferor's death if the transferee is an heir of the transferor and the combined value of all transfers received by that transferee is not greater than the share the transferee would be entitled to pursuant to chapter 134 of NRS if the testator had died intestate and the transferor's estate included all nonprobate transfers which are triggered by the death of the transferor.
> 3. Except as otherwise provided in this subsection, if the court determines, upon clear and convincing evidence, that the transfer was not the product of fraud, duress or undue influence. The determination of the court pursuant to this subsection must not be based solely upon the testimony of a person described in subsection 2 of NRS 155.097.

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50. The fact that Ella lived with Patricia and Patricia's partner Elizabeth Mendre, it is likely that Patricia and/or Elizabeth Mendre materially participated in formulating the alleged dispositive provision of the Trust's 75% interest in the Property found in the handwritten letter, which was allegedly written and signed by Ella. The fact that Elizabeth Mendre allegedly witnessed the letter supports this. It is likely that Patricia was also present at the time or had discussions with Ella about it.[10]

51. Even if Patricia and Elizabeth Mendre did not participate in the handwritten letter, which clearly was not the case as Elizabeth Mendre allegedly "witnessed" Ella's letter, the supposed transfer of the 25% Trust's interest in the Property is deemed presumably void because Patricia, the transferee, is "related to, affiliated with or subordinate to any person described in paragraph (a), (b) or (c).

52. Pursuant to NRS 155.097(3), unless the Court finds by clear and convincing evidence that the transfer in the handwritten letter was not a product of fraud, duress or undue influence, the handwritten letter, even if determined by the Court that it was an amendment to the Trust, would be deemed void as a matter of law.

D. Patricia's Petition to Confirm Trust Should be Granted In Part Only. Brian, in Good Faith and Upon Probable Cause, Seeks Instructions from the Court as to Validity of Second Amendment and Third Amendment of the Trust Pursuant to NRS 155.

53. Patricia's Petition further seeks confirmation of the Trust dated May 21, 1991. Brian does not dispute the existence of the May 21, 1991 Trust, the fact that Ella on May 21, 1991 created a Trust or the fact that Ella was competent at the time she created her Trust. Therefore, Brian has no objection if the Court confirms the Trust dated May 21, 1991.

[10] Therefore, it is really curious why the handwritten letter would not have been presented to the Trust beneficiaries before now as the supposed amendment to the Trust.

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Furthermore, Brian has no objection if the Court also confirms the validity of the First Amendment to the Trust made on March 6, 1998 ("First Amendment").

54. The question before this Court, or the instruction sought by Brian from this Court, is whether the Second Amendment and Third Amendment, like the handwritten letter, are presumably void pursuant to NRS 155.097. For the reasons stated in Part C of this Opposition and Counter-Petition, which argument is incorporated herein by this reference, Brian, in good faith and upon probable cause, brings this Petition for Instructions pursuant to NRS 153.031 (1)(b) and (d)[11] for a judicial determination whether, as a matter of law, the Second Amendment and Third Amendment would be presumed void under NRS 155.097.

55. Patricia's actions, as evidenced with the filing of this Petition and assertions made therein, and the fact that Ella's assets appeared to have diminished significantly after Ella moved to Las Vegas and lived with Patricia, not only make the handwritten letter presumably void, but also makes the Second Amendment and the Third Amendment suspect as well. Like the handwritten letter, the Second Amendment and the Third Amendment, although made more formally, were also made while Ella resided with Patricia. It is unclear whether or not Patricia in any way participated in the Second Amendment and/or the Third Amendment to the Trust. It is clear however, that prior to the Second Amendment and the Third Amendment Ella basically treated all of her grandchildren equally. However, once Ella moved to Las Vegas, not only did Ella "lose" significant amount of her estate, but also after that point, Ella's amendments to the Trust all of the sudden started to favor Patricia over all other grandchildren. Is the reason for this because Patricia exercised undue influence over her grandmother? Brian seeks instructions from the Court whether under these surrounding

[11] NRS §153.031(1) (b) and (d) provides that Brian as a beneficiary under the Trust "may petition the court regarding any aspect of the affairs of the trust, including: (b) determining the construction of the trust instrument; and (d) determining the validity of a provision of a trust.

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circumstances the Second Amendment and the Third Amendment are presumed void pursuant to NRS 155 unless Patricia can present clear and convincing evidence to refute this statutory presumption.

56. As with the handwritten letter, unless the Court determines, upon clear and convincing evidence, that these transfers were not a product of fraud, duress or undue influence, the Second Amendment and the Third Amendment to the Trust would be deemed void as a matter of law pursuant to NRS 155.097.

E. This Court Should Compel An Accounting of the Trust.

57. An accounting of the Trust is necessary in order to provide absolute transparency of Patricia's asset management. Despite the fact that Patricia accepted the appointment of successor trustee on November 18, 2016, to date, no accounting has been provided, despite prior requests or despite representations that accounting would be provided shortly after Patricia's meeting with her then counsel Kristin Tyler on June 19, 2017.

58. NRS 165.138 governs demands for an accounting by a beneficiary and requires a trustee to make a full and timely disclosure of trust assets as set forth in NRS 165.138. NRS 165.138(1) provides:

> **NRS 165.138 Written demand for account by beneficiary: General duties of trustee; power to provide account or information without demand.**
>
> 1. Notwithstanding any provision to the contrary in the trust instrument, but subject to the right of the trustee to petition the court for further instructions pursuant to subsection 2 of NRS 165.148, and subject to the exceptions set forth under paragraph (b) of subsection 1 of NRS 165.1207, a trustee shall provide an account conforming with the requirements of NRS 165.135 to a beneficiary pursuant to a demand by such beneficiary pursuant to NRS 165.141.

59. Here, Brian and his attorneys have made various requests to provide information relating to the Trust, including an account, but to no avail. As a beneficiary of

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the Trust, Brian is entitled to a full and frank disclosures of the Trust assets and this Court should compel Patricia to do provide a full Trust accounting within the next 60 days.

60. In addition to compelling an accounting, Brian also asks this Court to hold Patricia personally liable for his attorney's fees and costs for having to seek an accounting that he has always been entitled to as a matter of right. NRS 165.148 specifically grants this Court with authority to do so. NRS 165.148 states as follows:

> **NRS 165.148 Personal liability of trustee for failing to provide account; exceptions.**
>
> 1. Unless the court determines that the trustee was acting in good faith, a trustee who fails to provide an account pursuant to the terms of the trust instrument, or when required pursuant to the provision of this chapter, is **personally liable to each person entitled to receive an account who demanded the account in writing pursuant to this chapter or all costs reasonably incurred by each such person to enforce the terms of the trust or this chapter, including, without limitation, reasonable attorney's fees and court costs. The trustee shall not expend trust funds to satisfy the trustee's personal liability imposed under this subsection.**

Emphasis Added.

61. Here, there is absolutely no good cause for Patricia to withhold an accounting from Brian, or to any other beneficiaries of the Trust. Despite, promises that an accounting would be provided, Patricia failed to provide an accounting previously requested. Brian should be compensated (and Patricia punished) for having to bring this Counter-Petition in order to compel a task that is required to be made by a trustee. Accordingly, Brian respectfully requests that this Court orders Patricia to reimburse Brian personally for the fees and costs incurred by Brian in this regard.

F. This Court Should Order an Audit.

62. In addition to the accounting that Patricia is required to provide, Brian respectfully requests that this Court order a full and complete audit of the Trust and Ella's assets from 2000 forward.

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63. The Initial Inventory provided by Patricia on or about June 27, 2017, set forth assets of the Trust as of October 31, 2016 totaling $741,723.75. The assets listed in the Initial Inventory of the Trust are significantly less than the assets that Ella had when she moved to Las Vegas in 2001. Again, based on the information known to Brian, Ella had an estate valued around Three Million Dollars at the time she moved to Las Vegas, Nevada.

64. Despite having a significant estate, Ella was always very frugal. Since Ella was frugal in nature and basically sat in her chair watching her favorite TV shows for the past twenty years of her life, it is highly suspect as to what happened to Ella's assets to drastically reduce the value of her Estate. Since Ella had moved to Las Vegas and lived with Patricia, it appears that more than 75% of her estate had dwindled away. Per the Trust Inventory provided by Patricia, basically the only assets left to be distributed under the Trust are the two houses, which remarkably are to be distributed to Patricia.

65. A full and complete audit is clearly necessary to determine what happened to the majority of Ella's estate after her co-habitation with Patricia. Ella's standard or manner of living did not change after her move to Las Vegas which would have accounted for the diminution of the majority of her Estate. The audit would reveal the reasons for the diminution, including but not limited to, (a) whether or not the diminution of Ella's assets was a result of any fraud, duress or undue influence; (b) whether or not Ella's estate was diminished through any transfers made to Patricia that would then be presumably void pursuant to NRS 155.097; or (c) whether the Trust paid any personal obligations or debts of Patricia, including the mortgage on the Property. Alternatively, the audit may reveal significant amount of assets that are still owned by the Trust but which Patricia had no knowledge about and was unable to uncover during the administration of the Estate. Without the audit, it is almost impossible to determine if, how and why Ella's significant estate

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dwindled down by more than 75% of her original estate value since her move to Las Vegas and after Ella lived with Patricia. For those reasons, the Court should order an independent, complete and full audit of the Trust. Brian had previously offered to pay for the cost of such an audit and he is still willing to personally bear the expense of such audit.

G. Patricia as Successor Trustee Breached her Fiduciary Duty when She Failed to Timely Serve a Copy of the Inventory as provided under NRS 165.030.

66. Pursuant to Nevada law, Patricia was required to serve a copy of the Inventory of the Trust assets on all interested parties and the beneficiaries of the Trust.

67. More specifically, NRS 165.030 provides as follows:

> **NRS 165.030 Inventory of trust property.** Within 75 days after a trustee receives possession of trust property, the trustee shall serve a copy of an inventory setting forth all the trust property which has come into the possession or knowledge of the trustee. The trustee shall serve the notice in the manner set forth in NRS 155.010 to each interested person and beneficiary to whom the trustee is required to account pursuant to this chapter.

68. As there is nothing contrary in the Trust documents, pursuant to NRS 165.030, Patricia as Successor Trustee of the Trust was required to serve a copy of an inventory setting forth all of the trust property which has come into her possession or knowledge of trustee within "75 days after trustee receives possession of trust property". *See* NRS 165.030. Thus, pursuant to NRS 165.030, Patricia as the successor trustee of the Trust was required to provide a complete list of inventory by no later than February 1, 2017.

69. Patricia as Successor Trustee of the Trust did not provide a copy of the inventory of the Trust assets within 75 days as required under NRS 165.030. In fact, it was only after numerous demands upon her and her counsel that an Initial Inventory was provided to Brian on June 27, 2017, about 7 months after Patricia accepted appointment as Successor

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Trustee. Patricia's failure to timely serve Inventory as required pursuant to NRS 165.030 is a breach of her fiduciary duty.

H. Patricia as Successor Trustee Breached her Fiduciary Duty when She Failed to Provide Trust Accounting.

70. Pursuant to NRS 165.1204, Patricia has a duty to account for the trust estate in accordance with the provisions of NRS 165.1201 to 165.148, inclusive. NRS 165.1207 requires Patricia to deliver an account, upon demand pursuant to NRS 165.141, to each current beneficiary, and to each remainder beneficiary of the trust. Pursuant to NRS 165.1214, Patricia is required to deliver accounting within 90 days after the end of period of account.

71. Patricia accepted her appointment as successor trustee of the Trust on November 18, 2016. The annual accounting for period of November 18, 2016 through November 17, 2017 was due by February 15, 2018. To date, Patricia has failed to provide Trust accounting to the Trust beneficiaries, including Brian, notwithstanding Brian's prior demands for such an accounting. Patricia's failure to provide an accounting is a breach of her fiduciary duty.

I. This Court Should Remove Patricia as Trustee and Appoint a Successor Trustee.

72. Based on Patricia's utter refusal to properly act as a fiduciary of the Trust, her blatant breaches of her duties owed to the beneficiaries of the Trust and evident conflict of interest, this Court should remove Patricia as trustee and appoint a successor trustee in her place. As a trustee, Patricia has only acted in her own best interest and not in the interests of the remaining beneficiaries. This is evidenced by Patricia's failure to comply with her obligations under the Nevada law as well as her current Petition for Instructions in which she is seeking an order from this Court finding the handwritten letter to be an amendment to the Trust which in turn would transfer a 25% interest in the Property to Patricia instead of such

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25% interest in the Property being distributed among the residuary beneficiaries of the Trust. Patricia is clearly conflicted and is placing her interest before the interests of remaining beneficiaries. In the event Patricia's Petition is granted, it is likely that Patricia would possibly be the only beneficiary that actually receives a distribution from the Trust, after payment of Trust expenses,[12] in view that Ella's estate has been inexplicably and significantly reduced since her move to Las Vegas and while living with Patricia.

73. Also, it is astonishing that the handwritten letter "appeared" only after Brian made inquiries on any loans that were made by Ella to Patricia and only after he sought information relative the status of the loan on the Property and how the mortgage on the Property (which was the obligation of Patricia) was being paid. Prior to those inquiries, Patricia contended that there were only three amendments to the Trust. Now all of the sudden, miraculously another "amendment" appears which conveniently gives her the remaining interest in the Property.

74. Patricia's actions during the trust administration, including the filing of this current Petition, rose suspicion of self-dealing and potential undue influence which in turn brought the validity of the Second Amendment and the Third Amendment into question. Also, it arose suspicions that Ella's significant estate may have been improperly transferred as it appears that fraud, duress, undue influence or other foul play may have played a part, thus resulting in unequal Trust distribution among Ella's grandchildren.

75. As a result of the breach of fiduciary duties and in order to assure that independent review of Trust administration can be made and determine whether undue influence or other foul play played a part in diminishing the value of Ella's estate or whether

[12] As no accounting has yet been provided, it is difficult to determine what, if any, distribution the remaining beneficiaries would actually receive.

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Patricia had otherwise taken advantage of Ella and thereby caused a drastic reduction of Ella's estate for Patricia's benefit and detriment of the remaining grandchildren, Brian requests that this Court remove Patricia as the Successor Trustee pursuant to NRS 153.031(1)(k), and appoint Blaine Holiday as the successor trustee of the Trust. *See* Second Amendment, pg. 3.[13] If for some reason Blaine Holiday does not accept his appointment, then Brian respectfully requests this Court to appoint an independent trustee.

J. Brian Should be allowed to Conduct Discovery on the Contested Matters.

76. Pursuant to E.D.C.R. Rule 4.16 and Rule 4.17, Brian should be allowed to conduct discovery on all of the contested matters relating to Patricia's Petition as well as the Counter-Petition, including but not limited to the circumstances surrounding the amendments, the handwritten letter, or to otherwise determine what happened to the majority of Ella's estate after her co-habitation with Patricia. Again, Ella's standard or manner of living did not change after her move to Las Vegas which would have accounted for the diminution of the majority of her Estate. Discovery would reveal the reasons for the diminution, including but not limited to, (a) whether or not the diminution of Ella's assets was a result of any fraud, duress or undue influence; (b) whether or not Ella's estate was diminished through any transfers made to Patricia that would then be presumably void pursuant to NRS 155.097; or (c) whether the Trust paid any personal obligations or debts of Patricia, including the mortgage on the Property.

77. Pursuant to E.D.C.R. Rules 4.16 and 4.17, Brian hereby requests for this Court to set a discovery schedule and allow Brian to conduct discovery on the contested matters

[13] Despite the fact that the Court may deem the Second Amendment void as it pertains to transfer or distribution pursuant to NRS 155.097, the Second Amendment appointing Successor Trustees should remain valid. Pursuant to the Second Amendment Blaine Holiday was to be appointed as successor trustee upon Patricia's removal.

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pending before this Court, which contested matters involve disputed issues of material fact.

K. The Removal of In Rem Jurisdiction Over Trust Is Not Appropriate At this Time.

78. In her Petition, Patricia requests that the Court should assume in rem jurisdiction for "the limited purpose of reviewing and confirming trust instrument, confirm the trustee of the Trust, and declaring assets of the Trust" and that the Court, after the hearing on Patricia's Petition, should "release the jurisdiction over the Trust." *See* Petition, ¶¶26-27, pg. 5.

79. In his Objection and Counter-Petition, Brian has raised various concerns and issues which requires further Court involvement. Thus, it is inappropriate for this Court to release the jurisdiction over the Trust at this time. Brian, therefore requests that this Court deny Patricia's Petition for Removal of in Rem Jurisdiction over Trust/NRS §164.010(3) and retain jurisdiction over the Trust.

For the foregoing reasons, Brian respectfully requests that this Court:

a. Assume in rem jurisdiction over the Trust;
b. Grant Brian's Counter-Petition in its entirety
c. Enter an Order finding that Patricia breached her fiduciary duties under the Trust;
d. Enter an Order requiring Patricia to serve an accounting of the Trust from November 18, 2016 through the date of her removal;
e. Enter an Order allowing audit of the Trust to proceed to determine the reason for significant diminution of Ella's estate after Ella moved to Las Vegas Nevada and co-habited with Patricia;
f. Enter an Order that Patricia be removed as successor trustee of the Trust and that Blaine Holiday be appointed as the Successor Trustee of the Trust;
g. Enter an Order that Patricia be surcharged for the attorneys' fees and costs expended by Patricia on her Petition for Instructions as well as order Patricia

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to pay for the attorney's fees and costs incurred by Brian on the Counter-Petition;

h. Enter a discovery scheduling order allowing parties to conduct discovery on the contested matters before this Court;

i. Enter an Order denying Patricia's request for removal of the Trust from continuing jurisdiction of the Court and for the Court to retain the jurisdiction of the Trust; and

j. For such other and further relief as this Court seems just and equitable in the premises.

DATED this 16 day of July 2018.

HOWARD & HOWARD ATTORNEYS PLLC

GWEN RUTAR MULLINS, ESQ.
Nevada Bar No. 3146
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, NV 89169
Attorneys for Brian Holiday

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VERIFICATION

I, Brian Holiday, declare that:

(1) I am submitting this Objection to Patricia L. Horst's Petition to Confirm Trustee; Petition for Instructions, and Petition for Removal of In Rem Jurisdiction over Trust and Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) For Instructions ("Objection and Counter-Petition").

(2) I have read the Objection and Counter-Petition and know the contents thereof; and the same are true to the best of my own personal knowledge, except for those statements made upon information and belief; and, as to those statements, I believe them to be true.

(3) I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct and if called upon as a witness I could and would competently testify thereto.

Dated this 16 day of July, 2018.

Brian Holiday

EXHIBIT A

AFFIDAVIT OF SUCCESSOR TRUSTEE

(See Attached)

EXHIBIT A

APN: 138-03-511-061

APN: 125-34-310-047

Prepared by:

GARMAN TURNER GORDON LLP
650 WHITE DRIVE, SUITE 100
LAS VEGAS, NV 89119

When Recorded, Mail to:

PATRICIA L. HORST
7475 W ROSADA WAY
Las Vegas, NV 89149

AFFIDAVIT OF SUCCESSOR TRUSTEE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

PATRICIA L. HORST, being first duly sworn, deposes and says as follows:

1. On May 21, 1991, ELLA E. HORST, as Grantor and Trustee, executed a document entitled "THE ELLA E. HORST REVOCABLE TRUST" (herein "Trust").

2. The Trust was amended on March 6; 1998, March 16, 2004 and September 26, 2005.

3. ELLA E. HORST died on October 26, 2016 (see certified copy of her death certificate attached as **Exhibit 1**).

4. ARTICLE VIII of the Trust as amended on March 16, 2004 provides that upon the death of the Grantor that PATRICIA L. HORST is appointed as Successor Trustee of all trusts created under the Trust.

5. PATRICIA L. HORST hereby accepts and assumes the duties of Successor Trustee of "THE ELLA E. HORST REVOCABLE TRUST," dated May 21, 1991, as amended from time to time.

6. Real property located at 7125 Village Shore Court, Las Vegas, NV 89129 (A.P.N. 138-03-511-061) in the County of Clark, State of Nevada, more particularly

described in **Exhibit 2** was conveyed to "THE ELLA E. HORST REVOCABLE TRUST," dated May 21, 1991.

7. A 75% interest in real property located at 7475 Rosada Way, Las Vegas, NV 89149 (A.P.N. 125-34-310-047) in the County of Clark, State of Nevada, more particularly described in **Exhibit 3** was conveyed to "THE ELLA E. HORST REVOCABLE TRUST," dated May 21, 1991.

8. PATRICIA L. HORST as Successor Trustee has, among other powers, the power to sell, exchange, lease and otherwise engage in transactions involving trust assets as the Trustee deems appropriate. Trustee has the power to make all types of investments without limitation. These powers include the powers enumerated in NRS 163.265 to 163.410.

Dated this 18th day of November, 2016.

By: Patricia L Horst
PATRICIA L. HORST

STATE OF NEVADA)
) ss.:
COUNTY OF CLARK)

On November 18, 2016, before me, RaeAnna M. Burd, a Notary Public, personally appeared PATRICIA L. HORST, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing **AFFIDAVIT OF SUCCESSOR TRUSTEE** and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity on behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

RaeAnna Burd
Notary Public

RAEANNA BURD
Notary Public, State of Nevada
Appointment No. 14-14142-3
My Appt. Expires Jul 10, 2018

STATE OF NEVADA

CERTIFICATION OF VITAL RECORD

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
VITAL STATISTICS

CERTIFICATE OF DEATH

CASE FILE NO. 3922401

2016019498
STATE FILE NUMBER

TYPE OR PRINT IN PERMANENT BLACK INK

DECEDENT

1a. DECEASED-NAME (FIRST, MIDDLE, LAST, SUFFIX)			2. DATE OF DEATH (Mo/Day/Year)	3a. COUNTY OF DEATH
Ella Elizabeth		HORST	October 26, 2016	Clark

3b. CITY, TOWN, OR LOCATION OF DEATH	3c. HOSPITAL OR OTHER INSTITUTION -Name(If not other, give street no.)	3d. If Hosp. or Inst. indicate DOA,OP,Emer. Rm. Inpatient(Specify)	4. SEX
Las Vegas	Centennial Hills Hospital Medical Center	Inpatient	Female

5. RACE (Specify)	6. Hispanic Origin? Specify No= Non-Hispanic	7a. AGE-Last Birthday (Years)	7b. UNDER 1 YEAR MOS. / DAYS	7c. UNDER 24 HR HOURS / MINS	8. DATE OF BIRTH (Mo/Day/Yr)
White		95			September 13, 1920

IF DEATH OCCURRED IN INSTITUTION SEE HANDBOOK REGARDING COMPLETION OF RESIDENCE ITEMS

9a. STATE OF BIRTH (If not US/CA, name country)	9b. CITIZEN OF WHAT COUNTRY	10. EDUCATION	11. MARITAL STATUS (Specify)	12. SURVIVING SPOUSE'S NAME (Last name prior to first marriage)
Colorado	United States	12	Widowed	

13. SOCIAL SECURITY NUMBER	14a. USUAL OCCUPATION (Give Kind of Work Done During Most of	14b. KIND OF BUSINESS OR INDUSTRY	Ever In US Armed Forces?
	Homemaker	Own Home	No

15a. RESIDENCE - STATE	15b. COUNTY	15c. CITY, TOWN OR LOCATION	15d. STREET AND NUMBER	15e. INSIDE CITY LIMITS? (Yes or No)
Nevada	Clark	Las Vegas	7475 W. Rosada Way	No

PARENTS

16. FATHER/PARENT - NAME (First Middle Last Suffix)	17. MOTHER/PARENT - NAME (First Middle Last Suffix)
William Robert SMOCK	Eunice Andrea PETERSON

18a. INFORMANT - NAME (Type or Print)	18b. MAILING ADDRESS (Street or R.F.D. No, City or Town, State, Zip)
Patricia Lynne HORST	7475 W. Rosada Way Las Vegas, Nevada 89149

DISPOSITION

19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify)	19b. CEMETERY OR CREMATORY - NAME	19c. LOCATION City or Town State
Removal/Burial	Pierce Brothers Valhalla Memorial Park	North Hollywood California 91606

20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such)	20b. FUNERAL DIRECTOR LICENSE NUMBER	20c. NAME AND ADDRESS OF FACILITY
DAVID F HOLT SIGNATURE AUTHENTICATED	866	Palm Mortuary-Cheyenne 7400 W Cheyenne Las Vegas NV 89129

TRADE CALL

TRADE CALL - NAME AND ADDRESS Pierce Brothers Valhalla 10621 Victory Blvd North Hollywood CA 91606

CERTIFIER

To Be Completed by Certifier's Physician

21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated (Signature & Title) SIGNATURE AUTHENTICATED CHARLES J HU DO

21b. DATE SIGNED (Mo/Day/Yr)	21c. HOUR OF DEATH
October 31, 2016	13:28

21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)

To Be Completed by Coroner's Office

22a. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the cause(s) stated (Signature & Title)

22b. DATE SIGNED (Mo/Day/Yr)	22c. HOUR OF DEATH

22d. PRONOUNCED DEAD (Mo/Day/Yr) 22e. PRONOUNCED DEAD AT (Hour)

23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) Charles J Hu DO 6900 N Durango Dr Las Vegas, NV 89149

23b. LICENSE NUMBER DO1961

REGISTRAR

24a. REGISTRAR (Signature)	24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr)	24c. DEATH DUE TO COMMUNICABLE DISEASE
NANCY BARRY SIGNATURE AUTHENTICATED	October 31, 2016	YES ☐ NO ☒

CAUSE OF DEATH

CONDITIONS IF ANY WHICH GAVE RISE TO IMMEDIATE CAUSE STATING THE UNDERLYING CAUSE LAST

25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).)

PART I

		Interval between onset and death
(a)	Cardiopulmonary Arrest	
	DUE TO, OR AS A CONSEQUENCE OF:	
(b)	Acute Ischemic Cerebral vascular accident	
	DUE TO, OR AS A CONSEQUENCE OF:	
(c)	Atherosclerosis	
	DUE TO, OR AS A CONSEQUENCE OF:	
(d)	Hypertension	

PART II OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not resulting in the underlying cause given in Part 1.

27a. AUTOPSY (Specify Yes or No)	27. WAS CASE REFERRED TO CORONER (Specify Yes or No)
No	Yes

28a. ACC., SUICIDE, HOM., UNDET., OR PENDING INVEST. (Specify)	28b. DATE OF INJURY (Mo/Day/Yr)	28c. HOUR OF INJURY	28d. DESCRIBE HOW INJURY OCCURRED

28e. INJURY AT WORK (Specify Yes or No)	28f. PLACE OF INJURY- At home, farm, street, factory, office building, etc. (Specify)	28g. LOCATION STREET OR R.F.D. No.	CITY OR TOWN	STATE

LOCAL REGISTRAR

CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA. This copy was issued by the Southern Nevada Health District from State certified documents authorized by state Board of Health pursuant to NRS 440.175.

VRS-Rev-20120123a

332868

332868

Registrar of Vital Statistics

By:

DATE ISSUED: NOV 0 4 2016

This copy not valid unless prepared on watermarked security paper displaying date, seal and signature of Registrar.

SOUTHERN NEVADA HEALTH DISTRICT • P.O. Box 3902 • Las Vegas, NV 89127 • 702-759-1010 • Tax ID # 88-0151573

Exhibit 2

LOT TWENTY-SIX (26) IN BLOCK TWO (2), OF LONE MOUNTAIN VILLAGE – UNIT 1 AS SHOWN BY MAP THEREOF ON FILE IN BOOK 59 OF PLATS, PAGE 100 AND AMENDED BY CERTIFICATE OF AMENDMENT RECORDED MARCH 8, 1994 IN BOOK 940308 DOCUMENT NO. 01245, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

APN: 138-03-511-061

Exhibit 3

Lot Two (2) of that Certain Parcel Map on File in File 72, Page 40, in the Office of the County Recorder of Clark County, Nevada and Recorded May 14, 1992 in Book 920504 of Official Records as Document No. 00796

APN: 125-34-310-047

EXHIBIT B

NOTICE OF BENEFICIARIES, HEIRS AND INTERESTED PERSONS OF IRREVOCABLE TRUST

(See attached)

EXHIBIT B

NOTICE TO BENEFICIARIES, HEIRS AND INTERESTED PERSONS OF IRREVOCABLE TRUST

Pursuant to Nevada Revised Statutes ("NRS") 164.021, notice is hereby given of the following:

1. Ella E. Horst (the "Grantor"), created the "THE ELLA E. HORST REVOCABLE TRUST" on May 21, 1991 (the "Trust"). The Trust was amended on March 6, 1998, March 16, 2004 and September 26, 2005. A copy of the full Trust agreement and all Amendments are attached hereto as Exhibit "A".

2. The Grantor died on October 26, 2016, and, as a result of the Grantor's death, the Trust became irrevocable on that date.

3. ARTICLE VIII, of the Trust as amended on March 16, 2004 states that upon the death of the Grantor that Patricia L. Horst is appointed as Successor Trustee of all trusts created under the Trust.

4. On November 18, 2016, Patricia L. Horst accepted her appointment as Successor Trustee and executed an Affidavit of Successor Trustee, a copy of which is attached as Exhibit "B".

5. Per the terms of the Trust, Patricia L. Horst was nominated and appointed as the Successor Trustee upon the Grantor's death. Patricia L. Horst has agreed to serve as the Successor Trustee of the Trust. Patricia L. Horst can be contacted at:

Patricia L. Horst
7475 W. Rosada Way
Las Vegas, NV 89149
(702) 336-5633

6. Exhibit "A" is a copy of the Trust and all amendments which includes information regarding the beneficiares of the trust and their respective shares.

7. *You may not bring an action to contest the trust more than 120 days from the date this notice is served upon you. Pursuant to NRS 164.021(4), no person upon whom notice is served pursuant to such section may bring an action to contest the validity of the Trust more than 120 days from the date the notice is*

EXHIBIT A

EXHIBIT A

ELLA E. HORST

REVOCABLE DECLARATION OF TRUST

ELLA E. HORST as trustee ("Trustee" herein) declares that ELLA E. HORST as Settlor ("Settlor" herein) has transferred and delivered to the Trustee or does hereby transfer and deliver to the Trustee, without consideration, the property described in the attached Schedule A. The Trustee agrees to accept, hold, administer and distribute the property described in Schedule A, and any additions thereto, for the purposes and on the terms, conditions and limitations set forth below. Property subject to this Declaration of Trust is referred to as the "Trust Property."

ARTICLE I

REVOCATION AND AMENDMENT

During the lifetime of the Settlor, this Trust may be revoked in whole or in part by a written instrument signed by the Settlor and delivered to the Trustee. On revocation, the Trustee shall promptly deliver to the Settlor all or the designated portion of the Trust Property. If this Trust is revoked with respect to all or a major portion of the Trust Property and if the Settlor is not then acting as Trustee, the Trustee shall be entitled to retain assets reasonably determined to be sufficient to secure payment of liabilities lawfully incurred in the administration of the Trust, including Trustee's fees that have been earned, unless the Settlor shall indemnify the Trustee against loss or expense.

The Settlor may at any time during the Settlor's lifetime amend any of the terms of this Declaration of Trust by a written instrument signed by the Settlor and delivered to the Trustee. No amendment shall substantially increase the duties or liabilities of the Trustee nor change the Trustee's compensation without the Trustee's consent. The Trustee shall not be obligated to act under an amendment unless the Trustee accepts it. If a Trustee is removed, the Settlor shall pay to the Trustee any sums due and shall indemnify the Trustee against liability lawfully incurred in the administration of the Trust.

Upon the death of the Settlor, this Declaration of Trust shall become irrevocable and may not be amended or revoked by any person.

The powers of the Settlor to revoke or amend this Declaration of Trust are personal to the Settlor and shall not be exercisable on the Settlor's behalf by any guardian, conservator, fiduciary or other person, unless the revocation or amendment is authorized, after notice to the Trustee, by the Court that appointed the guardian or conservator, or unless revocation or amendment is by the holder of a durable power of attorney expressly authorizing the holder to revoke or amend the Declaration of Trust.

An amendment or revocation of this Declaration of Trust shall not affect a person without actual knowledge of the amendment or revocation. Any person dealing with the Trust or the Trustee, shall be entitled to rely upon a certificate in writing, signed by the current Trustee or by the Trust's attorney as to what, if any, amendment or revocation has been made in this Declaration of Trust.

ARTICLE II

DISTRIBUTION OF INCOME AND PRINCIPAL DURING SETTLOR'S LIFETIME

During the lifetime of the Settlor, the Trustee shall pay to or for the benefit of the Settlor from the Trust Property as much of the net income and principal as is appropriate, in the Trustee's discretion, for the Settlor's proper health, education, support, maintenance, comfort, and welfare. The Trustee shall construe this power liberally and shall exercise it in a liberal and generous manner. The rights of the remaindermen in the Trust shall be considered of secondary importance. Any good faith determination by the Trustee concerning the exercise of the power shall be binding and conclusive upon all persons. Any undistributed income for each taxable year shall be added to and become a part of the principal of the Trust, as the case may be.

The Trustee shall also distribute such amount of Trust Property to the Settlor as the Settlor may direct in writing.

ARTICLE III

DEATH OF SETTLOR

After the death of the Settlor, the Trustee shall continue to hold, administer and distribute the balance of the Trust Property (including principal and any accrued or undistributed income), together with any additions to the Trust Property under the Survivor's Will or otherwise, as follows.

A. Specific Gifts. If at the time of the Settlor's death, the Trust Property includes a Note, secured by a deed of trust, received by the Settlor in the 1990 sale of a parcel of residential real property in the state of Nevada, County of Clark, commonly known as 1621 Ogden Avenue, Las Vegas, Nevada 89101 ("the Note"), the Trustee shall distribute twenty-thousand dollars ($20,000) to the Settlor's Granddaughter Patricia H. Powers out of the proceeds of the Note.

Such gift shall be made without reduction or deduction for any debts, expenses, administrative costs or taxes arising by reason of the Settlor's death.

If at the time of the Settlor's death, the Trust Property does not include the Note, then this specific bequest to Ms. Powers shall be adeemed.

B. Divide into Shares. After the satisfaction of specific gifts as provided in Paragraph A of this Article, the Trustee shall divide the balance of the Trust Property into shares as follows:

On the date of execution of this Declaration of Trust, the Settlor has two living children, namely, WILLIAM ARTHUR HORST, born on October 31, 1936, and DONNA JEAN H. HOLIDAY, born on December 12, 1941.

If both children, WILLIAM ARTHUR HORST and DONNA JEAN H. HOLIDAY, survive the Settlor by thirty (30) days, then the Trustee shall divide the remaining Trust Property in equal shares to the children of the Settlor.

If WILLIAM ARTHUR HORST does not survive the Settlor by thirty (30) days and DONNA JEAN H. HOLIDAY does survive the Settlor by thirty (30) days, then the Trustee shall divide the remaining Trust Property, fifty percent (50%) to DONNA JEAN H. HOLIDAY, twenty-five percent (25%) to the group composed of the then living issue of WILLIAM ARTHUR HORST and twenty-five percent (25%) to the group composed of the then living issue of DONNA JEAN H. HOLIDAY.

If DONNA JEAN H. HOLIDAY does not survive the Settlor by thirty (30) days and WILLIAM ARTHUR HORST does survive the Settlor by thirty (30) days, then the Trustee shall divide the remaining Trust Property, fifty percent (50%) to WILLIAM ARTHUR HORST, seven and one-half percent (7.5 %) to the group composed of the then living issue of WILLIAM ARTHUR HORST and forty-two and one-half percent (42.5%) to the group composed of the then living issue of DONNA JEAN H. HOLIDAY.

If neither WILLIAM ARTHUR HORST nor DONNA JEAN H. HOLIDAY survives the Settlor by thirty (30) days, then the Trustee shall divide the remaining Trust Property among the then living issue of the deceased children of the Settlor as follows: one equal share shall be allocated to each living child of the deceased children of the Settlor (hereinafter referred to as a "grandchild") and one equal share shall be allocated to each group composed of the then living issue, by right of representation, of a deceased grandchild.

C. Fund the Shares. The Trustee shall fund the shares created pursuant to Paragraph B of this Article, as follows:

All assets of which the Settlor is the transferor for generation skipping transfer tax ("GST") purposes shall be allocated first to the share(s) for the living issue of a deceased child and then to the share(s) for the living children.

D. Divide Shares into Exempt and Non-Exempt Trusts.

If any of the Settlor's "Unused GST Exemption" (defined below) is allocated to a beneficiary's share and the net value of that beneficiary's share exceeds the amount of the Settlor's

Unused GST Exemption so allocated, then the Trustee shall further divide that beneficiary's share into two separate shares before establishing that beneficiary's trust. The Trustee shall instead establish two separate trusts, identified as the Exempt Trust and the Non-Exempt Trust in the name of that beneficiary. That beneficiary's Exempt Trust shall consist of the assets equal in value to the amount of the Settlor's Unused GST Exemption allocated to that beneficiary's share. That beneficiary's Non-Exempt Trust shall consist of the balance of that beneficiary's share. This division of that beneficiary's share into two separate trusts shall result in that beneficiary's Exempt Trust having an "Inclusion Ratio" (as defined in Section 2642(a) of the Code) of zero (0) and that beneficiary's Non-Exempt Trust having an Inclusion Ratio of one (1) for GST purposes.

"Unused GST Exemption" means the amount of the Settlor's GST exemption under Section 2631(a) of the "Code" (defined below) available at her death and not otherwise allocated by her or her Personal Representative (as defined in Section 58 of the California Probate Code, as amended from time to time and any successor provisions thereto) to other transfers of property by the Settlor during her lifetime or as a result of her death.

The "Code" refers to the Internal Revenue Code of 1986, as amended from time to time, and a reference to any section of the Code in this Declaration of Trust includes any successor statute or amendment to such section.

After payment of that beneficiary's pro-rata share of any debts, expenses, administrative costs and Death Taxes as provided in the Article entitled, "PAYMENT OF DEBTS, EXPENSES AND TAXES", the Trustee shall hold, administer and distribute the assets allocated to that beneficiary's Exempt Trust and to that beneficiary's Non-Exempt Trust as separate trusts for the benefit of that beneficiary in accordance with the provisions of the Article entitled, "DISTRIBUTION TO LINEAL DESCENDANTS."

References to that beneficiary's trust in this Trust or in the Settlor's Will or Codicil thereto shall also collectively

refer to such separate trusts. Each such separate trust shall have the same provisions as set forth in said Article for that beneficiary's trust.

If any of the Settlor's Unused GST Exemption is allocated to a beneficiary's share and the net value of that beneficiary's share is equal to or less than the amount of the Settlor's Unused GST Exemption so allocated, then the Trustee shall assign to the trust of that beneficiary the entire share of that beneficiary, which trust shall be exempt from GST and have an Inclusion Ratio of zero (0). After payment of that beneficiary's pro-rata share of any debts, expenses, administrative costs and Death Taxes as provided in the Article entitled, "PAYMENT OF DEBTS, EXPENSES AND TAXES", that beneficiary's trust shall be held, administered and distributed in accordance with the provisions of the Article entitled, "DISTRIBUTION TO LINEAL DESCENDANTS."

ARTICLE IV

PAYMENT OF DEBTS, EXPENSES & TAXES

Except as otherwise expressly provided in this Trust or in the Settlor's Will or Codicil thereto, after the death of the Settlor, the Trustee shall pay each beneficiary's pro-rata portion of the valid, current debts of the Settlor (except debts secured by mortgages, deeds of trust or other security instruments), the last illness, funeral and burial expenses of the Settlor, all attorney's fees and other costs incurred in the administration and distribution of the Settlor's estate, and all Death Taxes (defined below) arising by reason of the Settlor's death, with respect to any property, whether included in or passing outside of the Settlor's probate estate, out of that beneficiary's Non-Exempt Trust to the extent that such beneficiary's Non-Exempt Trust has sufficient assets, provided such payment does not increase the Inclusion Ratio of that beneficiary's Exempt Trust. To the extent that the assets in that beneficiary's Non-Exempt Trust are insufficient to pay such debts, expenses, administrative costs and Death Taxes or that such payment would increase the Inclusion Ratio of that

beneficiary's Exempt Trust, then such debts, expenses, administrative costs and Death Taxes may be paid out of that beneficiary's Exempt Trust.

A. Death Taxes Defined. "Death Taxes" shall mean all domestic and foreign estate, gift, or other transfer taxes, including any interest and penalties thereon, arising by reason of the death of a Settlor. The term, however, shall not include the following:

1. Generation skipping transfer taxes ("GST"), except those classified as taxes on direct skip transfers with respect to which the Settlor is the transferor;

2. Any estate taxes imposed pursuant to Section 2032A of the Code, which taxes are to be apportioned to, borne by, and paid out of the special use property and by the qualified heirs; and

3. Any estate taxes imposed by Section 4980A(d)(1) of the Code, which taxes are to assessed to and borne by the person receiving the property against which that tax has been imposed, except to the extent that the Settlor has made an election under Section 4980A(d)(5) of the Code.

B. Apportionment of Death Taxes. Except as otherwise expressly provided in this Trust or in the Settlor's Will or Codicil thereto, each beneficiary of the Settlor's estate shall pay his or her pro-rata portion of the Death Taxes.

ARTICLE V

DISTRIBUTION TO LINEAL DESCENDANTS

After the payment of debts, expenses, administrative costs and Death Taxes, as provided in the Article entitled, "PAYMENT OF DEBTS, EXPENSES AND TAXES," the Trustee shall hold, administer and distribute the trusts created for the Settlor's beneficiaries under the provisions of the Article entitled, "DEATH OF SETTLOR," as follows.

A. Outright Distribution for Beneficiaries Over 21 Years. The remaining Trust Property in any trust(s) for a

beneficiary who is over the age of twenty-one (21) years shall be distributed to such beneficiary outright and free of trust.

B. Trusts for Beneficiaries Under 21 Years. Each trust created for a beneficiary who is under the age of twenty-one (21) years, whether an Exempt Trust or a Non-Exempt Trust for GST purposes, shall be held, administered and distributed as follows:

The Trustee shall, from time to time, pay to or for the benefit of each beneficiary during the continuance of such beneficiary's trust, as much of the net income and principal of the trust as the Trustee, in said Trustee's discretion, shall deem appropriate for that beneficiary's health, education, maintenance and support, in accordance with that beneficiary's accustomed manner of living, after taking into consideration, to the extent the Trustee shall deem advisable, all other resources available to that beneficiary or available to those who have a legal obligation of support of that beneficiary, outside this trust, known to the Trustee, and all other circumstances and factors which the Trustee considers pertinent.

The term "education" shall be construed to include study at a private school at the elementary and secondary levels, study at a university or college, post-graduate and professional study, or attendance at a certified trade or technical school, so long as pursued to advantage by the beneficiary, at an institution of the beneficiary's choice. The term shall also include service as a full-time missionary for the Church of Jesus Christ of Latter-day Saints. In determining payments to be made for education, the Trustee shall take into consideration and pay the beneficiary's related living expenses to the extent they are reasonable.

All such discretionary invasions of income and principal to a beneficiary shall be made out of that beneficiary's Non-Exempt Trust to the extent that such beneficiary's Non-Exempt Trust has sufficient assets, provided such payment does not increase the Inclusion Ratio of that beneficiary's Exempt Trust. To the extent that the assets in that beneficiary's Non-Exempt Trust are

insufficient to pay such discretionary invasions of income and principal or that such payment would increase the Inclusion Ratio of that beneficiary's Exempt Trust, then such payments may be made out of that beneficiary's Exempt Trust.

The Trustee shall not be required to distribute income currently. Any income not distributed on or prior to the last day of each taxable year may be segregated by the Trustee and thus retain its characterization as income, or may be added to and become a part of the principal of the trust, at the option of the Trustee.

The Trustee shall not be held accountable to any beneficiary if part or all of the principal shall be depleted. The Trustee shall exercise the discretionary power to pay income and to invade principal of a beneficiary's trust to or for the benefit of that beneficiary, and the rights of the remaindermen in the beneficiary's trust shall be considered of secondary importance. Any determination made by the Trustee in good faith as to the manner in which or the extent to which the powers in this subparagraph shall be exercised shall be binding and conclusive upon all persons who might then or thereafter have or claim any interest in the Trust Property.

When each beneficiary reaches the age of twenty-one (21) years, the Trustee shall distribute outright and free of trust to said beneficiary all of the beneficiary's Trust Property as then constituted.

If a beneficiary survives the Settlor, but dies before reaching the age of twenty-one (21), the Trustee shall distribute such portion to such one or more persons and entities, including that beneficiary's own estate, and on such terms and conditions, IN TRUST OR OTHERWISE, as that beneficiary shall have appointed in a Will or Codicil thereto duly admitted to probate specifically referring to and exercising this general testamentary power of appointment. If this general testamentary power of appointment is not exercised, such portion shall be held, administered and/or distributed as follows.

If a beneficiary shall die before reaching the age of twenty-one (21) years without exercising the aforesaid general testamentary power of appointment, the undistributed balance of the Trust Property of that beneficiary's trust, including undistributed or accrued income, shall thereupon be distributed, free of trust, to his or her then living issue, by right of representation, or, if there are none, to the Settlor's then living issue, by right of representation; provided, however, that if any part of that Trust Property would otherwise be distributed to another beneficiary of the Settlor for whose benefit a trust is or trusts are then being administered under this Declaration of Trust, the Trustee may divide and allocate such Trust Property to said trust or trusts in such a manner as to avoid recalculation of the inclusion ratio in such beneficiary's Exempt Trust. Such Trust Property shall thereafter be administered according to the terms of said trust or trusts. If there are living issue of the Settlor, the remaining balance shall be distributed according to the Article entitled "ULTIMATE DISTRIBUTION."

ARTICLE VI

ULTIMATE DISPOSITION

If the Trustee is directed to distribute Trust Property in accordance with this ARTICLE or if at any time before full distribution of the Trust Property both the Settlor and all the Settlor's issue are deceased and no other disposition of the property is directed by this Declaration of Trust, the Trust Property shall then be distributed to the legal heirs of the Settlor, their identity and respective shares to be determined in all respects as though the death of the Settlor had occurred thirty (30) days after the date of the event requiring distribution and shall be determined according to the laws of succession of the State of California then in force relating to separate property not acquired from a parent, grandparent, or previously deceased spouse.

ARTICLE VII

PERPETUITIES SAVING PROVISION

Unless terminated earlier by its own provisions, all Trusts created by this Declaration of Trust or by the exercise of a power of appointment conferred hereunder shall terminate twenty-one (21) years after the last to occur of (a) the death of the Settlor and (b) the death of the last to die of the Settlor's issue living at the date of the death of the Settlor. The Trust Property of a terminated Trust shall vest in and be distributed to the then living issue of the Settlor, by right of representation, who are the income beneficiaries of that Trust.

ARTICLE VIII

SUCCESSOR TRUSTEE - NOMINATION

If ELLA E. HORST shall for any reason cease to act as Trustee, then her children, WILLIAM ARTHUR HORST and DONNA JEAN H. HOLIDAY, shall serve as Successor Co-trustees. If for any reason WILLIAM ARTHUR HORST or DONNA JEAN H. HOLIDAY shall fail or refuse to serve or complete service as Successor Co-trustees, then the other shall serve as sole successor trustee.

A Successor Co-trustee may act alone on behalf of the Trust with the written authorization of the other Co-trustee.

The income beneficiaries of any Trust or their legal representative shall have the power by unanimous vote and written notice to remove any then serving Trustee and to appoint a Successor Trustee as long as the Successor Trustee is a bank or trust company having total capital, undivided profits and surplus of not less than Fifty Million ($50,000,000) Dollars, if the exercise of such power does not cause the Trust Property of the Trust to be included in the estate of any beneficiary for federal estate tax purposes.

If at any time, as certified in writing by a licensed physician, an individual Trustee has become physically or mentally incapable of continuing to act as Trustee, whether or not a court of competent jurisdiction has declared said Trustee

incompetent, mentally ill, or in need of a conservator, that Trustee shall cease to act as Trustee.

No Successor Trustee shall have any responsibility for the acts or omissions of any prior Trustee and no duty to audit or investigate the accounts or administration of any such Trustee.

No bond shall be required of any person serving as a Trustee of any Trusts created hereunder for the faithful performance of their duties as Trustee, whether acting jointly or individually.

The term "Trustee" as used in this Declaration of Trust shall include any Trustee named in this Declaration of Trust or in accordance with the terms of this Trust.

ARTICLE IX

SPECIAL GST PROVISIONS

A. GST Elections. The Settlor intends by this Trust to fully utilize her Unused GST Exemption in order to minimize the GST liability associated with the Trust Property and her estate. Accordingly, the Settlor directs the Trustee to make any and all tax elections, such as the Election Regarding the Allocation of the GST Exemption, with respect to all or any part of the Trust Property in order to accomplish this purpose.

If it is unnecessary to probate any property of a Settlor, such tax elections shall be made by the Trustee. If it is necessary to probate any property of a Settlor, such elections shall be made by the Settlor's Personal Representative. If such elections will be made by the Settlor's Personal Representative, then the Trustee shall consult with the Personal Representative and shall assign Trust Property to trusts consistent with such elections made by the Personal Representative. Such elections shall be made with respect to all Trust Property assigned to a trust.

In making the election under Section 2632(a) of the Code to allocate the Settlor's Unused GST Exemption, the Settlor's Personal Representative or the Trustee may include in or exclude from that allocation any property of which the Settlor is the transferor for GST purposes, including property transferred prior

to such Settlor's death. These decisions may be based on transfers, gift tax returns and other information known to the Settlor's Personal Representative or the Trustee, with no requirement that such allocations benefit the various transferees or beneficiaries of such property equally, proportionally or in any other particular manner.

B. Power to Combine and Divide. In exercising the discretionary authority to combine and divide shares or trusts, the Trustee may take account of efficiencies of administration, GST and other transfer tax considerations, income tax factors affecting the various trusts and their beneficiaries, the need or desirability of having the same or different trustees for various shares or trusts, and any other considerations the Trustee may deem appropriate to the exercise of such discretion. Property allocated to a share or trust may be divided between separate and independent shares or trusts if necessary to permit tax elections to be made with respect to all of the property assigned to the share or trust or if necessary to preserve the exempt and non-exempt character (for GST purposes) of the property assigned to the share or trust, even if this requires the establishment of additional separate trusts with the same terms and provisions. When a trust is so divided, whether into exempt and non-exempt trusts as provided in other provisions of the Trust or otherwise into separate trusts, each such trust shall have the same provisions as the original trust from which it is established, and references in this Trust to the original trust shall collectively refer to the separate trusts derived from it. The Trustee shall divide property between or among shares or trusts according to the value of the property at the time of such division.

The Trustee may combine any share(s) or trust(s) created or administered under this Declaration of Trust with any other share(s) or trust(s) having the same Inclusion Ratios, including trusts established (during life or at death) by the Settlor, provided that such combination preserves the exempt (i.e.,

Inclusion Ratio of zero (0)) or the non-exempt (i.e, Inclusion Ratio of one (1)) character for GST purposes of the Trust Property of such share(s) or trust(s). The Trustee may establish separate shares in a combined trust if and as needed to preserve the rights and protect the interests of the various beneficiaries if the trusts combined do not have identical terms, or if separate shares are otherwise deemed desirable by the Trustee.

C. Trustee's Investment Powers. Without limiting the foregoing, the Settlor specifically authorizes (but does not require) the Trustee, in administering different trusts wholly or in part for the benefit of a particular beneficiary or group of beneficiaries, to adopt different investment patterns and objectives for different trusts based on the Inclusion Ratios of the trusts, and to prefer making distributions to beneficiaries who are skip persons (as defined in Section 2613(a) of the Code) from trusts that are exempt for GST purposes and to beneficiaries who are non-skip persons (as defined in Section 2613(b) of the Code) from trusts that are non-exempt for GST purposes.

D. Trustee's Exoneration. The Settlor expressly exonerates the Trustee from any liability arising from any exercise or failure to exercise these powers, provided the actions (or inactions) of the Trustee are taken in good faith.

E. Apportionment of GST. Except as otherwise expressly provided in this Trust or in the Settlor's Will or Codicil thereto, all GST attributable to transfers under this Declaration of Trust shall be paid as provided in Section 2603(a) of the Code.

ARTICLE X

POWERS OF TRUSTEE

In order to carry out the provisions of the trusts created by this Declaration of Trust, the Trustee shall have these powers, as to each respective trust, in addition to those now or hereafter conferred by law, subject to any other specific provisions contained in this Declaration of Trust.

A. To invest and reinvest funds in every kind of property, real, personal or mixed, and every kind of investment, foreign or domestic, specifically including, but not limited to, interest-bearing accounts, corporate obligations of every kind, stocks, preferred or common, margin accounts, options, shares of investment trusts, investment companies, and mutual funds or common trust funds, including those of a trustee, and mortgage participations, that persons of prudence, discretion and intelligence acquire for their own account, including any common trust fund administered by a Trustee.

The aggregate return on all investments from time to time shall be reasonable in light of then existing circumstances.

B. To continue to hold any property, including any shares of a Trustee's own stock, and to operate at the risk of the Trust Property any business that the Trustee receives or acquires under the Trust as long as the Trustee deems advisable.

C. To have all the rights, powers, and privileges of an owner with respect to the securities held in trust, including, but not limited to, the powers to vote, give proxies and pay assessments; to participate in voting trusts, pooling agreements, foreclosures, reorganizations, consolidations, mergers and liquidations, and incident to such participation, to deposit securities with and transfer title to any protective or other committee on such terms as the Trustee may deem advisable; and to exercise or sell stock subscription or conversion rights.

D. To manage, control, grant options on, sell (for cash or on deferred payments within or beyond the term of the Trust), convey, exchange, partition, divide, improve, and repair Trust Property.

E. To lease Trust Property for terms within or beyond the term of the trust for any purpose, including exploration for and removal of gas, oil and other minerals; and to enter into community oil leases, pooling and unitization agreements.

F. To sell property to or purchase property from and to borrow from or lend money to the personal representative under the Will of the Settlor or the Trustee of any trust created by the Settlor, and to enter into transactions, including acquisition or sale of trust assets, between the Trustee as Trustee of this Trust and the Trustee as principal or as agent of any other person or entity, or as Trustee of any other trust for which said Trustee is acting. Any such sales or purchases shall be made at the fair market value of the property. Any such borrowing or loans shall be adequately secured and shall be at the prevailing rates and terms of interest for similar loans. The powers authorized herein may be exercised although the

Executor and Trustee, or the Trustee of two or more trusts, may be the same.

G. To borrow money for any Trust purpose from any person or entity upon such terms and conditions as the Trustee may deem advisable, and to encumber or hypothecate Trust Property for any Trust purpose by mortgage, deed of trust, pledge or otherwise. No lender need inquire into the need for or the propriety of such loans nor see to the application of funds so borrowed. During the time that the Settlor is living, to encumber or hypothecate Trust Property by mortgage, deed of trust, pledge or otherwise to facilitate borrowing by the Settlor. To guarantee borrowing undertaken by the Settlor.

H. To commence or defend, at the expense of the Trust, such litigation with respect to the Trust or any Trust Property as the Trustee may deem advisable, and to compromise or otherwise adjust any claims or litigation against or in favor of the Trust.

I. To carry insurance of such kinds and in such amounts as the Trustee deems advisable, at the expense of the Trust, to protect the Trust Property and the Trustee personally against any hazard.

J. To withhold from distribution, in the Trustee's discretion, all or any part of the property to be so distributed, as long as the Trustee shall determine in the Trustee's discretion that such property may be subject to conflicting claims, to tax deficiencies, or to liabilities, contingent or otherwise, properly incurred in the administration of the Trust Property.

K. Whenever the Trustee is directed to make a distribution of Trust Property or a division of Trust Property into separate trusts or shares on the death of the Settlor, the Trustee may, in the Trustee's discretion, defer such distribution or division until six (6) months after the Settlor's death.

When the Trustee defers distribution or division of the trust assets, the deferred division or distribution shall be made as if it had taken place at the time prescribed in this instrument in the absence of this subparagraph, and all rights given to the beneficiaries of such trust assets under other provisions of this Declaration of Trust shall be deemed to have accrued and vested as of such prescribed time.

L. To partition, allot and distribute the Trust Property, on any division or partial or final distribution of the Trust Property, in undivided interests or in kind, or partly in cash and partly in kind, or entirely in cash, at fair market value as determined by the Trustee, and to sell such property as the Trustee may deem necessary to make such division or distribution.

Absent a specific direction to the contrary in this Declaration of Trust, in making any division into shares or partial or final distribution of the Trust Property, the Trustee shall be under no obligation to make a pro rata division, or to distribute the same assets to beneficiaries similarly situated. Rather, the Trustee may, in the Trustee's discretion, make a non-pro rata division between shares and non-pro rata distributions to such beneficiaries, as long as the respective assets allocated to separate shares, or distributed to such beneficiaries, have equivalent or proportionate fair market value.

M. To decline to accept any property or interest in property as Trust Property or to abandon any property or interest in property belonging to the Trust, when, in the Trustee's discretion, such action is in the best interest of the Trust and its beneficiaries.

N. To perform inspections of proposed Trust Property, to regularly inspect and monitor Trust Property for environmental compliance and to undertake cleanup of Trust Property in order to comply with environmental laws at the expense of the Trust, when, in the Trustee's discretion, such action is in the best interest of the Trust and its beneficiaries.

O. To employ and compensate from the Trust Property agents, attorneys, accountants, auditors, investment counselors, other experts, corporate fiduciaries, depositories and proxies to assist the Trustee in the administration of the Trust and to rely on the advice given by these agents, provided, however, that nothing contained herein shall authorize or empower a Trustee to delegate any fiduciary obligations imposed by this Declaration of Trust or by law. Reasonable compensation for all services performed by any such agents shall be paid from the Trust Property and shall not decrease the compensation to which the Trustee is entitled.

P. To purchase in the Trustee's discretion at less than par obligations of the United States of America that are redeemable at par in payment of any federal estate tax liability of the Settlor in such amounts as the Trustee deems advisable. If the Trustee has reason to believe that the Settlor is in substantial danger of death, the Trustee may borrow funds for the purchase of such obligations and give security for that purchase. The Trustee shall resolve any doubt concerning the desirability of making the purchase and its amount in favor of making the purchase and of purchasing a larger, even though somewhat excessive, amount. The Trustee shall not be liable to the Settlor or any beneficiary under this Declaration of Trust for losses resulting from purchases made in good faith.

Notwithstanding anything in this Declaration of Trust to the contrary, the Trustee is directed to pay the federal estate tax due on the Settlor's death in an amount not less than the par value plus accrued interest of such obligations, without apportionment or charge against any beneficiary of the Trust Property or transferee of property passing outside of the Trust Property, and the Trustee in determining income payable to any beneficiary of any trust hereunder shall exclude from said income the income accrued on Treasury bonds redeemed in payment of the Settlor's federal estate tax.

Q. To open, maintain and terminate bank accounts in the name of the Trustee with any bank, trust company, and savings and loan association and to designate the persons or agents to conduct banking by giving written notice of such designation to the bank, trust company, and savings and loan association in question; and such bank, trust company or savings and loan association shall be protected in relying upon such designation.

R. The Trustee may continue to hold in the form in which received (or the form to which changed by reorganization, split-up, stock dividend, or other like occurrence) any securities or other property the Trustee may at any time acquire under this Trust, it being the Settlor's express desire and intention that the Trustee shall have full power to invest and reinvest the Trust Property without being restricted to forms of investment that the Trustee may otherwise be permitted to make by law; and the investments need not be diversified.

S. As to any trust created herein, in the event that the Trust Property has, at any time, in the opinion of the Trustee, become sufficiently small in value or the administration thereof is no longer economically desirable, or the cost thereof is disproportionate to the value of the assets or the continuation thereof is no longer in the best interest of the beneficiary, the Trustee may or may not, in the Trustee's discretion, terminate the Trust, and regardless of the age of the beneficiary, distribute the principal and any accrued or undistributed net income to the beneficiary, to be said beneficiary's absolutely and free of any trust, or if a minor, to the guardian of said beneficiary's estate either as a guardian or as custodian under a Uniform Gifts to Minors Act, a Uniform Transfers to Minors Act or a similar statute, as shall be determined by the Trustee.

T. As clarification of the Trustee's power "to invest," but not by way of limitation thereto, it is expressly provided that the Trustee is authorized to buy, sell and trade in securities of any nature (including "short" sales) and including puts, calls, straddles and other options of every kind, on margin, and for such purpose may maintain and operate margin accounts with brokers and may pledge any securities held or purchased by them with such brokers as security for loans and advances made to the Trustee.

ARTICLE XI

MISCELLANEOUS PROVISIONS

The following miscellaneous provisions shall also apply to guide the Trustee of this Declaration of Trust.

A. In any case in which the Trustee is required or permitted to divide Trust Property into trusts or shares, the Trustee shall not be required physically to divide any of the investments or other property, but may keep the same or any part thereof in one fund in which the separate and distinct trusts and shares shall have undivided interests. The Trustee shall keep separate accounts for each such trust.

B. Except as otherwise specifically provided in this Declaration of Trust, the determination of all matters with respect to what is principal and income of the Trust Property and the apportionment and allocation of receipts and expenses between these accounts shall be governed by the provisions of the California Revised Uniform Principal and Income Act from time to time existing. Any such matter not provided for either in this Declaration of Trust or in the California Revised Uniform Principal and Income Act shall be determined by the Trustee in the Trustee's discretion.

While the Settlor is living and is acting as Trustee, there shall be no requirement to conform to the provisions of this Paragraph B.

C. After the death of the Settlor and except as otherwise specifically provided in this Declaration of Trust, the Trustee's powers shall be subject to the Trustee's duty to treat income beneficiaries and remaindermen equitably, and the following requirements shall be observed by the Trustee.

(1) A reasonable reserve for depreciation of all income-producing depreciable real and personal property, and for capital improvements and extraordinary repairs of income-producing property (i.e., new roof/new plumbing system), shall be charged to income from time to time;

(2) A reasonable reserve for depletion of all depletable natural resources, including, but not limited to, oil, gas,

and mineral and timber property, shall be charged to income from time to time;

(3) Distributions by mutual funds and similar entities of gains from the sale or other disposition of property shall be credited to principal;

(4) A reasonable reserve for amortization of all intangible property having a limited economic life, including, but not limited to, patents and copyrights, shall be charged to income from time to time;

(5) All premiums paid and all discounts received in connection with the purchase of any bond or other obligation shall be amortized by making an appropriate charge or credit to income as the case may be.

D. Unless otherwise specifically provided in this Declaration of Trust, the Trustee shall be required to make adjustments in the rights of any beneficiaries, and among the principal and income accounts, to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that the Trustee believes has had the effect, directly or indirectly, of preferring one beneficiary or group of beneficiaries over others.

E. Income accrued or unpaid on Trust Property when received into the Trust shall be treated as any other income. Income accrued or held undistributed by the Trustee at the termination of any Trust created herein shall go to the next beneficiaries of the Trust in proportion to their interest in it, except as may otherwise be provided for in this Declaration of Trust. This provision shall not apply to income on Treasury bonds redeemed in payment of either Settlor's federal estate tax.

F. Unless the Trustee shall have received actual written notice of the occurrence of an event affecting the beneficial interests of this Trust, the Trustee shall not be liable to any beneficiary of any Trust for distribution made as though the event had not occurred.

G. No beneficiary of any trust shall have any right, power or authority to sell, assign, pledge, mortgage or in any other manner to encumber, alienate, transfer or impair all or any part of his interest in the Trust or in the principal or income of the Trust. The beneficial and legal interest in and the principal and income of the Trust and every part of it shall be free from the interference or control of any creditor of any beneficiary of the Trust and shall not be subject to the claims of any such creditor nor liable to attachment, execution, bankruptcy or any other process of law.

The income and principal of the Trust shall be paid over to the beneficiary in person or, in the event of the minority or incompetency of any beneficiary, to the guardian of the person of

that beneficiary, or to or for the benefit of that beneficiary, in such manner as in the Trustee's discretion seems most advisable at the time and in the manner provided by the terms of the Trust, and not upon any written or oral order nor upon any assignment or transfer by the beneficiary nor by operation of law.

H. The validity of this Trust and the construction of its beneficial provisions shall be governed by the laws of the State of California in force from time to time. This Paragraph shall apply regardless of any change of residence of the Trustee or any beneficiary or the appointment or substitution of a Trustee residing or doing business in another state.

I. The term "issue" and the term "lineal descendant" used anywhere in this Declaration of Trust, unless otherwise specifically provided herein, shall include descendants and issue of all degrees, including adopted (if adopted prior to eighteen (18) years of age) and posthumous descendants and issue, and descendants and issue born after the signing of this Declaration of Trust, and unless otherwise specifically provided herein, distribution to lineal descendants or issue shall be made per stirpes, that is, in accordance with the principle of representation.

J. As used in this Declaration of Trust, the masculine, feminine or neuter gender, and the singular or plural number, shall each include the others whenever the context so indicates.

K. No person paying money or delivering property to the Trustee shall be responsible for its application.

L. Any person who is both a beneficiary and a Trustee of any Trust hereunder shall exercise all rights and powers granted to the Trustee only in the capacity of a fiduciary.

M. The Trustee shall not be required to file any periodic accounting with respect to any trust created herein, but this shall not prevent the Trustee from having said Trustee's accounts judicially settled at any time or times, if said Trustee should deem it advisable to do so. At the time that the Settlor is not serving as Trustee, the Trustee shall account annually to each income beneficiary who has attained the age of eighteen (18) years and to the parent or guardian of any income beneficiary who has not attained the age of eighteen (18) years.

N. The Trustee may hold any and all stocks, bonds, notes, mortgages or other property in bearer form, in the Trustee's own name, or in the name of said Trustee's duly appointed nominee, with or without disclosing the fiduciary relationship, and the Trustee's liability shall be neither increased nor decreased thereby.

O. No individual acting as Trustee under this Trust shall be liable to any beneficiary for the Trustee's acts or failure to act, except for willful misconduct or gross negligence.

P. Any Trustee, other than the Settlor, shall be entitled to receive from time to time, without prior court order, reasonable compensation for services rendered as Trustee. Any Trustee, including the Settlor, shall be entitled to have the Trust pay, or reimburse the Trustee for, expenses, including travel expenses, incurred in connection with the administration of the trust estate.

Q. Any Trustee may delegate to any other Trustee any right or power under this Declaration of Trust, except as otherwise provided herein.

R. If any beneficiary under this Trust contests or attacks this trust or any of its provisions, or any will of the Settlor, any share of the Trust given to that beneficiary is revoked and shall be disposed of as if that beneficiary had predeceased Settlor without issue.

S. Notwithstanding anything in this instrument to the contrary, the Trustee shall not pay any death taxes, including interest or penalties, last-illness and funeral expenses, attorney's fees, administration expenses, debts, or other obligations of the Settlor's estate from proceeds of insurance policies on the Settlor's life which are excluded from the Settlor's estate for federal estate tax purposes. However, the Trustee, in the Trustee's discretion, may but shall be under no obligation to use insurance proceeds for such payments.

ARTICLE XII

RELEASE OF POWER

Any Trustee shall have the right and power to release or to restrict the scope of any power that said Trustee may hold in connection with any trust created under this Declaration of Trust, whether this power is expressly granted in the Declaration of Trust or implied by law. The Trustee shall exercise this right in a writing and notify the Settlor or, if the Settlor is deceased, to any income beneficiary who has attained eighteen (18) years of age and to the parent or guardian of any income beneficiary who has not attained the age of eighteen (18) years, specifying the powers to be released or restricted and the nature of the restriction. Any released power shall pass to and be

exercisable by the other then acting Trustee or Successor Trustee or, if there is none, by a Successor Trustee nominated by the Probate Court in the county wherein the Surviving Settlor died.

ARTICLE XIII

POWER IN TRUSTEE

Notwithstanding anything contained to the contrary, upon the termination of any trust created herein, if pursuant to the provisions of this Declaration of Trust all or any part of the corpus of the Trust shall become distributable to a minor and shall vest in absolute ownership in said minor, the Trustee is authorized and empowered in said Trustee's uncontrolled discretion to hold said principal so vested in such minor, or any part thereof, in a separate fund for the benefit of such minor. The fund may be property that consists of investments not authorized by law for trust funds. The Trustee may invest and reinvest the same, collect the income therefrom, and, during the minority of such minor, apply net income thereof to the support, education, and maintenance of such minor as the Trustee shall see fit. The Trustee may accumulate, invest, and reinvest the balance of the income until such minor shall attain majority, and thereupon pay over the corpus, together with any accumulated and undistributed income, to the minor. If such minor shall die before attaining majority, the corpus, together with any accumulated and undistributed income, shall be paid over to the estate of the minor. The authority conferred upon the Trustee by this ARTICLE shall be construed as a power only, and shall not operate to suspend the absolute ownership of such property by such minor or to prevent the absolute vesting thereof in such minor. All the powers and discretion herein conferred upon the Trustee by this Declaration of Trust shall apply with respect to the administration of any property subject to this ARTICLE.

All the above provisions of this ARTICLE shall also apply in full to any adult beneficiary who is under a mental or legal disability, as determined by the Trustee in said Trustee's sole

discretion, during the period of time that such beneficiary is so disabled.

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ARTICLE XIV

NAME AND EXTRACT

This trust shall be known as the Ella E. Horst Revocable Trust. Any person in any way dealing with the Trust or the Trustee shall always be entitled to rely upon an Extract of terms of this Trust, which Extract need not include the dispository provisions of the Trust, signed by any then serving Trustee or the attorney for the Trust.

EXECUTED on May 21, 1991 at Los Angeles, California.

Ella E. Horst

Ella E. Horst, Settlor

IN THE PRESENCE OF:

Joan E. Johnson

Ella E. Horst

Ella E. Horst, Trustee

IN THE PRESENCE OF:

Joan E. Johnson

STATE OF CALIFORNIA)
) SS
COUNTY OF LOS ANGELES)

On MAY 21, 1991, before me, a Notary Public in and for the State of California, personally appeared Ella E. Horst, proved to me by satisfactory evidence to be the Settlor and the Trustee of the Trust created by the above instrument and to be the person whose name is subscribed to the instrument, and Ella E. Horst acknowledged that she executed the same as Settlor and Trustee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

OFFICIAL SEAL
JOAN McCALATION
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Comm. Expires June 20, 1994

(Seal)

Joan McCalation

Notary Public

5/13/91

FIRST AMENDMENT
TO THE ELLA E. HORST REVOCABLE TRUST
DATED MAY 21, 1991

I, ELLA E. HORST, hereby declare this to be the First Amendment to the ELLA E. HORST REVOCABLE DECLARATION OF TRUST dated May 21, 1991 (the "Declaration of Trust") establishing the ELLA E. HORST REVOCABLE TRUST (the "Trust").

Pursuant to power reserved to me as the Settlor as set forth in Article I of the Declaration of Trust, I have the authority to amend any of the terms of the Declaration of Trust at any time during my lifetime. With that authority, I hereby amend the Declaration of Trust, as follows:

FIRST: The name "Patricia H. Powers" found at the end of the seventh and at the beginning of the eighth lines of Section A. of Article III of the Declaration of Trust shall be changed to read "Patricia L. Horst; and the name "Powers" at the beginning of the third line of the third paragraph in said Section A shall be changed to read "Horst."

SECOND: Section A. (entitled "Specific Gifts") of ARTICLE III - Death of Settlor, shall have the following paragraphs added thereto:

"If the Settlor's son, William Arthur Horst, survives the Settlor, the Trustee shall distribute to him (1) the real property held in trust herein and located at 2631 Corinth Avenue, Los Angeles, California; (2) any automobile that is held in trust herein or owned by the Settlor which is to be distributed to the Trustee or Trust by Settlor's will; and (3) the 1979 Lazy Daze motor home held in trust herein or which is to be distributed to the Trustee or Trust by Settlor's will or otherwise.

If settlor's son, William Arthur Horst fails to survive the Settlor the foregoing paragraph shall be void and the assets set forth therein shall become part of the residual of the trust estate."

THIRD: Section B (entitled "Divide into Shares") shall be deleted in its entirety and in its stead, the following shall be inserted:

"B. Division into Shares. After the satisfaction of the specific gifts as provided

in Paragraph A of this Article, the Trustee shall divide the balance of the Trust Property into two equal shares as follows:

(1) One share shall be distributed free of trust to Settlor's son, WILLIAM ARTHUR HORST, and if he is then deceased, his share shall be distributed free of trust in equal portions to Patricia Lynne Horst, William Robert Horst, Kristy Marie Horst and Tara Lynne Horst, or their issue by right of representation.

(2) The other share shall be distributed free of trust in equal portions to Robert Kent Holiday, Blaine Charles Holiday, Jill Holiday Linford, Gail Holiday Herr, Kent Robert Holiday, Craig Donald Holiday, Brian James Holiday, Dawn Holiday Blanchard, Blake William Holiday, Steven John Holiday and Nathan Dean Holiday, or their issue by right of representation."

In all other respects, the Declaration of Trust shall remain in effect as originally written and executed.

Dated: 6 March, 1998 Ella E. Horst

STATE OF UTAH)
) ss
COUNTY OF Davis)

On Mar. 6th, 1998, before me, Corlynn Tingey ~~Ella E. Horst~~, a Notary Public, personally appeared ELLA E. HORST, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument entitled "First Amendment To The Ella E. Horst Revocable Declaration of Trust Dated May 21, 1991" and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person who executed the instrument.

WITNESS, my hand and official seal.
Signature: Corlynn Tingey

NOTARY PUBLIC
CORLYNN TINGEY
200 East Pages Lane
Centerville, Utah 84014
My Commission Expires
April 1, 2001
STATE OF UTAH

Address: 200 E. Pages Ln.
Centerville, Ut 84014

My Commission Expires: 04-01-2001

SECOND AMENDMENT

TO THE

ELLA D. HORST REVOCABLE DECLARATION OF TRUST

DATED MAY 1, 1991

Ella E. Horst, as Trustee of the Ella E. Horst Revocable Declaration of Trust, Dated May 1, 1991, as amended by a First Amendment dated March 6, 1998 (the "Trust"), pursuant to powers reserved to the Settlor in Article I of the Trust, hereby amends the Trust as follows:

FIRST: Settlor's first amendment to the trust, which was signed on March 6, 1998 and entitled: "FIRST AMENDMENT TO THE ELLA E. HORST REVOCABLE TRUST DATED MAY 31, 1991" is revoked in its entirety.

SECOND: Section A of Article III of the original trust dated May 1, 1991, entitled "Specific Gifts," is hereby deleted in its entirety, and in its place the following new Section A is inserted in stead thereof:

"A. Specific Gifts. As soon as practicable, the Trustee shall:

"1. Distribute to Settlor's granddaughter, Patricia Lynn Horst, the undivided one-half (50%) interest of the trust in and to that certain real property located at 7475 West Rosada Way, Las Vegas, Nevada 89149, subject to taxes and liens on said property. In the event Patricia Lynn Horst does not survive the Settlor by thirty (30) days, the trustee shall distribute one-half (50%) of the undivided one-half (50%) of the trust (25% of the undivided total) to Stella Adkins, provided she survives the Settlor by thirty (30) days. This gift shall be subject to t axes and liens on said property. In addition, if Patricia Lynn Horst does not survive the Settlor, Stella Adkins shall have the right to purchase the remaining one-fourth (1/4) interest of the trust in said real property. The purchase price shall be based upon the reasonable value of said property at that time, less a proportionate amount for unpaid balances of mortgages and or other liens against the property. The purchase by Stella Adkins may be for cash, or by mortgage or a note secured by a deed of trust, or part of each, at the election of Stella Adkins. Any mortgage or note secured by a deed of trust shall be at an interest rate not to exceed five percent (5%) per annum and the term of the mortgage or note shall not exceed fifteen years. If Stella

Adkins does not elect to purchase the remaining one-fourth interest in said property, that remaining one-fourth (1/4) interest shall become part of the residue of the trust estate.

"2. Distribute to Settlor's son, William Arthur Horst, provided he survives the Settlor by thirty (30) days, (a) the real property located at 2631 Corinth Avenue, Los Angeles, California, subject to any taxes and liens on said property; and (b) any automobile that is held in trust herein or owned by the Settlor which is to be distributed to the Trust or Trustee pursuant to Settlor's will. In the event William Arthur Horst does not survive the Trustee by thirty (30) days, the described real property and auto shall become part of the residue of the trust estate."

THIRD: Section B of Article III of the original trust, entitled "Divide into Shares," is hereby deleted in its entirety and in its stead the following is inserted:

"B. Distribution of Remainder. After satisfaction of the specific gifts as provided in Paragraph A of this Article III and payment of settlor's last illness and just debts (excluding any taxes or other liens on real property) as provided in Article IV, below, the residue of the trust estate shall be divided equally among and distributed to:

William A. Horst
William R. Horst
Kristi Horst
Robert K, Holiday
Blaine C. Holiday
Jill Linford
Gail Herr
Kent R. Holiday
Brian Holiday
Craig Holiday
Dawn Holiday Blanchard
Blake Holiday
Steven Holiday
Nathan Holiday

"If William A. Horst does not survive the Settlor by thirty (30) days, his share of the residue of the estate shall be distributed to Patricia Lynn Horst. If any other beneficiary in this Paragraph B predeceases the Settlor, his or her share shall be distributed to his or her issue by

right of representation. If such beneficiary leaves no issue, his or her share shall be distributed equally among the other beneficiaries."

FOURTH: Article V of the original trust, entitled "DISTRIBUTION TO LINEAL DESCENDANTS" is amended by adding the following paragraph "C" at the end of Article V:

"C. TERMINATION WHEN SHARE IS SMALL. If the trust share held for any beneficiary who is under 21years has a total value at the end of any calendar year of less than $10,000, the trustee, in the trustee's sole discretion, may distribute the entire trust share of that beneficiary to the beneficiary, provided however, if the beneficiary is under the age of 18, the trustee may, in the trustee's discretion, distribute the share to the beneficiary's parent or guardian under the Uniform Transfers to Minor's Act or similar legislation, to be held until the beneficiary attains age 18, and the trustee may then terminate the trust for that beneficiary."

FIFTH: Article VIII of the original trust, entitled "SUCCESSOR TRUSTEE – NOMINATION" is deleted in its entirety and in its stead the following is inserted:

"ARTICLE VIII

SUCCESSOR TRUSTEES

"If ELLA E. HORST shall for any reasons cease to act as Trustee, then her granddaughter, PATRICIA LYNN HORST shall act as Successor Trustee. If for any reason PATRICIA LYNN HORST shall fail or refuse to serve or complete service as Successor Trustee, ELLA E. HORST'S grandson, BLAINE HOLIDAY shall serve as Successor Trustee.

"If at any time, as certified in writing by a licensed physician, an individual Trustee has become physically or mentally incapable of continuing to act as Trustee, whether or not a court of competent jurisdiction has declared said Trustee incompetent, mentally ill, or in need of a conservator, that Trustee shall cease to act as Trustee.

"In the event both of the aforenamed Successor Trustees fail to act or are disqualified pursuant to the previous paragraph, the beneficiaries set forth in Section B of Article III shall have the power by MAJORITY vote to name one or more of such beneficiaries (but not

more than three) to serve as Successor Trustee(s). If more than one such Successor Trustee is elected by the majority vote of the beneficiaries, all decisions made and acts taken shall be by a MAJORITY of such Successor Trustees.

"No Successor Trustee shall have any responsibility for the acts or omissions of any prior Trustee and no duty to audit or investigate the accounts or administration of any such Trustee.

"No bond shall be required of any person serving as a Trustee of any Trusts created hereunder for the faithful performance of their duties as Trustee, whether acting jointly or individually.

"The term "Trustee" as used in this Declaration of Trust shall include any Trustee named in this Declaration of Trust or in accordance with the terms of this Trust."

In all other respects, the Trust as originally executed is hereby reaffirmed.

Dated: 3/16, 2004

Ella E. Horst Settlor
Ella E. Horst, Settlor

State of Utah)
) ss
County of Utah)

On this the 16 day of March, 2004 before me, Ella E. Horst the undersigned Notary Public, personally appeared Ella E. Horst personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument

WITNESS my hand and official seal.

Barbara Lewis Palfreyman
Notary's Signature

BARBARA LEWIS PALFREYMAN
Notary Public
State of Utah
My Commission Expires Jan 28, 2006
3100 Uintah Ave Rock UT 84001

THIRD AMENDMENT

TO THE

ELLA E. HORST REVOCABLE DECLARATION OF TRUST

DATED MAY 1, 1991

Ella E. Horst, as Trustee of the Ella E. Horst Revocable Declaration of Trust, Dated May 1, 1991, as amended by a First Amendment dated March 6, 1998 (which was subsequently revoked) and a Second Amendment dated May 1, 2004 (the "Trust"), pursuant to powers reserved to the Settlor in Article I of the Trust, hereby amends the Trust as follows:

Paragraph 2 of Section A of Article III of the Trust (as amended), Section A being entitled "Specific Gifts," is hereby deleted in its entirety, and the following new Paragraph 2 is inserted in the stead thereof:

"2. Settlor's rental real property, located at 7125 Village Shore Court, Las Vegas Nevada (the "Property") shall be held in trust and managed by Patricia Lynn Horst, hereinafter named as successor trustee of this Trust) as follows:

"a. All rental or other income from the Property, after payments of property taxes and assessments, insurance, maintenance, and other obligations due in the operation of the Property as a rental, including loan payments, if any, shall be used for the health, care and welfare of William Arthur Horst. The successor trustee shall have the power to sell the Property if, in the trustee's sole discretion, the net rents are not sufficient to provide for the health, care and welfare of William Arthur Horst, and to use the principal or income from the sale proceeds for his health, care and welfare. The successor trustee shall have all powers conferred in this Trust upon the Trustee and full discretion in regards the payment and use of such funds. No interest in the principal or income of any funds use for the benefit of William Arthur Horst shall be anticipated, assigned, encumbered or subjected to creditor's claim or legal process before actual personal receipt by the beneficiary. Upon the demise of William Arthur Horst, the trustee shall distribute the Property to Patricia Lynn Horst. Patricia Lynn Horst may sell the property and retain the proceeds therefrom or use the proceeds as she sees fit.

"b. The Property shall not be deemed part of the residue of the trust estate."

In all other respects, the Trust as previously amended is hereby reaffirmed.

Dated: Sept. 26, 2005

Ella E. Horst

Ella E. Horst, Settlor

State of Nevada)
) ss
County of Clark)

On this the 26 day of September, 2005 before me, Veronica Hochstetter the undersigned Notary Public, personally appeared Ella E. Horst personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument

WITNESS my hand and official seal.

Veronica Hochstetter (seal)
Notary's Signature

VERONICA HOCHSTETTER
Notary Public, State of Nevada
Appointment No. 04-83051-1
My Appt. Expires May 3, 2008

EXHIBIT B

EXHIBIT B

APN: 138-03-511-061

APN: 125-34-310-047

Prepared by:

GARMAN TURNER GORDON LLP
650 WHITE DRIVE, SUITE 100
LAS VEGAS, NV 89119

When Recorded, Mail to:

PATRICIA L. HORST
7475 W ROSADA WAY
Las Vegas, NV 89149

AFFIDAVIT OF SUCCESSOR TRUSTEE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

PATRICIA L. HORST, being first duly sworn, deposes and says as follows:

1. On May 21, 1991, ELLA E. HORST, as Grantor and Trustee, executed a document entitled "THE ELLA E. HORST REVOCABLE TRUST" (herein "Trust").

2. The Trust was amended on March 6; 1998, March 16, 2004 and September 26, 2005.

3. ELLA E. HORST died on October 26, 2016 (see certified copy of her death certificate attached as **Exhibit 1**).

4. ARTICLE VIII of the Trust as amended on March 16, 2004 provides that upon the death of the Grantor that PATRICIA L. HORST is appointed as Successor Trustee of all trusts created under the Trust.

5. PATRICIA L. HORST hereby accepts and assumes the duties of Successor Trustee of "THE ELLA E. HORST REVOCABLE TRUST," dated May 21, 1991, as amended from time to time.

6. Real property located at 7125 Village Shore Court, Las Vegas, NV 89129 (A.P.N. 138-03-511-061) in the County of Clark, State of Nevada, more particularly

described in **Exhibit 2** was conveyed to "THE ELLA E. HORST REVOCABLE TRUST," dated May 21, 1991.

7. A 75% interest in real property located at 7475 Rosada Way, Las Vegas, NV 89149 (A.P.N. 125-34-310-047) in the County of Clark, State of Nevada, more particularly described in **Exhibit 3** was conveyed to "THE ELLA E. HORST REVOCABLE TRUST," dated May 21, 1991.

8. PATRICIA L. HORST as Successor Trustee has, among other powers, the power to sell, exchange, lease and otherwise engage in transactions involving trust assets as the Trustee deems appropriate. Trustee has the power to make all types of investments without limitation. These powers include the powers enumerated in NRS 163.265 to 163.410.

Dated this 18th day of November, 2016.

By: Patricia L Horst
PATRICIA L. HORST

STATE OF NEVADA)
) ss.:
COUNTY OF CLARK)

On November 18, 2016, before me, RaEnna M. Burd, a Notary Public, personally appeared PATRICIA L. HORST, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the foregoing **AFFIDAVIT OF SUCCESSOR TRUSTEE** and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity on behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

RaEnna M Burd
Notary Public

RAEANNA BURD
Notary Public, State of Nevada
Appointment No. 14-14142-3
My Appt. Expires Jul 10, 2018

STATE OF NEVADA

CERTIFICATION OF VITAL RECORD

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC AND BEHAVIORAL HEALTH
VITAL STATISTICS

CASE FILE NO. 3922401

CERTIFICATE OF DEATH

2016019498
STATE FILE NUMBER

TYPE OR PRINT IN PERMANENT BLACK INK

DECEDENT

1a. DECEASED-NAME (FIRST, MIDDLE, LAST, SUFFIX)			2. DATE OF DEATH (Mo/Day/Year)	3a. COUNTY OF DEATH
Ella Elizabeth	HORST		October 26, 2016	Clark
3b. CITY, TOWN, OR LOCATION OF DEATH	3c. HOSPITAL OR OTHER INSTITUTION -Name(If not either, give street or	3d. If Hosp. or Inst. indicate DOA/OP/Emer. Rm Inpatient(Specify)		4. SEX
Las Vegas	Centennial Hills Hospital Medical Center	Inpatient		Female

5. RACE (Specify)	6. Hispanic Origin? Specify No - Non-Hispanic	7a. AGE-Last Birthday (Years)	7b. UNDER 1 YEAR MOS / DAYS	7c. UNDER 24 HR HOURS / MINS	8. DATE OF BIRTH (Mo/Day/Yr)
White		95			September 13, 1920

IF DEATH OCCURRED IN INSTITUTION SEE HANDBOOK REGARDING COMPLETION OF RESIDENCE ITEMS

9a. STATE OF BIRTH (If not US/CA, name country)	9b. CITIZEN OF WHAT COUNTRY	10. EDUCATION	11. MARITAL STATUS (Specify)	12. SURVIVING SPOUSE'S NAME (Last name prior to first marriage)
Colorado	United States	12	Widowed	

13. SOCIAL SECURITY NUMBER	14a. USUAL OCCUPATION (Give Kind of Work Done During Most of	14b. KIND OF BUSINESS OR INDUSTRY	Ever in US Armed Forces?
	Homemaker	Own Home	No

15a. RESIDENCE - STATE	15b. COUNTY	15c. CITY, TOWN OR LOCATION	15d. STREET AND NUMBER	15e. INSIDE CITY LIMITS (Specify Yes or No)
Nevada	Clark	Las Vegas	7475 W. Rosada Way	No

PARENTS

16. FATHER/PARENT - NAME (First Middle Last Suffix)	17. MOTHER/PARENT - NAME (First Middle Last Suffix)
William Robert SMOCK	Eunice Andrea PETERSON

18a. INFORMANT - NAME (Type or Print)	18b. MAILING ADDRESS (Street or R.F.D. No, City or Town, State, Zip)
Patricia Lynne HORST	7475 W. Rosada Way Las Vegas, Nevada 89149

DISPOSITION

19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify)	19b. CEMETERY OR CREMATORY - NAME	19c. LOCATION City or Town State
Removal/Burial	Pierce Brothers Valhalla Memorial Park	North Hollywood California 91606

20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such)	20b. FUNERAL DIRECTOR LICENSE NUMBER	20c. NAME AND ADDRESS OF FACILITY
DAVID F HOLT SIGNATURE AUTHENTICATED	866	Palm Mortuary Cheyenne 7400 W Cheyenne Las Vegas NV 89129

TRADE CALL TRADE CALL - NAME AND ADDRESS Pierce Brothers Valhalla 10621 Victory Blvd North Hollywood CA 91606

CERTIFIER

To Be Completed by CERTIFYING PHYSICIAN

21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated (Signature & Title) SIGNATURE AUTHENTICATED CHARLES J HU DO

21b. DATE SIGNED (Mo/Day/Yr)	21c. HOUR OF DEATH
October 31, 2016	13:28

21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)

To Be Completed by CORONER'S OFFICE

22a. On the basis of examination and/or investigation, in my opinion death occurred at the time, date and place and due to the cause(s) stated (Signature & Title)

22b. DATE SIGNED (Mo/Day/Yr)	22c. HOUR OF DEATH

22d. PRONOUNCED DEAD (Mo/Day/Yr)	22e. PRONOUNCED DEAD AT (Hour)

23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print)	23b. LICENSE NUMBER
Charles J Hu DO 6900 N Durango Dr Las Vegas, NV 89149	DO1961

REGISTRAR

24a. REGISTRAR (Signature)	24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr)	24c. DEATH DUE TO COMMUNICABLE DISEASE
NANCY BARRY SIGNATURE AUTHENTICATED	October 31, 2016	YES ☐ NO ☒

CAUSE OF DEATH

CONDITIONS IF ANY WHICH GAVE RISE TO IMMEDIATE CAUSE STATING THE UNDERLYING CAUSE LAST

25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c).) PART I		Interval between onset and death
(a)	Cardiopulmonary Arrest	
DUE TO, OR AS A CONSEQUENCE OF: (b)	Acute Ischemic Cerebral vascular accident	Interval between onset and death
DUE TO, OR AS A CONSEQUENCE OF: (c)	Atherosclerosis	Interval between onset and death
DUE TO, OR AS A CONSEQUENCE OF: (d)	Hypertension	Interval between onset and death

PART II OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not resulting in the underlying cause given in Part I.	27a. AUTOPSY (Specify Yes or No)	27. WAS CASE REFERRED TO CORONER (Specify Yes or No)
	No	Yes

28a. ACC., SUICIDE, HOM., UNDET. OR PENDING INVEST. (Specify)	28b. DATE OF INJURY (Mo/Day/Yr)	28c. HOUR OF INJURY	28d. DESCRIBE HOW INJURY OCCURRED

28e. INJURY AT WORK (Specify Yes or No)	28f. PLACE OF INJURY- At home, farm, street, factory, office building, etc. (Specify)	28g. LOCATION STREET OR R.F.D. No.	CITY OR TOWN	STATE

LOCAL REGISTRAR

CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA. This copy was issued by the Southern Nevada Health District from State certified documents authorized by state Board of Health pursuant to NRS 440.175.

VRS-Rev-20120523a

332868

332868

Registrar of Vital Statistics

By:

DATE ISSUED: NOV 0 4 2016

This copy not valid unless prepared on watermarked security paper displaying date, seal and signature of Registrar.
SOUTHERN NEVADA HEALTH DISTRICT • P.O. Box 3902 • Las Vegas, NV 89127 • 702-759-1010 • Tax ID # 88-0151573

Exhibit 2

LOT TWENTY-SIX (26) IN BLOCK TWO (2), OF LONE MOUNTAIN VILLAGE – UNIT 1 AS SHOWN BY MAP THEREOF ON FILE IN BOOK 59 OF PLATS, PAGE 100 AND AMENDED BY CERTIFICATE OF AMENDMENT RECORDED MARCH 8, 1994 IN BOOK 940308 DOCUMENT NO. 01245, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

APN: 138-03-511-061

Exhibit 3

Lot Two (2) of that Certain Parcel Map on File in File 72, Page 40, in the Office of the County Recorder of Clark County, Nevada and Recorded May 14, 1992 in Book 920504 of Official Records as Document No. 00796

APN: 125-34-310-047

EXHIBIT C

A COPY OF JUNE 27, 2017 LETTER FROM KRISTIN M. TYLER WITH TRUST INVENTORY

(See Attached)

EXHIBIT C

Kristin M. Tyler, Esq.
ktyler@gtg.legal

June 27, 2017

Gwen R. Mullins, Esq.
Howard & Howard Attorneys, PLLC
3800 Howard Hughes Pkwy, Ste. 1000
Las Vegas, NV 89169-5980

Re: THE ELLA E. HORST REVOCABLE TRUST, dated May 21, 1991

Dear Ms. Mullins:

As you are aware, Patricia Horst is the successor trustee of the above-named trust. A copy of the initial inventory of the trust is enclosed.

We are in the process of communicating with Kent Holiday regarding handling of the promissory note that he owed to the trust. We are also in the process of finding out who is named as beneficiary of Ella's IRA with Dreyfus. Once we have more information on these items we will be back in touch regarding the accounting and distributions from the Trust.

Should you have any questions or concerns, you can reach me at (725) 777-3000 or ktyler@gtg.legal. Thank you.

Very truly yours,

GARMAN TURNER GORDON

KRISTIN M. TYLER, ESQ.

KMT/cdt
cc: Patricia Horst (via email)
Enclosure

ELLA E. HORST REVOCABLE DECLARATION OF TRUST

Dated May 21, 1991, as Amended from Time to Time

Initial Inventory as of 10/31/16

ASSET	VALUE
Real Property – 7475 W. Rosada Way *75% interest of $489,934*	$367,450
Real Property – 7125 Village Shore Court *100% interest*	$227,646
Promissory Note – Kent Holiday (*Value does not include accrued interest*)	$52,087.82
Clark County Credit Union	$55,819.92
Nevada State Bank – money market	$27,598.14
Nevada State Bank – checking	$5,301.64
Prudential	$5,820.23
TOTAL	**$741,723.75**

Other Potential Asset:

Dreyfus IRA – beneficiary is unknown. The value of the Dreyfus IRA as of 10/31/16 was approximately $12,971.53. Paperwork has been submitted and we are awaiting information as to the beneficiary status.

By: Patricia L. Horst
PATRICIA L. HORST, Successor Trustee

EXHIBIT D

JUNE 2, 2017 E-MAIL FROM MS. TYLER

(See Attached)

EXHIBIT D

Mullins, Gwen Rutar

From: Kristin Tyler <ktyler@Gtg.legal>
Sent: Friday, June 02, 2017 3:53 PM
To: Mullins, Gwen Rutar
Cc: Carie Tofanelli
Subject: FW: Ella Horst Revocable Trust

Hi Gwen,

I am not going to respond to Brian if you have been retained. I have a meeting with the trustee on June 19 to finalize and send out what we hope will be a first and final accounting.

In addition, I will be sending all the beneficiaries a letter regarding whether or not they want any items of family memorabilia. Please confirm that I should send Brian's letter to you.

Happy to discuss this and answer any questions.

KT

Kristin M. Tyler
Partner

P 725 777 3000 | F 725 777 3112

GARMAN | TURNER | GORDON

650 WHITE DRIVE, SUITE 100
LAS VEGAS, NV 89119

website | vCard | map | email

From: Brian [mailto:bjholiday888@gmail.com]
Sent: Friday, June 2, 2017 1:54 PM
To: Kristin Tyler <ktyler@Gtg.legal>
Cc: sniglett@cox.net; Carie Tofanelli <ctofanelli@Gtg.legal>; Gwen Rutar Mullins <gmullins@HowardandHoward.com>
Subject: Re: Ella Horst Revocable Trust

Hello Kristin,

Despite requesting and waiting months, and your assurance below that one would be provided in the "near future", I still have not received an inventory of the trust assets. Grandma past away more than 7 months ago now and none of the beneficiaries, that I know of, have been provided this information. Nor have I received any explanation as to why one can't be provided.

This is not normal.

I have CC'd local counsel, Gwen Mullins, on this email.

A simple and open inventory of the assets of the trust is not a difficult request and should not take 7 months.

Best Regards,

Brian

On Apr 26, 2017, at 11:27 AM, BJ Holiday <bjholiday888@gmail.com> wrote:

> Hi Kristin,
>
> I still have not received the accounting of assets per your March 14 email below.
>
> Thanks,
>
> Brian
>
> > On Mar 14, 2017, at 10:52 AM, Kristin Tyler <ktyler@Gtg.legal> wrote:
> >
> > At some point in the near future, the trustee will provide an accounting of assets that will give you a better idea of what the trust held at the time of Ella's passing. I am not aware of any other Schedule A documents.
> >
> > Kristin Tyler
> >
> > **From:** Brian [mailto:bjholiday888@gmail.com]
> > **Sent:** Thursday, March 9, 2017 5:44 PM
> > **To:** Kristin Tyler <ktyler@Gtg.legal>
> > **Cc:** sniglett@cox.net; Carie Tofanelli <ctofanelli@Gtg.legal>
> > **Subject:** Re: Ella Horst Revocable Trust
> >
> > Thank you Kristin. Were there any additions to the Schedule A you've attached?
> >
> > Brian
> >
> > On Mar 9, 2017, at 12:56 PM, Kristin Tyler <ktyler@Gtg.legal> wrote:
> >
> > > Hi Brian,
> > >
> > > I am representing Tricia Horst in her role as successor trustee of THE ELLA E. HORST REVOCABLE TRUST created May 21, 1991 and any amendments thereto.
> > >
> > > Attached is the Schedule A which was inadvertently omitted. It is essentially an inventory of assets at that snapshot in time when the Exhibit A was written. I am informed that Ella may not have owned all of these properties at the time of her death.

Amendments 2 and 3 do reference the date of May 1, 1991. I did not prepare those amendments. We are not aware of any documents dated May 1, 1991 related to this trust and believe this to be a typo and should have been May 21, 1991. The date of May 21, 1991 is the date the original trust document was created and this date is used as a reference point to the trust.

Please let me know if you have any further questions.

Kristin M. Tyler
Partner

P 725 777 3000 | F 725 777 3112

GARMAN | TURNER | GORDON

650 WHITE DRIVE, SUITE 100
LAS VEGAS, NV 89119

website | vCard | map | email

<image001.jpg> <image008.jpg> <image002.jpg>

From: BJ Holiday [mailto:bjholiday888@gmail.com]
Sent: Monday, February 27, 2017 9:02 AM
To: Kristin Tyler <ktyler@Gtg.legal>
Cc: sniglett@cox.net
Subject: Ella Horst Revocable Trust

Hello Kristin,

I received your letter on February 8 regarding the Ella Horst trust documents.

Unfortunately, my set of documents is incomplete. Could you please provide me the following items:

1. Schedule A of May 21, 1991 Trust, along with any additions thereto. This schedule sets forth the property transferred to the trust.

2. May 1, 1991 Trust documents referenced to in the Amendment 2 and 3.

Finally could you please clarify who you represent?

Best Regards,

Brian Holiday
<Schedule A.PDF>

EXHIBIT E

HANDWRITTEN LETTER

(See Attached)

EXHIBIT E

11 October 2011

Edna E. Horst as Trustee
of the Edna E. Horst Revocable Trust
UDT DTD 5/21/91

I purchased Stella Adkins interest in the property at 7475 W Rosada Way - Las Vegas Nevada 89147. This interest is to be added to my other shares and go to Patricia Horst.

Elizabeth A. Mendré
11 Oct 2011

Edna E. Horst
of the Edna E. Horst Revocable Trust
UDT DTD 5/21/91

EXHIBIT F

DOCUMENTS CONTAINING ELIZABETH MENDRE'S SIGNATURE IN DIVORCE PROCEEDINGS

(See Attached)

EXHIBIT F

ORIGINAL

FILED

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CLERK OF THE COURT

COMD
AMY M. MASTIN, ESQ.
NEVADA BAR #006411
LAW OFFICE OF AMY M. MASTIN
1100 EAST BRIDGER AVENUE
LAS VEGAS, NEVADA 89101
(702) 638-0900
ATTORNEY FOR PLAINTIFF

DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

****

ELIZABETH MENDRE',

Plaintiff,

v.

ALFREDO PEREZ-MATA,

Defendant,

D-08-400314-D

L

COMPLAINT FOR DIVORCE

Plaintiff complains of Defendant, and for cause of action alleges:

I.

That Plaintiff is now and for more than six (6) weeks immediately preceding the commencement of this action, has been an actual, bona fide resident and domiciliary of the County of Clark, State of Nevada, actually and physically residing and being domiciled therein during all of said period of time.

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II.

That Plaintiff and Defendant were intermarried in the City of Las Vegas, State of Nevada, on or about the 15th day of November, 2004, and have ever since been husband and wife.

III.

That the parties have become incompatible in marriage to a degree that they can no longer live as husband and wife and that reconciliation is not possible.

IV.

That there are no minor children of the parties hereto, no adopted children, and Plaintiff is not now pregnant.

V.

That there is no community property of the parties.

VI.

That there is community debt of the parties hereto, specifically an attorney's lien in favor of Reza Athari, Esq. in the amount of $1,100.00.

VII.

That Plaintiff does not require spousal support from Defendant.

VIII.

That Plaintiff desires to maintain her maiden name, ELIZABETH MENDRE', as she never assumed Defendant's last name during their marriage.

IX.

That Plaintiff has been forced to retain the services of an attorney and Defendant should bear Plaintiff's fees and costs incurred herein.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

1. That the bonds of matrimony now and heretofore existing between Plaintiff and Defendant be dissolved, set aside and held for naught, and that the parties hereto and each of them be restored to the status of a single, unmarried person;

2. For an order that Defendant, ALFREDO PEREZ-MATA, assume responsibility for the debt to Reza Athari, holding Plaintiff harmless therefrom;

3. That Plaintiff continue to maintain her maiden name;

4. For an order awarding Plaintiffs her attorney's fees of $1,000.00;

5. For such other and further relief as the Court may deem just and proper in the premises.

DATED this 8th day of September, 2008.

LAW OFFICE OF AMY M. MASTIN

AMY M. MASTIN, ESQUIRE
Nevada Bar Number 006411
1100 East Bridger Avenue
Las Vegas, Nevada 89101
(702) 638-0900
Attorney for Plaintiff

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

ELIZABETH MENDRE', being first duly sworn, deposes and says:

That she is the Plaintiff in the above-entitled action; that she has read the foregoing Complaint for Divorce and knows the content thereof and that the same is true of her own knowledge, except as to those matters therein stated on information and belief, and as to those matters, she believes them to be true.

Elizabeth A Mendre
ELIZABETH MENDRE'

SUBSCRIBED and SWORN to before me
this 9th day of September, 2008.

A M Mastin
NOTARY PUBLIC STATE OF NEVADA
My Appointment Expires 07/12/2011
Appointment No. 02-73746-1

NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE

ORIGINAL

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CLERK OF THE COURT

AFPT
AMY M. MASTIN, ESQ.
NEVADA BAR #006411
LAW OFFICE OF AMY M. MASTIN
1100 EAST BRIDGER AVENUE
LAS VEGAS, NEVADA 89101
(702) 638-0900
ATTORNEY FOR PLAINTIFF

DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

****

ELIZABETH MENDRE',

Plaintiff,

v.

ALFREDO PEREZ-MATA,

Defendant,

Case No. : D-08-400314-D
Dept. No. : L

AFFIDAVIT OF PLAINTIFF IN SUPPORT OF REQUEST FOR SUMMARY DISPOSITION FOR DECREE OF DIVORCE

STATE OF NEVADA)
)ss:
COUNTY OF CLARK)

ELIZABETH MENDRE', being first duly sworn, deposes and says:

1. That I do solemnly swear to testify herein to the truth, the whole truth, and nothing but the truth.

2. That I am the Plaintiff in the above-entitled matter.

3. That I currently reside at 7475 West Rosada Way, Las Vegas, Nevada 89149.

4. That I have lived in Las Vegas continuously since on or before February, 2002; it is my intention to remain in Clark County for the foreseeable future;

5. That I have read the Complaint for Divorce and can testify that the allegations stated in the Complaint are true.

6. That there are no minor children of the marriage, none adopted, and I am not now pregnant.

7. That my husband and I have become incompatible in marriage in that our likes, dislikes, tastes and personalities are so divergent that we can no longer live harmoniously together as husband and wife and reconciliation is not possible.

8. That the parties have no community property for the Court to divide.

9. That the division of community debt set forth in the Decree of Divorce is a fair and equal distribution to the extent practicable.

10. That I do not require spousal support from Defendant.

11. That I will pay for the attorney's fees incurred as a result of this action.

12. That I desire to retain my maiden name of ELIZABETH MENDRE'.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 8th day of September, 2008.

ELIZABETH MENDRE'

SUBSCRIBED and SWORN to before me this 8th day of September, 2008.

NOTARY PUBLIC FOR SAID COUNTY AND STATE

A M Mastin
NOTARY PUBLIC STATE OF NEVADA
My Appointment Expires 07/12/2011
Appointment No. 02-71746-1

Electronically Filed
7/16/2018 3:38 PM
Steven D. Grierson
CLERK OF THE COURT

NOH
GWEN RUTAR MULLINS, ESQ.
Nevada Bar No. 3146
HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy., Ste. 1000
Las Vegas, Nevada 89169
Telephone: (702) 257-1483
Facsimile: (702) 567-1568
Email Address: grm@h2law.com
Attorneys for Brian Holiday

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1991	**CASE NO.: P-18-095314-T** **DEPARTMENT 26**

AFFIDAVIT OF MAILING OF (a) NOTICE OF HEARING ON BRIAN HOLIDAY'S COUNTER-PETITION TO (1) REMOVE PATRICIA L. HORST AS TRUSTEE AND APPOINT SUCCESSOR TRUSTEE; (2) COMPEL ACCOUNTING AND IMPOSE PERSONAL LIABILITY UNDER NRS 165.148; and (3) FOR INSTRUCTIONS; and (b) OBJECTION TO PATRICIA L. HORST'S PETITION TO CONFIRM TRUSTEE; PETITION FOR INSTRUCTIONS, AND PETITION FOR REMOVAL OF *IN REM* JURISDICTION OVER TRUST AND COUNTER-PETITION TO (1) REMOVE PATRICIA L. HORST AS TRUSTEE AND APPOINT SUCCESSOR TRUSTEE; (2) COMPEL ACCOUNTING AND IMPOSE PERSONAL LIABILITY UNDER NRS 165.148; and (3) FOR INSTRUCTIONS

Date of Hearing: August 2, 2018
Time of Hearing: 9:30 a.m.

I hereby certify that on the 16th day of July 2018, I served a true and correct copy of the foregoing:

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy, Ste. 1000
Las Vegas, Nevada 89169
(702) 257-1483
(702) 567-1569 Fax

(a) NOTICE OF HEARING ON BRIAN HOLIDAY'S COUNTER-PETITION TO (1) REMOVE PATRICIA L. HORST AS TRUSTEE AND APPOINT SUCCESSOR TRUSTEE; (2) COMPEL ACCOUNTING AND IMPOSE PERSONAL LIABILITY UNDER NRS 165.148; and (3) FOR INSTRUCTIONS; and

(b) OBJECTION TO PATRICIA L. HORST'S PETITION TO CONFIRM TRUSTEE; PETITION FOR INSTRUCTIONS, AND PETITION FOR REMOVAL OF IN REM JURISDICTION OVER TRUST AND COUNTER-PETITION TO (1) REMOVE PATRICIA L. HORST AS TRUSTEE AND APPOINT SUCCESSOR TRUSTEE; (2) COMPEL ACCOUNTING AND IMPOSE PERSONAL LIABILITY UNDER NRS 165.148; and (3) FOR INSTRUCTIONS

by placing the above referenced documents in the US Mail first class, postage prepaid, addressed to the following:

Kirk D. Kaplan, Esq.
Crest Key, Prof., L.L.C.
6980 O'Bannon Drive, Ste. 100
Las Vegas, NV 89117
Attorneys for Petitioner Patricia L. Horst

William "Bill" R. Horst
7475 W. Rosada Way
Las Vegas, NV 89149

Blaine Holiday
1747 Orchard Drive
Woodbury, MN 55125

Kent Holiday
2402 Cedar Court
Cody, WY 82414

Dawn Holiday Blanchard
3247 E. 81st N.
Idaho Falls, ID 83401

Kristi Horst
1000 S. Williams St. #35
Westmont, IL 60559

Jill Holiday Linford
1298 Eastridge Circle
Logan, UT 84321

Craig Holiday
2299 Orange Cove Avenue
La Crascenta, CA 91214

Blake Holiday
5403 Rise Bend Lane
Katv, TX 77494

Robert Holiday
6878 W. Ainsley Circle
Highland, UT 85002

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(702) 257-1483
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Gail Holiday Herr
10630 E. Realgar Place
Tucson, AZ 85747

Steven Holiday
602 N. Beaufort Avenue, Unit B
Lubbock, TX 79416

Nathan Holiday
45 Radiance Lane
Las Flores, CA 92688

and that there is regular communication by mail between the place of mailing and the places so addressed.

I further certify that on the 16th day of July 2018, I caused a copy of the above referenced documents to be served electronically via the Court's ECF system on the following parties listed on the electronic service list:

Kirk Kaplan kirk@crestkey.com

Cheryl Klukas,
an Employee of Howard & Howard Attorneys PLLC

4813-5619-1596, v. 1

HOWARD & HOWARD ATTORNEYS PLLC
3800 Howard Hughes Pkwy, Ste. 1000
Las Vegas, Nevada 89169
(702) 257-1483
(702) 567-1569 Fax

Electronically Filed
8/10/2018 4:07 PM
Steven D. Grierson
CLERK OF THE COURT

PETN
Kirk D. Kaplan, Esq.
Nevada Bar # 5685
Jason M. Sadow
Nevada Bar # 14112
CREST KEY, PROF., L.L.C.
6980 O'Bannon Drive, Suite 100
Las Vegas, Nevada 89117
Telephone: (702) 202-4153
Facsimile: (702) 837-1879
Kirk@CrestKey.com
Attorneys for Petitioner, Patricia L. Horst

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the

ELLA E. HORST REVOCABLE TRUST
u/a/d 05/21/1991

Hearing Date: Thursday, September 13, 2018
Hearing Time: 9:30 a.m.

Case No.: P-18-095314-T
Dept. No.: PC1

RESPONSE TO BRIAN HOLIDAY'S OBJECTION TO PATRICIA L. HORST'S PETITION TO CONFIRM TRUSTEE; PETITION FOR INSTRUCTIONS, AND PETITION FOR REMOVAL OF IN REM JURISDICTION OVER TRUST AND OBJECTION TO COUNTER-PETITION TO (1) REMOVE PATRICIA L. HORST AS TRUSTEE AND APPOINT SUCCESSOR TRUSTEE; (2) COMPEL ACCOUNTING AND IMPOSE PERSONAL LIABILITY UNDER NRS 165.148; AND (3) FOR INSTRUCTIONS
[Pursuant to NRS §§164.021, 155.097, 165.1214(1), 165.141, 165.1204(2), and 155.0945(3)]

Patricia L. Horst, as successor Trustee of the Ella E. Horst Revocable Trust, u/a/d 01/01/1991, (hereinafter referred to as the "Petitioner"), by and through the law firm of CREST KEY, PROF., L.L.C., hereby files this Response To Brian Holiday's Objection To Patricia L. Horst's Petition To Confirm Trustee; Petition For Instructions, And Petition For Removal Of In Rem Jurisdiction Over Trust And Objection To Counter-Petition To (1) Remove Patricia L. Horst As Trustee And Appoint Successor Trustee; (2) Compel Accounting And Impose Personal Liability Under NRS 165.148; And (3) For Instructions to this Honorable Court to and Petitioner respectfully declares and states as follows:

I. PRELIMINARY MATTERS

This dispute is regarding the administration of the Ella E. Horst Revocable Trust (the "Trust"). Ella E. Horst is the "Settlor" of the Trust. Patricia L. Horst is the Petitioner, successor Trustee and granddaughter of the Settlor. Objector, Brian Holiday, is a beneficiary of the Trust.

CREST KEY, PROF., L.L.C.
6980 O'Bannon Drive, Suite 100
Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879

II. POINTS AND AUTHORITIES

a. Factual Background

Settlor died on October 26, 2016.

On May 21, 1991, Settlor created the Trust, upon information and belief drafted by her California attorney, Jay Lake, Esq.

On May 6, 1998, Settlor executed the First Trust Amendment, upon information and belief drafted by her California attorney, Jay Lake, Esq.

Settlor moved to Las Vegas, Nevada and began to live with Petitioner in 2001.

Settlor created an unexecuted handwritten Second Amendment to the Trust, a true and accurate copy is attached hereto as Exhibit 1.

On March 16, 2004, Settlor executed the Second Trust Amendment, upon information and belief drafted by her California attorney, Jay Lake, Esq.

On September 26,2005, Settlor executed the Third Trust Amendment, upon information and belief drafted by her California attorney, Jay Lake, Esq.

Upon information and belief, Jay Lake, Esq. retired after the Third Trust Amendment was executed and was unavailable afterwards.

On April 12, 2002, the Trust, Petitioner and Stella P. Adkins purchased residential real property located at 7475 W Rosada Way, Las Vegas, NV 89149 (the "Residence").

On the date of purchase, the Trust owned fifty percent (50%), Petitioner owned twenty-five percent (25%), and Stella P. Adkins owned twenty-five (25%).

The purchase price of the property was $340,000. The Trust purchased its interest with $170,000 in cash, and Petitioner and Stella P. Adkins purchased their interest with a $170,000 third-party mortgage on the Property.

On February 29, 2008, Stella P. Adkins sold her twenty-five percent (25%) share of the Property to the Trust. The Trust assumed half of the existing mortgage as part of the transaction.

On or before September 23, 2008, Elizabeth A. Mendre lived with Settlor and Petitioner. Elizabeth A. Mendre moved out in July of 2011 per her Declaration, attached hereto as Exhibit 2.

On October 11, 2001, Settlor signed a handwritten note and addressed it to the Trustee of

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the Trust, witnessed by Elizabeth A. Mendre, that reads, "I purchased Stella Adkins interest in the property at 7475 W Rosada Way, Las Vegas, NV 89149. This share is to be added to my other share and go to Patricia Horst." The handwritten note (herein after referred to "Handwritten Note") is attached to Petitioner's Petition to Assume *In Rem* Jurisdiction[1] as Exhibit 5.

On November 18, 2016, Petitioner signed an Affidavit of Successor Trustee, and recorded the same on January 27, 2017. The Affidavit is attached to Objector's Response as Exhibit A.

On January 27, 2017, a Notice to Beneficiaries, Heirs and Interested Persons of Irrevocable Trust (the "Notice") was sent to each beneficiary, attached to Objector's Response as Exhibit B, and included the following language: "Pursuant to NRS §164.021(4), no person upon whom notice is served pursuant to section may bring an action to contest the validity of the Trust more than 120 days from the date the notice is served upon the person."

The expiration date (120 days after January 27, 2017) upon which a beneficiary may bring an action was, Tuesday, May 17, 2017.

On March 9, 2017, Petitioner's prior counsel sent Objector the initial inventory in an email which included the statement, "Attached is the Schedule A which was inadvertently omitted," the entire email thread is attached hereto as Exhibit 3.

On March 14, 2017, Petitioner's prior counsel sent Objector an email response "in the near future, the trustee will provide an accounting of assets" to Objector's inquiry if there were "additions to Schedule A."

On April 26, 2017, Objector sent an email that reads, "I still have not received the accounting of assets per your March 14 email below,"

On June 2, 2017, Objector, in the same email thread, responded, "I still have not received an inventory of the trust assets."

On June 27, 2017, inventory was distributed to the beneficiaries.

On May 9, 2018, Petitioner filed her initial Petitions See footnote 1 for complete name of initial pleading.

[1] The full title to the initial pleading is "Petition to Assume *In Rem* Jurisdiction over Trust; Petition to Confirm Trust; Petition to Confirm Trustee; Petitioner for Instructions; and Petition for Removal of In Rem Jurisdiction over Trust," court clerk file-stamped May 9, 2018.

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On May 23, 2018, Objector files the Notice of Appearance and Request Pursuant to E.D.C.R. 4.08 to have the Matter Heard Before a Probate Judge.

On July 16, 2018, Objector filed his Objection to Patricia L. Horst's Petition to Confirm Trustee; Petition for Instructions, and Petition for Removal of In Rem Jurisdiction Over Trust and Counter-Petition to (1) Remove Patricia L. Horst as trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) for Instructions.

A First Accounting for the period beginning October 27, 2016 and ending October 26, 2017, was distributed to beneficiaries on August 10, 2018.

b. Authority

NRS §165.030 provides a Trustee shall deliver an inventory of trust assets in possession by a Trustee 75 days after receipt of possession: It specifically provides:

> Within 75 days after a trustee receives possession of trust property, the trustee shall serve a copy of an inventory setting forth all the trust property which has come into the possession or knowledge of the trustee. The trustee shall serve the notice in the manner set forth in NRS 155.010 to each interested person and beneficiary to whom the trustee is required to account pursuant to this chapter. (2015.)

NRS §165.141 provides the requirements of a beneficiary to provide a trustee a valid demand for an account: It specifically provides:

> Written demand for account by beneficiary: Acceptance or rejection of demand by trustee; limitations on right to demand account. A beneficiary who has not otherwise been provided with an account pursuant to this chapter **may send a written demand for an account** to the trustee in accordance with the following procedure:
> 1. The demand on the trustee must be sent to the trustee or to the trustee's attorney of record and the demand must include, without limitation:
>   (a) The identity of the demanding beneficiary, including the beneficiary's mailing address or the address of the beneficiary's attorney;
>   (b) The accounting period for which an account is demanded; and
>   (c) The nature and extent of the account demanded and the legal basis for the demand. (bold emphasis added.) (2015.)

NRS §165.1204(2) describes the form an account shall be presented. Specifically, it reads, "the trustee of a nontestamentary trust shall satisfy the duty to account by delivery of an account in the form, manner and to the persons as required by the terms and conditions stated in the trust instrument." (2015.)

NRS §165.148 provides when a Trustee is personally liable for failure to provide an accounting:

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1. Unless the court determines that the trustee was acting in good faith, a trustee who fails to provide an account pursuant to the terms of the trust instrument, or when required pursuant to the provision of this chapter, is personally liable to each person entitled to receive an account who demanded the account in writing pursuant to this chapter or all costs reasonably incurred by each such person to enforce the terms of the trust or this chapter, including, without limitation, reasonable attorney's fees and court costs. The trustee shall not expend trust funds to satisfy the trustee's personal liability imposed under this subsection.

2. Notwithstanding subsection 1, if the trustee's failure to account is based upon good cause due to the trustee's reasonable uncertainty as to the beneficiary's right to an account or by a provision in the trust instrument that specifically restricts or prohibits the trustee from providing an account to a beneficiary who is otherwise entitled to an account, then the trustee may, at the expense of the trust estate, bring a petition for instructions before the court to confirm:
   (a) The right of the beneficiary to receive an account;
   (b) The right of and sufficiency of a demand for an account by a beneficiary; or
   (c) The extent of account required to satisfy the trustee's duty to account to such beneficiary, if any, including the sufficiency of a confidential account pursuant to NRS 165.145. (2015)

NRS §164.021 provides a trustee may send notice of irrevocability:

1. When a revocable trust becomes irrevocable because of the death of a settlor or by the express terms of the trust, the trustee may, after the trust becomes irrevocable, provide notice to any beneficiary of the irrevocable trust, any heir of the settlor or to any other interested person.
2. The notice provided by the trustee must contain:
   . . .
   (e) A statement set forth in a separate paragraph, in 12-point boldface type or an equivalent type which states: You may not bring an action to contest the trust more than 120 days from the date this notice is served upon you.
   . . .
4. No person upon whom notice is served pursuant to this section may bring an action to contest the validity of the trust more than 120 days from the date the notice is served upon the person, unless the person proves that he or she did not receive actual notice.

NRS §111.240 reads "Every conveyance in writing whereby any real property is conveyed or may be affected must be acknowledged or proved and certified in the manner provided in this chapter and in NRS 240.161 to 240.169, inclusive."

Objector omitted subsection 4, a pertinent subsection of NRS §155.097 added in 2015:

Validity; circumstances in which transfer is presumed void; rebuttable presumption; exceptions.

1. Regardless of when a transfer instrument is made, to the extent the court finds that a transfer was the product of fraud, duress or undue influence, the transfer is

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void and each transferee who is found responsible for the fraud, duress or undue influence shall bear the costs of the proceedings, including, without limitation, reasonable attorney's fees.

2. Except as otherwise provided in subsection 4 and NRS 155.0975, a transfer is presumed to be void if the transfer is to a transferee who is:

. . .

(c) A person who materially participated in formulating the dispositive provisions of the transfer instrument or paid for the drafting of the transfer instrument; or

(d) A person who is related to, affiliated with or subordinate to any person described in paragraph (a), (b) or (c).

. . .

3. The provisions of subsection 2 do not apply to a transfer instrument that is intended to effectuate a transfer:

(a) After the transferor's death, unless the transfer instrument is made on or after October 1, 2011 . . . (bold emphasis added.) (2015.)

NRS §155.0945(3) defines a related person includes:

3. A relative of the person within the third degree of consanguinity . . . . (2015.)

NRS §163.002(1) defines creation of a trust:

Except as otherwise provided by specific statute, a trust may be created by any of the following methods:

(a) A declaration by the owner of property that he or she holds the property as trustee. In the absence of a contrary declaration by the owner of the property or of a transfer of the property to a third party and regardless of formal title to the property:

(1) Property declared to be trust property, together with all income therefrom and the reinvestment thereof, must remain trust property; and

(2) If the property declared to be trust property includes an account, contract, certificate, note, judgment, business interest, contents of a safe deposit box or other property interest that is subject to additions or contributions, all subsequent additions and contributions to the property are also trust property. (2015.)

NRS §163.003 defines the creation requirements for a trust:

Creation: Requirements. A trust is created only if:

1. The settlor properly manifests an intention to create a trust; and
2. There is trust property, except as otherwise provided in NRS 163.230. (1999.)

Restatement (Second) of Trusts §24 defines the requirements for a valid trust writing:

Mode of manifestation of Intention

(1) Except as otherwise provided by statute, the manifestation of intention to create a trust maybe made by written or spoken words or by conduct.

(2) No particular form of words or conduct is necessary for the manifestation of intention to create a trust. (1959.)

Restatement (Second) of Trusts §57 describes creation of inter vivos disposition:

Disposition Inter Vivos Where Settlor Reserves Power to Revoke, Modify, or Control. Where an interest in the trust property is created in a beneficiary other than the settlor, the disposition is not testamentary and invalid for failure to comply with

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the requirements of the Statue of Wills merely because the settlor reserves a beneficial life interest or because he reserves in addition a power to revoke the trust in whole or in part, and a power to modify the trust and a power to control the trustee as to the administration of the trust. (1959.)

NRS §163.004(4) provides creation of a trust, "must be liberally construed to give maximum effect to the principle of freedom of disposition and to the enforceability of trust instruments."

NRS §155.165 provides circumstances under where a court may find a vexatious litigant and order remedies:

> 1. The court may find that a person, including, without limitation, a personal representative or trustee, is a vexatious litigant if the person files a petition, objection, motion or other pleading which is without merit, intended to harass or annoy the personal representative or a trustee or intended to unreasonably oppose or frustrate the efforts of an interested person who is acting in good faith to enforce his or her rights. The court may find that a personal representative or trustee is a vexatious litigant if the personal representative or trustee has expended the funds of the estate or trust to unreasonably oppose the good faith efforts of an interested person to enforce his or her rights. In determining whether the person is a vexatious litigant, the court may take into consideration whether the person has previously filed pleadings in a proceeding that were without merit, intended to harass or annoy a fiduciary or intended to unreasonably oppose or frustrate the efforts of an interested person who is acting in good faith to enforce his or her rights. (underline emphasis added.)
>
> 2. If a court finds that a person is a vexatious litigant pursuant to subsection 1, the court may impose sanctions on the person in an amount sufficient to reimburse the estate or trust for all or part of the expenses, including, without limitation, reasonable attorney's fees, incurred by the estate or trust to respond to the petition, objection, motion or other pleading and for any other pecuniary losses which are associated with the actions of the vexatious litigant. If a court finds that a personal representative or trustee is a vexatious litigant, the court may remove the personal representative or trustee and any sanctions imposed by the court must be imposed against the personal representative or trustee personally and not against the estate or trust. The court may make an order directing entry of judgment for the amount of such sanctions.
>
> . . .
>
> 4. If a court finds that a person is a vexatious litigant pursuant to subsection 1, that person does not have standing to:
>
> (a) Object to the issuance of letters; or
>
> (b) Request the removal of a personal representative or a trustee. (2015.)

c. The Trust and First, Second and Third Amendments should be confirmed because Objector did not timely bring an action and there is no presumption transfers therein are void.

Neither Petitioner nor Objector dispute the validity of Trust and First Amendment.

Petitioner contends Objector's action to challenge, despite a claim of good faith, the validity of the Second and Third Amendment must fail because the date, pursuant to NRS §164.021(4), to

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bring an action ended on May 17, 2017 (120 days after Notice of Irrevocable Trust was sent to Objector on January 27, 2017). Objector filed an Objection challenging the Second and Third Amendments on July 16, 2016. This date is over one year and two months after May 23, 2017.

Petitioner also believes there is no presumption the transfers in the Second Amendment, executed on March 16, 2004, and Third Amendment, executed on September 26, 2005, are void pursuant to NRS §155.097(4) because each Amendment was executed before October 1, 2011. NRS §155.097(4) specifically provides: "The [presumptions attaching to] provisions of subsection 2 [materially participated in formulating the dispositive provisions by a related party] do not apply to the Second and Third Amendments because they were executed on March 6, 2004 and September 26, 2005, respectively. These dates are before the date of October 1, 2011.

Furthermore, Objector presents no facts in his Objection that Petitioner materially participated in formulating the dispositive provisions in the Second and Third Amendments. Objector states in his Objection, "It is unclear whether or not Patricia in any way participated in the Second Amendment and/or Third Amendment...." Page 14, Lines 18-20, of Objector's Objection. Merely because Grantor lived with Petitioner is not sufficient to meet the burden of proof of any wrong doing by the Petitioner. Therefore, Petitioner believes the Second and Third Amendments should be confirmed.

Next, Petitioner has been forced to expend the funds of the Trust on legal fees to defend Objector's challenge to the Second and Third Amendments. Objector's action to contest the validity of the Second and Third Amendments more than 120 days from the date the Notice was issued, and therefore is without merit because it is in direct opposition to express language in NRS §164.021(4). Petitioner requests reimbursement for reasonable attorney's fees, incurred by the estate to respond to Objector, pursuant to NRS §155.165(2).

d. Grantor's handwritten note should be confirmed as the Fourth Amendment to the Trust because it was properly executed and reflects the Trustors intent.

Article I of the Trust reads "the Settlor may at any time during the Settlor's lifetime amend any of the terms of this Declaration of Trust by a written instrument signed by the Settlor and delivered to the Trustee." Furthermore, NRS §163.004(4) provides creation of a trust, in this case a

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handwritten note, "must be liberally construed to give maximum effect to the principle of freedom of disposition and to the enforceability of trust instruments" and therefore is a trust amendment.

Objector, citing to NRS §111.240, incorrectly conflates conveyance as a disposition from trust pursuant to NRS Chapter 163. NRS Chapter 163 governs the how a disposition from or beneficial interest in a trust is created. A disposition under a trust is not a conveyance, it is a reflection of a grantor's intent a trustee is to follow in the future.

The Residence was formally conveyed to the Trust via several deeds the Clark County Recorder accepted. All deeds were notarized and thus "acknowledged" whereby all applicable interests in the Residence was conveyed to the Trust via deeds attached to the original Petition.

Nowhere do NRS §§163.002 - .004, nor 163.008 (a written instrument conveying the trust property and signed by settlor) require an acknowledgement. Grantor wrote and signed the Handwritten Note, witnessed by Elizabeth Mender, and delivered to herself, Trustee, in accordance with the Restatement (Second) of Trusts §24 and 57. The Handwritten Note is a manifestation of Grantor's intention and no particular form or words are necessary. The disposition of her Property in a nontestamentary trust is not invalid for failure to comply with the Statute of Wills. Furthermore, the second paragraph of Article I of the Trust also reads "The Settlor may at any time during the Settlor's lifetime amend any of the terms of this Declaration of Trust by a written instrument signed by the Settlor and delivered to the Trustee." The handwritten note meets all standards.

There is no presumption the transfer in the Handwritten Note is void because Objector did not assert facts Petitioner "materially participated" in formulating the dispositive provisions of the handwritten. The only tenuous connection that Objector could conjure was the suggestion that Elizabeth A. Mendre, who was not related to, affiliated with or subordinate anyway, was living with Settlor when she witnessed the handwritten note, but as her Declaration states, she had moved out of the Property in July of 2011 and witnessed the handwritten note in October of 2011.

The unsigned writing Grantor created entitled Second Amendment is consistent with the Handwritten Note date October 11, 2011, and expresses Settlor's intent to transfer all of the Property to Petitioner as early as 2004. Settlor's handwriting that was made into the Second Amendment includes, "My interest in the Property at 7475 W Rosada Way, Las Vegas, NV is to go to my

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granddaughter Patricia L. Horst." The formally drafted Second Amendment simply described Settlor's current interest at the time of execution, "Distribute to Settlor's granddaughter, Patricia Lynn Horst, the undivided one-half (50%) interest of the trust in and to that certain real property…" NRS §163.004 provides for liberal construction to give maximum effect to Settlor's intent.

Therefore, Petitioner believes Court confirmation of the Handwritten Note as the Fourth Amendment to the Trust is proper.

e. Petitioner should be confirmed as Trustee because Objector has cited no authority that a late publication of Inventory and Accounting is a material breach of fiduciary duty.

1. Objector has approved the initial inventory as final because he has not timely filed a written objection within in 90 days of receipt NRS §165.1214(4).

Objector, pursuant to NRS §165.1214(4), possess a duty to file a written objection to the inventory within 90 days or August 28, 2018, of receipt, or the inventory is finalized. Specifically, NRS §165.1214(4) provides: "An account must be deemed approved and final as follows: (a) By a beneficiary who received a copy of the account if no written objection is delivered to the trustee . . . within 90 days after the date of on which the trustee provided the account to the beneficiary[.]"

Objector, while receiving a late delivered inventory, neither provided Petitioner with a written objection to its contents nor complain about its late delivery, within 90 days. Objector's Objection Court Clerk file stamped July 16, 2018 is after August 28, 2017, and as such NRS §165.1214(4) expressly provide the inventory is "approved and final." As such, Petitioner asserts Objector waived his objection to the late filing of the Inventory.

2. Objector never provided Petitioner a written demand for an accounting pursuant to NRS §165.141and therefore, Petitioner is not personally liable under NRS §165.148.

In the case at bar, Objector never provided Petitioner a written demand pursuant to NRS §165.141. Emails Objector provide to support his petition refer to requesting an inventory of trust assets, not an accounting. Examples of key words in Objector's requests are "Inventory of Assets" and "Accounting of Assets" interchangeably and, in context, refer to the Inventory discussed above. Objector's emails do not include a period for which the account is demanded and the nature and extent of demanded required pursuant to NRS §165.141(1). Additionally, Petitioner did not withhold

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an accounting maliciously as evidenced by Petitioner, albeit late, publication of the First Accounting on August 10th, 2018.

Since Objector did not provide Petitioner a formal demand required by NRS §165.141(1), Petitioner asserts she should not be held personally liable for failure to file a timely accounting under NRS §165.148.

f. An Audit is not required since Petitioner's was not responsible for Trust assets before becoming Successor Trustee; Objector has not provided sufficient information to support allowing discovery.

Article VIII, Paragraph 6 of the Trust, indemnifies a successor trustee for acts of a prior trustee. Specifically, the paragraph states, "No Successor Trustee shall have any responsibility for the acts or omissions of any prior Trustee and no duty to audit or investigate the accounts or administration of any such Trustee."

Petitioner, does not understand the meaning Objector places upon the word "audit" and as such Objector should provide this Court with detailed description of scope of such word. Whatever the scope of the "audit," Petitioner, believes the spirit of the Grantor's intentions that "[n]o Successor Trustee shall have any responsibility for the acts or omissions of any prior Trustee and no duty to audit or investigate the accounts or administration of any such Trustee," be respected and followed. Petitioner also asserts neither Trust nor Petitioner's personal funds should be expended on or for Objector's investigation. Furthermore, Petitioner also believes Objector's should be performed without hindrance or delays to the administration of the Trust, including providing clear a time limit of 120 days to sufficiently to perform the "audit."

The only matter supposedly remaining unresolved, at least in the mind of Objector, is the Grantor's activity before the date of death of which Petitioner is not responsible.

This pleading issue has been addressed by the United States Supreme Court when it wrote:

> First, the tenet that a court must accept a complaint's allegations as true is inapplicable to threadbare recitals of a cause of action's elements, supported by mere conclusory statements. ... Second, determining whether a complaint states a plausible claim is context-specific, requiring the reviewing court to draw on its experience and common sense. ... A court considering a motion to dismiss may begin by identifying allegations that, because they are mere conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the complaint's framework, they must be supported by factual allegations. *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 173 L.Ed2d 868, 556 U.S. 662,663-4 77 USLW 4387 (2009) (internal citations omitted).

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In Nevada, pursuant to NRCP 9, when pleading fraud "the circumstances constituting fraud or mistake shall be stated with particularity." NRCP 9(b). Indeed, "[t]o comply with NRCP 9(b), a complaint for fraud must allege the time, place, identity of the parties involved and the nature of the fraud." In re CityCenter Const., *127 Nev. 1144, 373 P.3d 925 (2011).*

Furthermore, the Supreme Court of Nevada held in In re Estate of Bethuren, in order to establish undue influence under Nevada law, "it must appear, either directly or by justifiable inference from the facts proved, that the influence ... destroy[ed] the free agency of the testator." (underline emphasis added.) In re Estate of Bethurem, 129 Nev. 869, 874, 313 P.3d 237, 241 (2013). The Supreme Court continued, "[t]he influence that may arise from a family relationship is only unlawful if it overbears the will of the testator." (underline emphasis added) Id. at 874.

Objector merely pled sparse facts and conclusory statements. If allowed to proceed with discovery, every beneficiary that lives with a Settlor will be subject to discovery. Undue influence is a species of fraud and the heightened pleading standard should be used. The inference Petitioner unduly influenced Settlor or materially participated in the drafting of Trust Amendments because they lived together is merely conclusory. Petitioner believes Objector has not provided sufficient facts that Petitioner destroyed the free agency of the Settlor, and as such further discovery should be denied.

g. Removal of In Rem Jurisdiction is appropriate.

Objector has failed to provide sufficient concerns requiring further Court involvement in the administration of the Trust. Therefore, Petitioner requests that the Court release *in rem* jurisdiction over the Trust at this time.

III. PRAYER FOR RELIEF

Based upon the above discussed matter, and upon other pleading that may be filed herein and oral argument that may be allowed at the hearing, Petitioner believe the best interests of the Trust and its beneficiaries will be best served and thus prays this Honorable Court will:

1. Review and confirm the Ella E. Horst Revocable Trust u/a/d 5/21/1991, including the First, Second and Third Trust Amendments.

2. Confirm Grantor's Handwritten Note, dated October 11, 2011, as a valid Amendment

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to the Ella E. Horst Revocable Trust u/a/d 5/21/1991.

3. Confirm Petitioner as successor Trustee of the Ella E. Horst Revocable Trust u/a/d/ 5/21/1991.

4. Confirm Inventory Petitioner provided Objector of the Ella E. Horst Revocable Trust u/a/d 5/21/1991 is approved and final.

5. Petitioner is not personally liable for legal fees and costs to Brian Holiday for an Accounting of the Ella E. Horst Revocable Trust u/a/d 5/21/1991.

6. Deny Objector's request for an "audit" of the Ella E. Horst financial transactions before the date of death.

7. Release *In Rem* jurisdiction over the Ella E. Horst Revocable Trust u/a/d 5/21/1991.

8. Grant reasonable legal fees for having to file a response to meritless objections to the confirmation of the Second and Third Trust Amendments.

9. Order such other and further relief as the Court finds proper in the circumstances.

Dated this 10th day of August, 2018.

Kirk D. Kaplan, Esq.
Nevada Bar # 5685
Jason M. Sadow
Nevada Bar # 14112
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Kirk@CrestKey.com
Attorney for Petitioner, Patricia L. Horst

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VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

Patricia L. Horst, being first duly sworn on oath, according to law, deposes and says:

1. I am the Petitioner named in the foregoing Response To Brian Holiday's Objection To Patricia L. Horst's Petition To Confirm Trustee; Petition For Instructions, And Petition For Removal Of In Rem Jurisdiction Over Trust And Objection To Counter-Petition To (1) Remove Patricia L. Horst As Trustee And Appoint Successor Trustee; (2) Compel Accounting And Impose Personal Liability Under NRS 165.148; And (3) For Instructions.

2. I have read the same and know the contents thereof, and the same are true to the best of my own personal knowledge, except for those statements made therein upon information and belief, and as to those statements, I believe them to be true.

Patricia L. Horst, Petitioner

Subscribed and sworn to before me
this 10th day of August, 2018.

NOTARY PUBLIC in and for said County and State

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
MELISSA VALENZUELA
Appt. No. 15-2203-1
My Appt. Expires July 1, 2019

the First, Second and Third Trust Amendments.

2. Confirm Grantor's Handwritten Note, dated October 11, 2011, as a valid Amendment to the Ella E. Horst Revocable Trust u/a/d 5/21/1991.

3. Confirm Petitioner as successor Trustee of the Ella E. Horst Revocable Trust u/a/d/ 5/21/1991.

4. Confirm Inventory Petitioner provided Objector of the Ella E. Horst Revocable Trust u/a/d 5/21/1991 is approved and final.

5. Petitioner is not personally liable for legal fees and costs to Brian Holiday for an Accounting of the Ella E. Horst Revocable Trust u/a/d 5/21/1991.

6. Deny Objector's request for an "audit" of the Ella E. Horst financial transactions before the date of death.

7. Release *In Rem* jurisdiction over the Ella E. Horst Revocable Trust u/a/d 5/21/1991.

8. Grant reasonable legal fees for having to file a response to meritless objections to the confirmation of the Second and Third Trust Amendments.

9. Order such other and further relief as the Court finds proper in the circumstances.

Dated this 10th day of August, 2018.

Kirk D. Kaplan, Esq.
Nevada Bar # 5685
Jason M. Sadow
Nevada Bar # 14112
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Kirk@CrestKey.com
Attorney for Petitioner, Patricia L. Horst

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Exhibit "1"

SECOND AMENDMENT
TO THE ELLA E. HORST REVOCABLE TRUST
DATED

I, ELLA E. HORST, hereby declare this To be The Second Amendment To The ELLA E. HORST REVOCABLE DECLARATION OF TRUST dated 2 con (The "Declaration of TRUST") establishing the ELLA E. HORST REVOCABLE TRUST (the "Trust")

Pursuant To power reserved To me as The Settlor as set forth in Article I of The Declaration of Trust, I have The authority To amend any of the terms of the Declaration of Trust at any time during my Lifetime. With That authority I hereby amend The Declaration of Trust, as follows.

FIRST
"If The Settlor's son, William Arthur Horst, survives The Settlor, The Trustee shall distribute to him (i) the real property held in Trust herein and located at 2031 Corinth Avenue, Los Angeles, California (2) any automobile That is held in Trust herein or owned by The Settlor which is To be distributed to The Trustee or Trust by Settlor's will.

If the Settlor's son, William Arthur Horst fails To survive The Settlor The foregoing paragraph shall be void and The assets set forth therein shall become part of The residual of The Trust estate"

Second my interest in The property at 7475 W Rosada Way Las Vegas, Nevada is To go To my Granddaughter Patricia L. Horst.

After paying my expenses The rest To be divided among William Arthur Horst, William R Horst, Kristi Horst, Robert Holiday, Blaine C. Holiday, Jill Linford, Gail Herr, Kent R. Holiday, Brian Holiday, Craig Holiday, Dawn Blanchard, Blake Holiday, Steven Holiday, Nathan Holiday.

If my son William A Horst is deceased before I am his inheritance is To return To The Trust. Then put Patricia L. Horst in his place To receive part of The distribution.

Patricia Lynne Horst as Trustee
Blaine C. Holiday as second Trustee

Assets
Dreyfus - checking #039-082-185-1649
Bond IRA #124-0565-46-3869
Ella IRA 039-055-19-9472
US money market 124-0821-851-449
Washington Mutual Bank #486-2937740
Nevada State Bank 5800 39041
Nevada State Bank 05800 38100
2631 Corinth Ave Los Angeles, Calif - property
7475 W. Rosada Way Las Vegas, NV 1/2 owner
1990 Oldsmobile car
Burial site at Valhalla Cemetery - Burbank Calif
Life Insurance policy on Life of ELLA E. Horst Through Prudential insurance Co. of America Policy no 41-620-182 I face amount of $600

Dated 2004 _____ Initn
State of Nevada
County of

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Exhibit "2"

DECLARATION OF ELIZABETH A. MENDRE

I, Elizabeth A. Mendre, say:

1. I lived with Ella A. Horst and Patricia L. Horst for a short period of time after my divorce.

2. We lived at 7475 W Rosada Way, Las Vegas, Nevada 89149.

3. I moved out of the house in July of 2011 and have not lived there since.

4. Ella A. Horst, requested that I witness the hand written note dated October 11, 2011 that she drafted and signed in my presence, because she believed it needed to be witnessed.

5. I was neither spouse or domestic partner of Patricia L. Horst.

6. I am not a relative of Patricia L. Horst.

7. At no time did I own a business with Patricia L. Horst nor was I ever employed by a business owned by Patricia L. Horst.

Pursuant to NRS 53.045, I declare under penalty of perjury that the foregoing is true and correct.

Dated August 7, 2018

Elizabeth A. Mendre

Elizabeth A Mendre

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08/07/2018 10:34 (FAX) P.001/001

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Exhibit "3"

Mullins, Gwen Rutar

From: Kristin Tyler <ktyler@Gtg.legal>
Sent: Friday, June 02, 2017 3:53 PM
To: Mullins, Gwen Rutar
Cc: Carie Tofanelli
Subject: FW: Ella Horst Revocable Trust

Hi Gwen,

I am not going to respond to Brian if you have been retained. I have a meeting with the trustee on June 19 to finalize and send out what we hope will be a first and final accounting.

In addition, I will be sending all the beneficiaries a letter regarding whether or not they want any items of family memorabilia. Please confirm that I should send Brian's letter to you.

Happy to discuss this and answer any questions.

KT

Kristin M. Tyler
Partner

P 725 777 3000 | F 725 777 3112

GARMAN | TURNER | GORDON

650 WHITE DRIVE, SUITE 100
LAS VEGAS, NV 89119

website | vCard | map | email

From: Brian [mailto:bjholiday888@gmail.com]
Sent: Friday, June 2, 2017 1:54 PM
To: Kristin Tyler <ktyler@Gtg.legal>
Cc: sniglett@cox.net; Carie Tofanelli <ctofanelli@Gtg.legal>; Gwen Rutar Mullins <gmullins@HowardandHoward.com>
Subject: Re: Ella Horst Revocable Trust

Hello Kristin,

Despite requesting and waiting months, and your assurance below that one would be provided in the "near future", I still have not received an inventory of the trust assets. Grandma past away more than 7 months ago now and none of the beneficiaries, that I know of, have been provided this information. Nor have I received any explanation as to why one can't be provided.

This is not normal.

I have CC'd local counsel, Gwen Mullins, on this email.

A simple and open inventory of the assets of the trust is not a difficult request and should not take 7 months.

Best Regards,

Brian

On Apr 26, 2017, at 11:27 AM, BJ Holiday <bjholiday888@gmail.com> wrote:

> Hi Kristin,
>
> I still have not received the accounting of assets per your March 14 email below.
>
> Thanks,
>
> Brian
>
> > On Mar 14, 2017, at 10:52 AM, Kristin Tyler <ktyler@Gtg.legal> wrote:
> >
> > At some point in the near future, the trustee will provide an accounting of assets that will give you a better idea of what the trust held at the time of Ella's passing. I am not aware of any other Schedule A documents.
> >
> > Kristin Tyler
> >
> > **From:** Brian [mailto:bjholiday888@gmail.com]
> > **Sent:** Thursday, March 9, 2017 5:44 PM
> > **To:** Kristin Tyler <ktyler@Gtg.legal>
> > **Cc:** sniglett@cox.net; Carie Tofanelli <ctofanelli@Gtg.legal>
> > **Subject:** Re: Ella Horst Revocable Trust
> >
> > Thank you Kristin. Were there any additions to the Schedule A you've attached?
> >
> > Brian
> >
> > On Mar 9, 2017, at 12:56 PM, Kristin Tyler <ktyler@Gtg.legal> wrote:
> >
> > > Hi Brian,
> > >
> > > I am representing Tricia Horst in her role as successor trustee of THE ELLA E. HORST REVOCABLE TRUST created May 21, 1991 and any amendments thereto.
> > >
> > > Attached is the Schedule A which was inadvertently omitted. It is essentially an inventory of assets at that snapshot in time when the Exhibit A was written. I am informed that Ella may not have owned all of these properties at the time of her death.

Amendments 2 and 3 do reference the date of May 1, 1991. I did not prepare those amendments. We are not aware of any documents dated May 1, 1991 related to this trust and believe this to be a typo and should have been May 21, 1991. The date of May 21, 1991 is the date the original trust document was created and this date is used as a reference point to the trust.

Please let me know if you have any further questions.

Kristin M. Tyler
Partner

P 725 777 3000 | F 725 777 3112

GARMAN | TURNER | GORDON

650 WHITE DRIVE, SUITE 100
LAS VEGAS, NV 89119

website | vCard | map | email

<image001.jpg> <image008.jpg> <image002.jpg>

From: BJ Holiday [mailto:bjholiday888@gmail.com]
Sent: Monday, February 27, 2017 9:02 AM
To: Kristin Tyler <ktyler@Gtg.legal>
Cc: sniglett@cox.net
Subject: Ella Horst Revocable Trust

Hello Kristin,

I received your letter on February 8 regarding the Ella Horst trust documents.

Unfortunately, my set of documents is incomplete. Could you please provide me the following items:

1. Schedule A of May 21, 1991 Trust, along with any additions thereto. This schedule sets forth the property transferred to the trust.

2. May 1, 1991 Trust documents referenced to in the Amendment 2 and 3.

Finally could you please clarify who you represent?

Best Regards,

Brian Holiday
<Schedule A.PDF>

HOWARD & HOWARD ATTORNEYS PLLC

IN THE SUPREME COURT
OF THE STATE OF NEVADA

IN THE MATTER OF ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1991 BRIAN HOLIDAY, Appellant, vs. PATRICIA L. HORST, Trustee of the ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1999; ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1999, Respondents.	**No.: 77964** Eight Judicial District Court Case No: P-18-095314-T (In the Matter of the Ella E. Horst Revocable Living Trust u/a/d 05/21/1991)

JOINT APPENDIX
Volume II of II

THOMAS W. DAVIS II, ESQ.
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GWEN RUTAR MULLINS, ESQ.
Nevada Bar No. 003146
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S. Don Bennion, Esq.
Nevada Bar No. 4530
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Attorneys for Respondent Patricia L. Horst, Trustee of Ella E. Horst Revocable Trust

Docket 77964 Document 2020-03877

INDEX TO JOINT APPENDIX
(Chronological)

DOCUMENT DESCRIPTION	LOCATION
Petition to Assume *In Rem* Jurisdiction Over Trust; Petition to Confirm Trust; Petition to Confirm Trustee; Petition for Instructions; and Petition for Removal of In Rem Jurisdiction Over Trust	Vol. I Bates No. 00001-00053
Certificate of Mailing of Petition to Assume *In Rem* Jurisdiction Over Trust; Petition to Confirm Trust; Petition to Confirm Trustee; Petition for Instructions; and Petition for Removal of In Rem Jurisdiction Over Trust	Vol. I Bates No. 00054-00055
Notice of Appearance and Request Pursuant to E.D.C.R. 4.08 to Have the Matter Heard Before a Probate Judge	Vol. I Bates No. 00056-00058
Court Minutes re: Referral to Probate Judge	Vol. I Bates No. 00059-00060
Order Scheduling Status Check dated May 31, 2018	Vol. I Bates No. 00061-00062
Court Minutes re: Status Check dated June 14, 2018	Vol. I Bates No. 00063

Objection to Patricia L. Horst's Petition to Confirm Trustee; Petition for Instructions, and Petition for Removal of *In Rem* Jurisdiction Over Trust and Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) for Instructions	Vol. I Bates No. 00064-00153
Affidavit of Mailing of (a) Notice of Hearing on Brian Holiday's Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) for Instructions; and (b) Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) for Instructions	Vol. I Bates No. 00154-00156
Response to Brian Holiday's Objection to Patricia L. Horst's Petition to Confirm Trustee; Petition for Instructions and Petition for Removal of *In Rem* Jurisdiction Over Trust and Objection to Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) for Instructions	Vol. I Bates No. 00157-00180

Reply in Support of Brian Holiday's Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) for Instructions	Vol. II Bates No. 00181-00242
Court Minutes re: All Pending Motions dated September 13, 2018	Vol. II Bates No. 00243
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Order on Patricia A. Horst's Petition, Opposition to Patricia A. Horst's Petition and Counter-Petition	Vol. II Bates No. 00283-00286
Notice of Entry of Order on Patricia A. Horst's Petition, Opposition to Patricia A. Horst's Petition and Counter-Petition	Vol. II Bates No. 00287-00293
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HOWARD & HOWARD ATTORNEYS PLLC

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DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1991	**CASE NO.: P-18-095314-T** **DEPARTMENT 26**

REPLY IN SUPPORT OF BRIAN HOLIDAY'S COUNTER-PETITION TO (1) REMOVE PATRICIA L. HORST AS TRUSTEE AND APPOINT SUCCESSOR TRUSTEE; (2) COMPEL ACCOUNTING AND IMPOSE PERSONAL LIABILITY UNDER NRS 165.148; and (3) FOR INSTRUCTIONS

Date of Hearing: September 13, 2018
Time of Hearing: 9:30 a.m.

BRIAN HOLIDAY, one of the residuary beneficiaries under the ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1991 ("Trust"), by and through his attorney, Gwen Rutar Mullins, Esq. of HOWARD & HOWARD ATTORNEYS PLLC hereby files this Reply In Support of Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148, and (3) for Instructions.

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Case Number: P-18-095314-T

This Reply is based upon the papers and pleadings on file herein, the attached Memorandum of Points and Authorities and any argument the Court may hear at the time of the hearing on Patricia L. Horst's Petition to Confirm Trustee; Petition for Instructions, and Petition for Removal of In Rem Jurisdiction Over Trust and Brian Holiday's Counter-Petition to (1) Remove Patricia L. Horst as Trustee, and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and For Instructions.

DATED this 31st day of August 2018.

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MEMORANDUM OF POINTS AND AUTHORITIES

A. Introduction.

The following pertinent facts provide this Court with a brief history of how we got to a point where an appointment of disinterested trustee is necessary, or, in the alternative, if the Court is not inclined to remove Patricia and appoint a disinterested trustee warrant further discovery:

1. Sometime in 2001 Ella A. Horst ("Ella"), a grandmother of both Patricia L. Horst ("Patricia") and Brian Holiday ("Brian"), moved to Las Vegas.

2. At the time Ella moved to Las Vegas, Ella's estate was around Three Million Dollars.

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3. During her entire life, Ella lived frugally and seldom ventured out of her home.

4. After Ella's move to Las Vegas, Ella and Patricia lived together, until Ella's death on October 26, 2016.

5. Ella's standard of living and frugalness did not end after her move to Las Vegas. Ella continued to stay in her home watching her favorite TV shows.

6. Ella died on October 26, 2016.

7. On November 18, 2016, Patricia formally accepted her appointment as a Successor Trustee of the Trust. *See* Affidavit of Successor Trustee, attached as **Exhibit A** to Brian's Objection to Patricia L. Horst Petition to Confirm Trustee, Petition for Instructions, and Petition for Removal of In Rem Jurisdiction over Trust and Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) For Instructions. ("Brian's Objection").

8. On January 27, 2017, Patricia sent a notice to all beneficiaries of her appointment as Successor Trustee of the Trust. At the same time she sent out a copy of the alleged Trust. *See* Notice to Beneficiaries, Heirs and Interested Parties of Irrevocable Trust, attached as **Exhibit B** to Brian's Objection.

9. In the Notice to Beneficiaries, Heirs and Interested Parties of Irrevocable Trust she mailed out on January 27, 2017, Patricia certified that the entire Trust consisted of the following documents: original Trust dated May 21, 1991, First Amendment dated March 6, 1998, Second Amendment dated March 26, 2004 and Third Amendment dated September 26, 2005.

10. Patricia did not serve an inventory of the Trust assets within 75 days of her appointment as required pursuant to Nevada law. In fact, despite numerous requests from

Brian, Patricia did not provide beneficiaries with the inventory of the Trust assets for several months after it was due and then only after Brian retained counsel.

11. A year and a half after being appointed Successor Trustee of the Trust, Patricia "discovers" another "amendment" (i.e. handwritten letter) that miraculously provides her an additional 25% interest in the West Rosada Way property. Patricia then tries to get this Court to "confirm" the document as an amendment to the Trust.

12. Despite continual promises and representations that accounting for the Trust was going to be provided, Patricia did not provide beneficiaries with an accounting. Again, it was only after Brian asked for this Court's to compel Patricia to provide an accounting for the Trust that Patricia provided partial financial information (containing of 3 pages –*See* **Exhibits G, H**, and **I** attached to this Reply). This did not occur until August 10, 2018, or over 8 months after the accountimg was due. Also, the financial information provided entails a limited time period, namely from October 16, 2016 through October 26, 2017 and is not current. Furthermore, the documentation, although quite telling, does not provide a full accounting of the Trust as required under NRS 165.135. It certainly does not provide the current financial status of the Trust.

13. Surprisingly, when a partial financial information was provided, it shows that there were significant "loans" that Patricia made to herself that were never disclosed. The partial financial information also, for the first time, discloses an alleged mortgage obligation of the Trust on the West Rosada Way property, which Patricia is seeking to distribute to herself. Undoubtedly Patricia intends to pay the mortgage on the West Rosada Way property, with the Trust's funds that would otherwise be distributed to remaining beneficiaries.

14. At this point it is evident that Patricia is not capable of administering the Trust in a disinterested manner. She is improperly using funds from the Trust for her own benefit.

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She is concocting stories about "new amendments" and liabilities that she "just discovered." Unmistakably, Patricia's actions in administering the Trust are, and have been, to benefit Patricia only, irrespective of her duty of loyalty, duty of impartiality and duty to avoid a conflict of interest she owes to the Trust and its beneficiaries.

15. In view of the manner that Patricia has handled the administration of the trust and her lack of transparency, Brian seeks the following from this Court:

a. That this Court appoint an non-interested third party trustee to take over the administration of the Trust, and among other things, look into the assets of the Trust and what happened to them from 2001 forward; review the Trust's financials, amendments, etc.; and distribute the assets in accordance with the actual Trust documents, after making adjustments for any monies improperly transferred, either before or after Ella's death.

b. Alternatively, if the Court is not inclined to appoint a non-interested third party trustee, then Brian requests that he be allowed to conduct discovery relative to the assets of the Trust, the administration of the Trust and other issues and matters raised in this action.

c. Finally, Brian seeks an order (1) compelling Patricia to provide accounting in compliance with NRS 165.135 from October 26, 2016 through the date of the hearing, within 60 days from the date of the hearing; and (2) holding Patricia personally liable for Brian's attorney's fees and costs for having to seek an accounting that he has always been entitled to as the beneficiary of the Trust.

B. An appointment of a Non-Interested Third Party Trustee is Appropriate at This Time.

As a trustee, Patricia has only acted in her own best interest and not in the interests of the remaining beneficiaries. This is evidenced by Patricia's failure to comply with her obligations under the Nevada law as well as her current Petition for Instructions in which she

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seeks an order from the Court finding the handwritten letter to be an amendment to the Trust and thereby giving her an additional 25% interest in the West Rosada Way Property, rather than having this 25% interest distributed among the residuary beneficiaries of the Trust. Patricia's blatant disregard of her fiduciary duties as trustee is further shown by her failure to timely provide Trust Inventory, her failure to provide Trust accounting and by improper disgorgement of Trust assets.

It has just come to light that sometime during the first year serving as the trustee of the Trust[1], Patricia "loaned" herself $19,259.86 from the Trust assets. *See* Balance Sheet As of October 26, 2017, provided by Patricia's counsel on August 10, 2018, a copy of which is attached as **Exhibit G**, and incorporated herein by this reference. Based on the Balance Sheet at Date of Death October 26, 2016, a copy of which is attached as **Exhibit H**, Patricia's liability was not listed as an asset of the Trust at Ella's death. Therefore, Patricia must have "loaned" herself or otherwise taken $19,259.86 from the Trust sometime after Ella's death but prior to October 26, 2017, as this amount is shown on the Balance Sheet As of October 26, 2017. *See* **Exhibit G**.

Any loan to Patricia, the trustee of the Trust, by the Trust is in violation of NRS 163.030(2) and a material breach of her fiduciary duty. On this basis alone, the removal of Patricia as trustee of the Trust is mandated pursuant to NRS 163.190.

NRS 163.030 provides:

> **NRS 163.030 Loan of money held in trust.**
>
> 1. Except as provided in NRS 163.040, no corporate trustee shall lend trust funds to itself or an affiliate, or to any director, officer, or employee of itself or of an affiliate.

[1] Since the only financial information that Patricia provided on August 10, 2018 covering period from October 26, 2016 through October 26, 2017, Brian is unable to determine whether Patricia has "loaned" to herself any other sums.

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> 2. **Except as otherwise:**
>
> (a) **Provided in a trust instrument and:**
>
> **(1) Consented to by all beneficiaries of the trust; or**
>
> **(2) Performed in accordance with a notice of a proposed action provided pursuant to NRS 164.725; or**
>
> **(b) Approved by a court,**
>
> **a noncorporate trustee, including a limited-liability company, shall not lend trust funds to itself, himself or herself, or to a relative, employer, employee, partner, member or other business associate.**

[Emphasis Added.]

The terms of the Trust do not give Patricia authority to loan herself funds from the Trust while acting as a Trustee or otherwise. Even if such authority had been given by the Trust documents, which it is not, pursuant to NRS 163.030(2)(a) Patricia would still need to obtain a prior consent of all the beneficiaries of the Trust before making loan to herself, or, at minimum, Patricia was required to send out a notice of proposed action to all beneficiaries pursuant to NRS 164.725. She did neither.

Alternatively, pursuant to NRS 163.030(2)(b), Patricia was required to obtain this Court's prior approval before lending any funds to herself out of the Trust. Again, she did not do so. Therefore, by "lending" herself these funds, Patricia has put her own self-interest above the residuary beneficiaries and thereby violated NRS 163.030. In doing so, Patricia breached her fiduciary duty of loyalty, duty of impartiality and duty to avoid a conflict of interest.[2]

Patricia breached her duty of loyalty, when she failed to administer the Trust solely in the interest of beneficiaries and in giving herself a loan, thereby putting her own self-interest

[2] Again, since the Balance Sheet provided reflects activity only through October 26, 2017, it is unknown whether additional funds have been improperly removed by Patricia from the Trust.

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above the residuary beneficiaries. Patricia, also breached her duty of impartiality and duty to avoid a conflict of interest, when she "loaned" herself monies from the Trust and by advocating as trustee for a trust interpretation favoring herself as beneficiary.[3] *See Matter of W.N. Connell and Marjorie T. Connell Living Trust*, ____ Nev. ___, 393 P.3d 1090 (2017) (Finding that trustee breached her fiduciary duties of impartiality and to avoid conflicts of interest when trustee unilaterally ceased distributions to respondents without seeking court instructions and when she advocated as trustee for a trust interpretation favoring herself as beneficiary.) Moreover, Patricia breached her fiduciary duty when she failed to comply with Nevada law in the administration of the Trust, i.e. failure to timely provide initial Inventory, and her failure to provide accounting.[4]

NRS 163.190 provides that violation of NRS 163.030 may be treated as a breach of trust. NRS 163.190 further provides that in the event that a trustee violates any provision of NRS 163.010-163.200, the Trustee may be removed and denied compensation. More specifically, NRS 163.190 provides:

> **NRS 163.190 Penalty for violation of certain provisions of chapter.** If a trustee violates any of the provisions of NRS 163.010 to 163.200, inclusive, the trustee may be removed and denied compensation in whole or in part, and any beneficiary, cotrustee or successor trustee may treat the violation as a breach of trust.

[3] Patricia is seeking an order from this Court finding a handwritten letter, which she failed to disclose to beneficiaries for over a year and a half, to be an amendment to the Trust, thereby giving her the remaining 25% interest in the West Rosada Way property.

[4] To date, Patricia has yet to provide full accounting of the Trust. After filing the Counter-Petition, Patricia provided Brian with two Balances Sheets from October 26, 2016 through October 26, 2017 (*See* **Exhibits G and H**) and a Statement of Increases and Decreases, attached as **Exhibit I**. The documents provided do not comply with NRS 165.135. Moreover, Brian requested that current accounting, i.e. From October 26, 2016 through July 31, 2018, be provided, however, Patricia refuses to do so. *See* E-mail from Kirk Kaplan dated August 28, 2018, attached hereto as **Exhibit J**.

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Based on her utter refusal to properly act as a fiduciary of the Ella E. Horst Revocable Trust u/a/d 05/21/1999 ("Trust"), her blatant breaches of her duties owed to the beneficiaries of the Trust and evident conflict of interest, this Court should remove Patricia L. Horst ("Patricia") as trustee and appoint a neutral successor trustee in her place.

Since the filing of the Counter-Petition, in addition to revealing for the first time that Patricia had made loan from the Trust to herself,[5] Patricia now also contends that the Trust apparently has a mortgage obligation in the sum of $84,449.79 on the West Rosada Way Property. More specifically, Patricia contends that "[o]n February 29, 2009, Stella P. Adkins sold her twenty-five percent (25%) share of the Property to the Trust. The Trust assumed half of the existing mortgage as part of the transaction." *See* Response to Brian Holiday's Objection to Patricia L. Horst's Petition to Confirm Trustee; Petition for Instructions, and Petition for Removal of In Rem Jurisdiction over Trust and Objection to Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148; and (3) For Instructions ("Response"), pg. 2, lns. 24-25. Other than listing this obligation on the Balance Sheet as of October 26, 2017 (*See* **Exhibit G**) Patricia did not provide any evidence to support such self-serving contention. Interestingly, this liability is not listed on the Balance Sheet as of Date of Death. (*See* **Exhibit H.**) If such liability truly existed as Patricia now claims, it should have been disclosed on the Balance Sheet as of Date of Death, which it was not!

Moreover, the Declaration of Value that was filled out and submitted by Stella P. Adkins with the Grant, Bargain, Sale Deed at the time that Stella P. Adkins' interest was transferred to the Trust, specifically states, under penalty of perjury, that the transfer was made

[5] As to date Patricia has only provided information relative the Trust affairs through October 26,2017, it is unknown whether additional "loans" have been made to Patricia or what other "obligations" may have been paid by the Trust.

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without consideration. A copy of the Declaration of Value and Grant Bargain Sale Deed is attached hereto as **Exhibit K** and incorporated herein by this reference. The West Rosada Way property upon which Patricia now claims that the Trust owes 50% of the mortgage is the property in which the Trust owns 75% ownership interest.[6] It is also the same property that Patricia seeks "instructions" from this Court that the handwritten letter constitutes an amendment to the Trust, thereby entitling Patricia to the Trust's entire 75% interest in the West Rosada Way property. Thus not only is Patricia seeking to deprive the residuary beneficiaries of the 25% in the West Rosada Way property but she now also claims that the Trust and Trust assets are responsible for the 50% of the outstanding mortgage. In doing so, she is essentially making sure that there will be no assets available for distribution to the remaining beneficiaries as the entire Trust estate, which according to Patricia consists of Trust's interests in two real properties and minimal liquid assets, would basically be distributed to Patricia, after payment of Trust's expenses and liabilities. These self-serving actions constitute breach of her fiduciary duties and warrant her removal as the Trustee of the Trust and appointment of a non-interested third party trustee in her stead. *See, Matter of W.N. Connell, supra.*

1. Patricia's Breaches of Her Fiduciary Duty and Conflicts of Interest Are Further Shown by Her Self-Interest and Unwarranted Claims and Reliance on Inapplicable NRS to Validate Her Actions.

In her Response, instead of providing justifiable reasons for her failure to provide the Trust inventory as required under NRS 165.030, Patricia, citing to an inapplicable NRS statute, asserts that "Objector has approved the initial inventory as final because he has not timely filed a written objection within in (sic) 90 days of receipt NRS §165.1214(4)." *See* Response, pg. 10, lns. 9-10. More specifically, Patricia argues "Objector, pursuant to NRS

[6] The remaining 25% is owned by Patricia.

§165.1214(4), possess (sic) a duty to file a written objection to the inventory within 90 days or August 28, 2018 (sic), of receipt, or the inventory is finalized." *Id*, lns. 10-12. She then goes on and cites NRS 165.1214(4), which clearly does not apply to inventory.

NRS 165.1214 provides in pertinent part:

> **NRS 165.1214 Delivery of account; frequency; when account deemed approved and final; payment of cost of preparation.**
>
> 1. Except as may otherwise be required pursuant to the terms of the trust instrument or by order of the court, **the trustee shall deliver a required account within 90 days after the end of the period of account**, which may be extended by consent of the beneficiary, or by order of the court for good cause shown.
>
> * * *
>
> 4. **An account must be deemed approved and final** as follows:
>
> (a) **By a beneficiary who received a copy of the account if no written objection is delivered to the trustee in accordance with subsection 2 within 90 days after the date on which the trustee provided the account to that beneficiary**; or
>
> (b) By all beneficiaries who are not required to receive an account, such as nonvested and contingent beneficiaries, remote beneficiaries, minor beneficiaries, and unborn or unknown beneficiaries if the account is deemed approved and final by a beneficiary who has a similar, but preceding interest, in the trust estate, in conformance with NRS 164.038, or as to any beneficiary who has waived an account pursuant to NRS 165.121.
>
> Notwithstanding the foregoing, if an account is submitted to the court for approval under a petition pursuant to chapter 164 of NRS, the account must be deemed final and approved upon by order of the court, subject only to the right of an interested person to appeal.

[Emphasis Added.]

Plain reading of NRS 165.1214(4) shows that this statute deals with trust accountings and not trust inventory that Patricia was also required to provide pursuant to NRS 165.030. Thus, NRS 165.1214(4) is simply inapplicable and any argument to its applicability is disingenuous.

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In addition to relying on an inapplicable statute, Patricia is also not totally forthright with the Court when asserting "Objector, while receiving a late delivered inventory, neither provided Petitioner with a written objection to its contents or complain about its late delivery, within 90 days. ...As such, Petitioner asserts Objector waived his objection to the late delivery of the Inventory." *See* Response, pg. 10, lns. 16-20. this is blatantly untrue. The truth is that several requests were made for inventory/account by Brian to Patricia's prior counsel (*See* **Exhibit L**). These e-mails show Brian's frustration in not being provided with timely inventory, including "A simple and open inventory of the assets of the trust is not a difficult request and should not take 7 months." *Id.* Also, once received, the inventory of Trust was immediately questioned. In fact, as a result of the meager assets set forth in the Inventory, Brian sought financial documentation of the Trust from Patricia and requested an audit of the Trust to be performed to determine what happened to all of Ella's assets. *See* a copy of letter dated July 25, 2017, attached hereto as **Exhibit M**. The July 25, 2017 letter questioning the Inventory and the assets of the Trust was sent within 90 days of the receipt of the initial inventory on June 27, 2017 (*See* **Exhibit C**). Therefore, even if NRS 165.1214(4) was applicable, which it is not, a timely objection to the Inventory was made. Not being completely honest with the Court further supports Brian's position that Patricia should be removed as the Trustee of the Trust.

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2. In Her Self-Interest, Patricia is Again Deceitful in Claiming that a Written Demand for Accounting Was Never Provided.

In her Response, Patricia does not dispute the fact that an accounting had not been provided.[7] Rather she attempts to excuse her failure to perform her trustee duties and provide an accounting by asserting that "Objector never provided Petitioner a written demand pursuant to NRS §165.141." *See* Response, pg.10, lns. 23-24. Patricia, while admitting that there were emails exchanged requesting "Inventory of Assets" and "Accounting of Assets" now claims that these written exchanges were only requests for her to provide inventory and not also demands for her to provide an accounting. Such parsing of words in itself is ludicrous. First, even if no written demand for accounting had been made, Patricia was still required to provide an annual accounting both under the terms of the Trust. Second, Patricia conveniently forgets to mention the June 2, 2017 e-mail from Patricia's counsel wherein Ms. Tyler in response to one of Brian's e-mails states "I have a meeting with the trustee on June 19 to finalize and send out what we hope to be a first and final accounting" [8](*See* **Exhibit D**), or the June 9, 2017 letter to Patricia's counsel, attached hereto as **Exhibit O**, specifically requesting for an accounting. The June 9, 2017 letter states in pertinent part:

> From your e-mail I understand that you will be meeting with Successor Trustee on June 19, 2017 to finalize **the accounting** for the Trust and that you will be **providing the accounting** to the beneficiaries of the Trust, including our client, shortly thereafter. **We look forward to receipt of the Trust accounting**, as our client has been requesting one for quite some time. **I presume that the accounting that will be provided will meet the requirements of Nevada law, including NRS 165.135.** We look **forward to the receipt of the accounting for the Trust** shortly after your June 19, 2017 meeting.

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[7] Again, after filing of the Counter-Petition, Patricia provided what she claims to be an accounting on August 10, 2018. A copy of Kirk Kaplan's August 10, 2018 e-mail and the documentation asserted to be an accounting for the Trust is attached hereto as **Exhibit N**. Even if the documentation provided is deemed to be an "accounting" that meet the requirements of NRS 165.135, it is only through October 26, 2017 and not through at least the date that Counter-Petition was filed, i.e. July 16, 2018.

[8] Patricia apparently wants this Court to believe that her prior counsel does not know the distinction between an inventory and an accounting. This is absurd.

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> **Although we realize that the Trust accounting should be provided shortly**, at this time, **we again request that the Successor Trustee provide a copy of the Inventory of the Trust property** that should have been provided months ago. More specifically, pursuant to NRS 165.030, the Successor Trustee was required to provide the beneficiaries the inventory of the Trust assets within 75 days after a trustee receives possession of trust property.
>
> * * *
>
> Thank you for giving this matter your immediate attention. **We look forward to the receipt of the Inventory of the Trust** assets that your client was required to provide by February 1, 2017 by no later than June 19, 2017. **We also look forward to the receipt of the accounting of the Trust**, which you believe should be finalized shortly after your meeting with your client on June 19, 2017.

See **Exhibit O.** [Emphasis Added.]

Thus for Patricia now argue that "Objector never provided Petitioner a written demand for an accounting" is simply not true. Moreover, even if a request for an accounting had not been made, Patricia, through her counsel made representations that accounting, which she had obligation to provide, would be provided. *See* **Exhibit D** to Brian's Response. *See also*, Ms. Tyler's letter dated June 27, 2017 enclosing Trust's initial inventory and stating "Once we have more information on these items we will be back in touch regarding the accounting and distribution from the Trust." *See* **Exhibit C** to Brian's Response. Based on the numerous representations that an accounting was going to provided and the fact that she is required to provide an accounting both under the terms of the Trust and Nevada law, there would be no reason for Brian to make a formal demand for accounting, although one was made.

Patricia is again attempting to justify her failure to perform her trustee duties by self-serving, albeit untrue, statements. Apparently, Patricia has no issue of being less than truthful with the Court. Therefore, it should also come to no surprise that she has not been candid with

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the beneficiaries. Patricia's lack of candor to this Court, along with her self-serving actions that she has taken during the administration of the Trust, mandate her removal and appointment of a neutral and unbiased trustee, or, alternatively justify discovery on this matter.

C. This Court Should Compel An Accounting of the Trust Covering Period From October 26, 2016 through to the Date of the Hearing.

Whether or not a non-interested third party trustee is appointed, Patricia should be required to provide beneficiaries and this Court with an accounting. An accounting of the Trust is necessary in order to provide absolute transparency of Patricia's asset management. Despite the fact that Patricia accepted the appointment of successor trustee on November 18, 2016, prior to filing the Counter-Petition, no accounting for the Trust has been provided, despite prior requests or despite representations that accounting would be provided shortly after Patricia's meeting with her then counsel Kristin Tyler on June 19, 2017.

In fact, only after Brian filed his Counter-petition, did Patricia, on August 10, 2018, finally provide Brian with three pages of Trust financials claiming to be an accounting for a period covering October 26, 2016 through October 26, 2017.[9] More specifically, Patricia provided a Balance Sheet at Date of Death, a Balance Sheet as of October 26, 2017 and a Statement of Increases and Decreases. *See* **Exhibit N**. Not only does the documentation provided not meet the requirements of NRS 165.135, but the information provided is only through October 26, 2017. From the financials provided, however, it is evident that Patricia engaged in self-dealing and has breached yet again her fiduciary duties to the residuary beneficiaries.

As no financial information from October 27, 2017 through date has been provided, we are unable to determine whether further self-dealing occurred and what the current status

[9] To the extent that these financials in any way constitute an account of the Trust as provided under NRS 165.1214, then this Reply constitutes a written objection to the account.

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of the Trust actually is. Although a request was made for Patricia to provide accounting from October 26, 2016 through July 31, 2018, Patricia, through her counsel refuses to do provide such an accounting, claiming that Brian is not entitled to further accounting until at least January, 2019. *See* **Exhibit J**. Since Brian has already been forced to file a petition to compel Patricia to comply with her fiduciary duties as a trustee including to provide an accounting, there is no justifiable reason as to why Patricia should not provide an account of the Trust covering the period from October 26, 2016 through to the date of the hearing. Any account of the Trust that Patricia is ordered to provide should comply with the NRS Chapter 165 requirements.

In addition to compelling an accounting of the Trust and whether or not the Court finds that the August 10, 2018 financials meet the requirements of an account of the Trust, this Court should nonetheless hold Patricia personally liable for the attorney's fees and costs expended by Brian for having to seek an accounting that he has always been entitled to as a matter of right. NRS 165.148 specifically grants this Court with authority to do so. It is evident that without bringing the Counter-Petition it is unlikely that Brian would have received any financial accounting information, despite by her own admission, Patricia is well aware that she was required to provide annual accounting to the beneficiaries. *See* **Exhibit J**.

D. If the Court Does Not Appoint a Non-Interested Third Party Trustee to Look into the Trust's Affairs, then an Audit and Further Discovery is required to Determine What Happened to $2.5 Million of Ella's Assets Which Seemed to Have Disappeared While Ella Lived with Patricia.

In her Response, Patricia argues that an audit is not required because Patricia was not responsible to Trust assets before becoming successor trustee of the Trust. She then cites to Article VIII, Paragraph 6 of the Trust which indemnifies a successor trustee of acts of prior trustees. Brian is aware that Patricia, as successor trustee, would not be responsible for any

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acts of prior trustees. That is not the intention of seeking an audit of the Trust from 2001 forward.

Rather, as stated in Counter-Petition, audit is sought to determine what happened to substantial assets that Ella had prior to moving in with Patricia.[10] The Initial Inventory provided by Patricia on or about June 27, 2017, set forth assets of the Trust as of October 31, 2016 totaling $741,723.75. The assets listed in the Initial Inventory of the Trust are significantly less than the assets that Ella had when she moved to Las Vegas in 2001. Again, based on the information known to Brian, Ella had an estate valued around Three Million Dollars at the time she moved to Las Vegas, Nevada.

Despite having a significant estate, Ella was always very frugal. Since Ella was frugal in nature and basically sat in her chair watching her favorite TV shows for the past twenty years of her life, it is highly suspect as to what happened to Ella's assets to drastically reduce the value of her Estate. Since Ella had moved to Las Vegas and lived with Patricia, it appears that more than 75% of her estate had dwindled away. Per the Trust Inventory provided by Patricia, basically the only assets left to be distributed under the Trust are the two houses, which remarkably are to be distributed to Patricia. Thus any audit and discovery conducted in this matter would likely reveal the reasons for the diminution, including but not limited to, (a) whether or not the diminution of Ella's assets was a result of any fraud, duress or undue influence; (b) whether or not Ella's estate was diminished through any transfers made to Patricia that would then be presumably void pursuant to NRS 155.097; or (c) whether the Trust paid any personal obligations or debts of Patricia, including the mortgage on the

[10] If this Court appoints a non-interested third party trustee, he/she would be able to review the Trust financials to determine whether or not any improper transfers occurred during Ella's life that resulted in significant diminution of the Trust's estate as well as whether review the actions taken by Patricia once she assumed her responsibility of the Trustee. In that event, no separate audit would be necessary.

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Property. Alternatively, the audit and discovery may reveal significant amount of assets that are still owned by the Trust but which Patricia had no knowledge about and was unable to uncover during the administration of the Trust. Without an audit or further discovery, it is almost impossible to determine if, how and why Ella's significant estate dwindled down by more than 75% of her original estate value since her move to Las Vegas and after Ella lived with Patricia. Also without audit and further discovery, Brian is unable to determine who was paying the mortgage on the West Rosada Way property from the inception or any loans that Ella made to Patricia. Again, on numerous occasions Ella told Brian that she had loaned funds to Stella and Patricia, which upon inquiry Patricia denied. In fact, now she claims that one-half of the mortgage on the West Rosada Way property is owed by the Trust.

Finally, in view of the current developments that Patricia has "loaned" herself monies from the Trust as well as her self-serving contention that the entire 75% interest in the West Rosada Way property is to now go to Patricia, raises serious red flags and concerns that she may well have played a part, whether through undue influence or otherwise, in having Ella's assets significantly depleted. It may well be one of the reasons for Patricia's refusal to be transparent with previously promised financial documents. Thus, an audit and further discovery should provide a clearer picture as to what happened to the Trust assets.

For those reasons, if the Court does not appoint a non-interested third party trustee, then the Court should order an independent, complete and full forensic audit of the Trust and allow Brian to conduct further discovery. Brian had previously offered to pay for the cost of an audit and he is still willing to personally bear the expense thereof. As Brian is willing to pay for thc cost of an audit, Patricia should have no issue with this request, unless, of course, she has something to hide. If nothing improper occurred, in view of the frugal manner that

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Ella lived, then it would be likely that additional Trust assets should be discovered through an audit, which would benefit all of the beneficiaries.

E. If The Court is Not Inclined to Appoint a Neutral Trustee for the Trust, Brian Should be allowed to Conduct Discovery on the Contested Matters Raised in this Action.

Patricia asserts that Brian has not provided sufficient information to support allowing discovery. That is simply not true. Brian has raised legitimate concerns and questions as to what happened with Ella's significant assets that she had prior to moving to Las Vegas. Again, Ella's standard or manner of living did not change after her move to Las Vegas to account for the diminution of the majority of her Trust estate. A non-interested trustee, once appointed by this Court, should be able to do a thorough review of the Trust affairs, both before and after Ella's death, and determine the reasons for the diminution of Trust. A non-interested trustee would also be able to look into the facts behind the "new" amendment and the loan and determine what is actual and what is fabricated. Finally, a neutral and unbiased trustee will be able to distribute the Trust assets in accordance with actual trust documents, after making adjustments for money that may have been improperly transferred. However, should the Court be unwilling to appoint a neutral trustee, then Brian should be allowed to proceed with discovery on this matter before any further action is taken by this Court or Patricia relative to the Trust.

Discovery should reveal the reasons for the diminution, including but not limited to, (a) whether or not the diminution of Ella's assets was a result of any fraud, duress or undue influence; (b) whether or not Ella's estate was diminished through any transfers made to Patricia that would then be presumably void pursuant to NRS 155.097; or (c) whether the Trust paid any personal obligations or debts of Patricia, including the mortgage on the West Rosada Way property. Not only has Ella told Brian that she had loaned money to Patricia relative to the West Rosada Way property, which obligation does not appear anywhere in the list of Inventory, but now Patricia asserts that the Trust owes one-half of the mortgage on the

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West Rosada Way Property. Unless a neutral trustee is appointed by this Court, Brian should be allowed to conduct discovery to sort all this out.

Moreover, Brian has raised legitimate concerns that warrant discovery on the issue surrounding the handwritten letter as well as the Second and Third Amendments to the Trust. Furthermore, Brian has raised significant questions surrounding Patricia's administration of the Trust. By her own admission, Patricia has "loaned" herself significant sums from the Trust, without anyone's approval and in clear violation of Nevada law. Pursuant to E.D.C.R. Rule 4.16 and Rule 4.17, Brian should be allowed to conduct discovery on all of the contested matters relating to Patricia's Petition as well as the Counter-Petition, including but not limited to the circumstances surrounding the amendments, the handwritten letter, or to otherwise determine what happened to the majority of Ella's estate after her co-habitation with Patricia. Therefore, unless the Court appoints a neutral trustee, Brian, pursuant to E.D.C.R. Rules 4.16 and 4.17, requests for this Court to set a discovery schedule and allow Brian to conduct discovery on the contested matters pending before this Court, which contested matters involve disputed issues of material fact.

1. Patricia's Self-Serving Actions Place the Validity of The Second and Third Amendments to the Trust In Question and Justify Discovery On this Matter.

In her response, Patricia argues that the challenge as to "the validity of the Second and Third Amendment must fail because the date, pursuant to NRS §164.021(4), to bring an action ended on May 17, 2017 (120) days after Notice of Irrevocable Trust was sent to Objector on January 27, 2017." *See* Patricia's Response, pg. 7, lns. 27-28, pg. 8, lns. 1-2. It is not disputed, however, that until the filing of Patricia's Petition with this Court on May 9, 2018, Brian would have had no reason to seek instructions as to the validity of Trust or the three Amendments to the Trust.

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First, in making this argument, Patricia is again putting her own interest before other beneficiaries. She asserts that despite the fact that Patricia failed to provide the beneficiaries with what she now claims to be the entire trust documents[11], a beneficiary is now somehow barred to question the validity of the trust documents. It is ludicrous to think that a beneficiary is barred questioning Trust documents after not being provided with all relevant documents in the first place. Moreover, by bringing her Petition seeking to have the handwritten letter confirmed as part of the Trust documents isn't this exactly what she is doing? In her Petition, Patricia is asking the Court to confirm the handwritten letter as an amendment to the Trust even though Patricia had previously certified to the beneficiaries that the Trust, First Amendment, Second Amendment and Third Amendment constituted the entire Trust. Why is it okay for her to seek instructions relative the Trust amendments after she gave the notice pursuant to NRS 165.021 but not for Brian? Also, why has Patricia waited for a year and a half to reveal the handwritten letter? Undoubtedly the reason that Patricia concealed the alleged existence of the handwritten letter until just now was not to raise any suspicions of the beneficiaries relative the trust documents and prevent them from timely raising any questions or challenge in a timely manner.[12] This shows yet another example of Patricia's breach of her fiduciary duty.

In fact, it was only after Brian became aware of Patricia's self-serving interests, i.e. her current position that the Trust was allegedly further amended via a handwritten letter, together with her representation that the Trust estate, which was around Three Million Dollars when Ella moved in with Patricia, is now less than $750,000[13] that Brian started to question Patricia and her actions relative to the Trust. His inquiry is further justified with the current revelation of Patricia's self-dealing including the loan Patricia made to herself from the Trust and the Trust's newly found "mortgage liability" to Patricia's former lover. Until the

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[11] Patricia lived with Ella and would have had immediate access to all Ella's records after Ella's death, including the handwritten letter she miraculously found after one and one-half year after of administering the Trust.

[12] In concealing the handwritten letter to the beneficiaries, which Patricia now asserts constitutes another Amendment to the Court, Patricia committed fraud upon the Trust beneficiaries when she certified to the beneficiaries that what she was providing to them along with the Notice constituted entire trust documents of the Trust. NRS 11.190(3)(d) provides for a three-year statute of limitations for fraud actions which accrues "upon the discovery by the aggrieved party of the facts constituting the fraud."

[13] Per the Initial Inventory, the Trust assets as of the date of Ella's death totaled $741,723.75. *See* **Exhibit C**.

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disclosure of the handwritten letter, for which Patricia provides no explanation as to why it is being presented now, almost one and one-half years after her being appointed as successor trustee, and until disclosure of the self-serving actions[14] Patricia has taken during the administration of the Trust, Brian had no reason to question the validity of any Trust amendments or the fact that they may be a subject of potential undue influence or fraud exerted by Patricia over their grandmother Ella. However, the manner that Patricia has handled this matter along with the fact that majority of Ella's assets have apparently been depleted while Ella was living with Patricia, raise major concerns that Patricia may have engaged in self-dealing even before Ella died. Brian hopes that this is not the case, but he certainly now has a reasonable and valid basis to question Patricia's actions, both before and after Ella's death.

It is for that reason that Brian is seeking instructions from this Court relative the Second Amendment and Third Amendment to the Trust and whether, they, like the handwritten letter, may also be void pursuant to NRS 155.097 or otherwise. Like the handwritten letter, the Second Amendment and the Third Amendment, although made more formally, were also made while Ella resided with Patricia. It is unclear whether or not Patricia in any way participated in the Second Amendment and/or the Third Amendment to the Trust. It is clear however, that prior to the Second Amendment and the Third Amendment Ella basically treated all of her grandchildren equally. However, once Ella moved to Las Vegas, not only did Ella "lose" significant amount of her estate, but also after that point, Ella's amendments to the Trust all of the sudden started to favor Patricia over all other grandchildren. Is the reason for this because Patricia exercised undue influence over her grandmother? Thus, even if NRS 155.097 was not in effect at the time the amendments were made, and there would be no statutory presumption of invalidity, under the Nevada common law any instrument signed under undue influence would be deemed void. *Peardon v. Peardon*, 67 Nev. 717, 201 P.2d 309 (1948). Undue influence may be shown in the absence of

[14] A year and a half into administering the Trust, Patricia not only "found" a document claiming to be an amendment to the Trust giving her an additional 25% of the West Rosada Way property, but Patricia now has also "found" a new mortgage liability of the Trust to her former lover with whom she co- parent, in order to have the Trust pay mortgage on this 25% interest and assures that Patricia would receive the 75% interest that the Trust owns in the West Rosada Way property free and clear.

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a presumption. *See generally In re Estate of Hegarty*, 46 Nev. 321, 327, 212 P. 1040, 1042 (1923); *In re Estate of Bethurem*, 129 Nev. 869, 874, 313 P.3d 237,241 (2013); see also *Schmidt v. Merriweather*, 82 Nev. 372, 376, 418 P.2d 991, 993 (1966) (holding that " 'where confidential relations between parent and child are shown to have existed and where a conveyance of property is made by the weaker to the dominant party, a presumption arises that the conveyance was obtained through the undue influence of the dominant party' " (*quoting Walters v. Walters*, 26 N.M. 22, 188 P. 1105, 1106 (1920))).

Brian has raised valid points questioning the validity of these two amendments. In view of Patricia's actions and self-interest as already shown, Brian should be allowed to conduct discovery on this matter before the Court rules on the validity of and/or confirm the Second and Third Amendment to the Trust.

Finally, in her Response, Patricia seeks attorneys' fees pursuant to NRS 155.165(2). Again, but for Patricia's actions, the validity of the Second and Third Amendment, would not have been put into question in the first instance. It is only because of her self-serving actions and lack of transparency that the validity of the Second and Third Amendment came into question. There is no rational basis for finding that Brian's request for instructions and discovery, both of which are being made on a good faith basis, constitute a vexatious litigation contemplated under NRS 155.165(2). Therefore, Patricia's request for an award of attorney's fees is simply unwarranted and must be denied.

2. A Handwritten Letter Does Not Constitute a Valid Amendment to the Trust, and, at Minimum, Justify Further Discovery Relative Thereto.

In her Petition and Response, Patricia advocates as trustee for a trust interpretation favoring herself as beneficiary. More specifically, Patricia, after previously certifying to the beneficiaries that the Trust was amended only on three occasions, now advocates that a handwritten letter constitutes another amendment to the Trust. Conveniently, Patricia fails to advocate this position or apprise the beneficiaries of this alleged amendment until well after the 120 days limit to object to the validity of the Trust has passed. Moreover, she provides no

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explanation or reason for the delay in presenting this handwritten letter which she now self-servingly claims to be an amendment to the Trust. Since Patricia lived with Ella, she certainly had access to all of Ella's documentation to be able to "locate" and present this document to the Trust beneficiaries well before now. Thus, to do so now, and then rely on "untimeliness" argument is yet another example of self-dealing and breach of her fiduciary duties.

Despite this fact, Patricia, while breaching her duty of loyalty, duty of impartiality and duty to avoid a conflict of interest, argues that there "is no presumption the transfer of the Handwritten Note is void because Objector did not assert facts Petitioner "materially participated" in formulating the dispositive provisions of the handwritten (sic)." [Emphasis Added.] *See* Response, pg. 9, lns. 19-21. So basically her only argument is that the Court should deem the handwritten letter an amendment because at this point, Brian has not been able to prove her participation in the handwritten letter or any exercise of undue influence on her part. Obviously until discovery has been conducted, he is unable to do so. What is more telling, however, is that neither Patricia nor Ms. Mendre have denied participation or other involvement with its preparation. Ms. Mendre's Declaration attached to Patricia's Response is completely silent on this point. In view of everything that we learned thus far, discovery is certainly warranted to determine the extent of Patricia's and Ms. Mendre's participation that led to the preparation of the handwritten letter now allegedly giving Patricia the remaining 25% interest in the West Rosada Way property.

Moreover, pursuant to NRS 155. 097(2)(d), a transfer is also presumed void if the transfer is to a transferee "who is related to, affiliated with or subordinate to any person described in paragraph (a), (b) or (c)." Indisputably, the transfer was made to transferee (Patricia) who is related to Ella. Moreover, the transfer was made to Patricia who is affiliated with Elizabeth Mendre. Thus, pursuant to NRS 155.097(2)(d), the handwritten letter is presumed void as a matter of law. It is Patricia's burden to rebut this presumption. She has not done so. In fact, Patricia did not provide any evidence, let alone a clear and convincing evidence, to rebut this presumption. As Patricia has failed to rebut the presumption by clear and convincing evidence, the handwritten letter, even if determined to be a valid amendment

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to the Trust, is conclusively presumed to be a product of fraud, duress or undue influence, and therefore void as a matter of law. *See* NRS 155.097(3).

F. The Removal of In Rem Jurisdiction Over Trust Is Not Appropriate At this Time.

In her Response, Patricia contends that "Objector has failed to provide sufficient concerns requiring further Court involvement in the administration of the Trust." *See* Response, pg. 12, lns. 19-20. In fact the opposite is true. Brian has raised legitimate concerns and issues concerning the Trust and the Trust administration. Furthermore, based on Patricia's self-dealing and prior actions, it is clear that she will provide no transparency or information, including the accounting to which she was obligated to provide, until and unless this Court continues to be involved. By lending herself monies from the Trust, clearly puts Patricia's conduct in question and warrants this Court's continued involvement of this Trust's administration. Therefore, this Court should retain in rem jurisdiction of the Trust and deny Patricia's request for the Court to release in rem jurisdiction over the Trust.

G. Conclusion.

In conclusion, Patricia is clearly conflicted and has been placing her own interest before the interests of all of the remaining beneficiaries. Patricia has also violated Nevada law in numerous ways while administering the Trust. Therefore, Patricia should be removed as a Trustee of the Trust and a neutral and un-conflicted trustee should be appointed.[15]

[15] At minimum, this court should appoint a temporary trustee pending the resolution of this matter to conduct an independent audit of the Trust.

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A neutral and un-conflicted successor trustee will be able to make an unbiased review of the Trust administration and make sure that no other self-dealings were done by Patricia either prior to and after Ella E. Horst's death. It is highly suspicious that around $2 to $2.5 million dollars of Ella's assets dissipated while living with Patricia, especially of the frugal way of life that Ella lived. There may be a perfectly reasonable explanation of this, but Brian, as one of the beneficiaries of the Trust, has the right to make sure that there was nothing improper about it, especially in view of the manner that Patricia has been administering the Trust thus far.[16] However, to the extent that any assets were improperly transferred to Patricia or anyone else to the detriment of other beneficiaries, then a neutral and un-conflicted trustee will certainly be able to take appropriate actions to recover them for the benefit of all beneficiaries. Since Patricia has a conflict of interest in serving as the trustee, and has already breached her fiduciary duties while administering the Trust, the removal of Patricia as the Trustee of the Trust and appointment of a neutral trustee is appropriate at this time.

Alternatively, in the event that this Court is not yet inclined to remove Patricia as the trustee, then Brian should be allowed to conduct discovery relative the Trust assets and its administration. There are clearly disputed material facts upon which discovery is appropriate. Furthermore, Brian asks for an audit of the Trust. In order to provide transparency to all of the beneficiaries, Brian has offered, and continues to offer, to pay for a forensic audit of the Trust to determine what happened to the Trust assets. It is possible that an audit may reveal that the

[16] Not only has Patricia "loaned" herself funds, but Patricia has not been forthright from the inception. She "conveniently" failed to include a handwritten note which she now claims was an amendment to the Trust giving her the entire Trust's 75% interest in the West Rosada Way property. She undoubtedly felt that had she included this note that she claims constitute an amendment to the Trust, that a beneficiary may have questioned or challenged the Trust and the validity of amendments which were made while Ella resided with Patricia as from that time forward, Patricia was started being favored by Ella as a beneficiary over her other grandchildren. Until the note was "provided" the beneficiaries had no basis to question the validity of Trust as amended. After Patricia's current self-interested position, however, the beneficiaries have a valid basis to do so. Conveniently, and again, in her self-interest, Patricia now claims that the First, Second and Third Amendments must be confirmed because Brian has failed to timely bring an action to contest their validity.

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Trust funds were legitimately spent by Ella. In that event, a forensic audit, with no expense to the Trust, will at minimum provide closure and eliminate any ill-feelings or suspicions that are currently lingering among the family members. Also, an audit may reveal and uncover assets that Patricia was unable to locate; which will benefit everyone.

Finally, whether or not a neutral trustee is appointed, Patricia should still be compelled to provide a complete and full accounting for the Trust while she served as Trustee. Other than an untrue claim that an accounting had not been demanded, Patricia provides no reason for not meeting her fiduciary duty and provide accounting to the beneficiaries of the Trust. As there is absolutely no good cause for Patricia to withhold an accounting, Brian respectfully requests that this Court enter an order compelling Patricia to provide an accounting from inception through the date of the hearing. The accounting should meet with the requirements of NRS 165.135 and be provided to beneficiaries within 60 days from the date of the hearing. In addition, Brian should be compensated for having to bring this Counter-Petition in order to compel a task that is required to be made by a trustee in the first instance. Accordingly, Brian respectfully requests that this Court orders Patricia to reimburse Brian personally for the fees and costs incurred by Brian in this regard.

DATED this 31st day of August 2018.

HOWARD & HOWARD ATTORNEYS PLLC

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CERTIFICATE OF ELECTRONIC SERVICE

I do hereby certify that on the 31st day of August, 2018 I caused a copy of the foregoing REPLY IN SUPPORT OF BRIAN HOLIDAY'S COUNTER-PETITION TO (1) REMOVE PATRICIA L. HORST AS TRUSTEE AND APPOINT SUCCESSOR TRUSTEE; (2) COMPEL ACCOUNTING AND IMPOSE PERSONAL LIABILITY UNDER NRS 165.148; and (3) FOR INSTRUCTIONS to be served electronically via the Court's ECF system on the following parties listed on the electronic service list:

Kirk Kaplan (kirk@crestkey.com)

I further certify that on the 31st day of August, 2018, I also served a true and correct copy of the REPLY IN SUPPORT OF BRIAN HOLIDAY'S COUNTER-PETITION TO (1) REMOVE PATRICIA L. HORST AS TRUSTEE AND APPOINT SUCCESSOR TRUSTEE; (2) COMPEL ACCOUNTING AND IMPOSE PERSONAL LIABILITY UNDER NRS 165.148; and (3) FOR INSTRUCTIONS by placing the above referenced documents in the US Mail first class, postage prepaid, addressed to the following:

Kirk D. Kaplan, Esq.
Crest Key, Prof., L.L.C.
6980 O'Bannon Drive, Ste. 100
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Attorneys for Petitioner Patricia L. Horst

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and that there is regular communication by mail between the place of mailing and the places so addressed.

An Employee of Howard & Howard Attorneys PLLC

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EXHIBIT G

BALANCE SHEET AS OF OCTOBER 26, 2017
PROVIDED BY PATRICIA'S COUNSEL ON AUGUST 10, 2018

(See Attached)

EXHIBIT G

Ella E Horst Revocable Trust u/a/d 05/21/91 (as Amended)
Balance Sheet
As of October 26, 2017

	Oct 26, 17	
ASSETS		
Current Assets		
Checking/Savings		
Checking - NSB (9286)		10,964.85
M/M - NSB (9041)		80,464.78
Total Checking/Savings		91,429.63
Other Current Assets		
Due from Patricia Horst		19,259.86
Total Other Current Assets		19,259.86
Total Current Assets		110,689.49
Fixed Assets		
Real Property		
Real Prop - 7125 Village Shore	227,646.00	
Real Prop - 7475 W. Rosada(75%)	367,450.00	
Total Real Property		595,096.00
Total Fixed Assets		595,096.00
Other Assets		
Promissory Note- Kent Holiday		52,087.82
Total Other Assets		52,087.82
TOTAL ASSETS		757,873.31
LIABILITIES & EQUITY		
Liabilities		
Current Liabilities		
Other Current Liabilities		
Mortgage Payable - Rosada		81,842.11
Total Other Current Liabilities		81,842.11
Total Current Liabilities		81,842.11
Total Liabilities		81,842.11
Equity		
Beneficiary Equity		
01. Patricia L. Horst		
Remainder (7.141%)	10,470.69	
Specific Gifts	595,096.00	
Total 01. Patricia L. Horst		605,566.69
02. William R. Horst (7.143%)		10,473.62
03. Kristi Horst (7.143%)		10,473.62
04. Robert K. Holiday (7.143%)		10,473.62
05. Blaine C. Holiday (7.143%)		10,473.62
06. Jill Linford (7.143%)		10,473.62
07. Gail Herr (7.143%)		10,473.62
08. Kent R. Holiday (7.143%)		10,473.62
09. Brian Holiday (7.143%)		10,473.62
10. Craig Holiday (7.143%)		10,473.62
11. Dawn H Blanchard (7.143%)		10,473.62
12. Blake Holiday (7.143%)		10,473.62
13. Steven Holiday (7.143%)		10,473.62
14. Nathan Holiday (7.143%)		10,473.62
Total Beneficiary Equity		741,723.75
Retained Earnings		-75,309.38
Net Income		9,616.83
Total Equity		676,031.20
TOTAL LIABILITIES & EQUITY		757,873.31

EXHIBIT H

BALANCE SHEET AT DATE OF DEATH OCTOBER 26, 2016

(See attached)

EXHIBIT H

Ella E Horst Revocable Trust u/a/d 05/21/91 (as Amended)
Balance Sheet at Date of Death
October 26, 2016

		Oct 26, 16
ASSETS		
Current Assets		
Checking/Savings		
CCCU (00)		269.23
CCCU (30)		55,450.69
CCCU (75)		100.00
Checking - NSB (9266)		5,301.64
M/M - NSB (9041)		27,598.14
Total Checking/Savings		88,719.70
Total Current Assets		88,719.70
Fixed Assets		
Real Property		
Real Prop - 7125 Village Shore	227,646.00	
Real Prop - 7475 W. Rosada(75%)	367,450.00	
Total Real Property		595,096.00
Total Fixed Assets		595,096.00
Other Assets		
Promissory Note- Kent Holiday		52,087.82
Prudential		5,820.23
Total Other Assets		57,908.05
TOTAL ASSETS		741,723.75
LIABILITIES & EQUITY		
Equity		
Beneficiary Equity		
01. Patricia L. Horst		
Remainder (7.141%)	10,470.69	
Specific Gifts	595,096.00	
Total 01. Patricia L. Horst		605,566.69
02. William R. Horst (7.143%)		10,473.62
03. Kristi Horst (7.143%)		10,473.62
04. Robert K. Holiday (7.143%)		10,473.62
05. Blaine C. Holiday (7.143%)		10,473.62
06. Jill Linford (7.143%)		10,473.62
07. Gail Herr (7.143%)		10,473.62
08. Kent R. Holiday (7.143%)		10,473.62
09. Brian Holiday (7.143%)		10,473.62
10. Craig Holiday (7.143%)		10,473.62
11. Dawn H Blanchard (7.143%)		10,473.62
12. Blake Holiday (7.143%)		10,473.62
13. Steven Holiday (7.143%)		10,473.62
14. Nathan Holiday (7.143%)		10,473.62
Total Beneficiary Equity		741,723.75
Total Equity		741,723.75
TOTAL LIABILITIES & EQUITY		741,723.75

EXHIBIT I

STATEMENT OF INCREASES AND DECREASES

(See Attached)

EXHIBIT I

Ella E Horst Revocable Trust u/a/d 05/21/91 (as Amended)
Statement of Increases and Decreases
October 27, 2016 through October 27, 2017

	Oct 27, '16 - Oct 27, 17
Income	
Discovered Assets	
IRA Distribution (Dreyfus)	12,959.48
Opening Balances Difference	17,389.18
Total Discovered Assets	30,348.66
Other Income	
Credit Card Refund	6.46
Dividend Received	10.82
Interest Received	74.22
Total Other Income	91.50
Social Security	0.00
Total Income	30,440.16
Expense	
Bank Service Charge	57.50
Discovered Liability	
Mortgage	84,449.79
Total Discovered Liability	84,449.79
Funeral Expenses	7,693.78
Legal Fees	3,969.54
Medical Insurance	-37.90
Total Expense	96,132.71
Net Income	-65,692.55

EXHIBIT J

E-MAIL FROM KIRK KAPLAN DATED AUGUST 28, 2018

(See Attached)

EXHIBIT J

Mullins, Gwen Rutar

From: Kirk D. Kaplan <kirk@crestkey.com>
Sent: Tuesday, August 28, 2018 1:04 PM
To: Mullins, Gwen Rutar
Subject: Re: Accounting for Ella E. Horst Revocable Trust for the period, October 27, 2016 to October 26, 2017

Hi Gwen,

Sorry.

We estimate $75.00 to produce the accounting support for the accounting period presented – October 27, 2016 to October 26, 2017. Do you want hard copies or is an email with PDFs sufficient? Please draft the check payable to Crest Key.

In regards to an accounting, Article XI, Section M trust provides: "At the time of the Settlor is not serving as Trustee, the Trustee shall account annually." The next accounting is not due until approximately January 24, 2019, for the FYE October 26, 2018, or earlier if trust distributions occur sooner. As such, the accounting will be produced at the earlier of the two dates – January 24, 2019, or with distributions.

No fiduciary income tax returns have been filed.

Thank you.

Kirk D. Kaplan, Esq., CPA
Crest Key, Prof., LLC
6980 O'Bannon Drive, Suite 100
Las Vegas, Nevada 89117
(T) (702) 202-4153
(F) (702) 837-1879
Kirk@CrestKey.com

From: "Mullins, Gwen Rutar" <gmullins@HowardandHoward.com>
Date: Tuesday, August 28, 2018 at 9:02 AM
To: "Kirk D. Kaplan" <kirk@crestkey.com>
Subject: RE: Accounting for Ella E. Horst Revocable Trust for the period, October 27, 2016 to October 26, 2017

Good morning Kirk,

I am just following up on my e-mail of August 16, 2018 (see below). To date, I have not heard from you nor have I received an accounting from October 27, 2017 through date. Please advise if and when the updated accounting will be provided. Thank you.

Also, can you give me an estimate on the cost for providing us with copies of the backup documents, including the financial documents/tax returns that you have in your possession that you previously indicated you would make available for review. As I previously indicated obtaining a copy is likely going to be more cost effective than if our client and/or his authorized representative come to your office to review them.

Thank you for giving this matter your immediate attention. I look forward to hearing from you in this regard. Gwen

Howard & Howard
law for business
Gwen Rutar Mullins
Attorney and Counselor
Direct: 702.667.4818
Fax 702.567.1568
3800 Howard Hughes #1000
Las Vegas, NV 89169
gmullins@HowardandHoward.com
www.howardandhoward.com

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ELECTRONIC SIGNATURE: Nothing contained in this communication is intended to constitute an electronic signature unless a specific statement to the contrary is included in this message.

From: Mullins, Gwen Rutar
Sent: Thursday, August 16, 2018 1:36 PM
To: 'Kirk D. Kaplan' <kirk@crestkey.com>
Subject: RE: Accounting for Ella E. Horst Revocable Trust for the period, October 27, 2016 to October 26, 2017

Hi Kirk,

Thank you for the Accounting that you provided. I have forwarded to my client. I note that the Accounting goes only through October 26,2017. In our Counter-Petition we are seeking Trust accounting to date. I am pretty sure that our client would like to see the current state of trust affairs. Thus, please provide me with the Trust accounting/updated balance sheet through at least July 31, 2018. I would appreciate if you could provide me with the updated information next week or soon thereafter as possible. Please let me know if and when you are able to get me the updated accounting.

Also, can you give me an estimate on the cost for providing me with copies of the backup documents, including the documents/tax returns that you have in your possession so that I can discuss with my client. I presume that obtaining a copy would be more cost effective than if our client and/or his authorized representative come to your office to review them.

Since my client is constantly travelling, I am hoping to discuss with him this matter on Monday. Therefore, I would appreciate hearing back from you as soon as possible in this regard. Thank you. Gwen

Howard & Howard
law for business
Gwen Rutar Mullins
Attorney and Counselor
Direct: 702.667.4818
Fax 702.567.1568
3800 Howard Hughes #1000
Las Vegas, NV 89169
gmullins@HowardandHoward.com
www.howardandhoward.com

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ELECTRONIC SIGNATURE: Nothing contained in this communication is intended to constitute an electronic signature unless a specific statement to the contrary is included in this message.

From: Kirk D. Kaplan [mailto:kirk@crestkey.com]
Sent: Friday, August 10, 2018 4:57 PM
To: Mullins, Gwen Rutar <gmullins@HowardandHoward.com>
Subject: Accounting for Ella E. Horst Revocable Trust for the period, October 27, 2016 to October 26, 2017

Gwen,

Accompanying this email are the following statements for the Ella E. Horst Revocable Trust. Let me know if you have any questions.

1) Balance Sheet at Date of Death as of October 26,2016 (Cash Basis).
2) Statement of Increases and Decreases for the Period October 27, 2016 to October 26, 2017 (Cash Basis).
3) Balance Sheet as of October 26, 2017 (Cash Basis).

Please note, Retained Earnings on the Balance Sheet dated October 26, 2017 of ($75,309.38) and Net Income of $9,616.83 sum to ($65,692.55), the net loss on the Statement of Increases and Decreases. The net loss is to be spread among the remainder interests according to each beneficiary share.

Be advised the Trust assumed half of the mortgage for the purchase of Stella's interest in the Rosando Residence. The Trust's share of the mortgage balance at the date of Ella's death was $88,449.79. This amount is identified on the Statement of Inflows and Outflows as Discovered Liability. The reason for its classification is it should have been disclosed on the original inventory previously submitted to your client.

You or an identified authorized agent are welcome to come to the office to observe documents supporting amounts on the statements. Or if you choose, documents produced will be billed at $0.25/physical page and for bookkeeper compilation at $65.00/hour for either physical or electronic productions, plus my review time estimated at one-half hour. Time estimate for preparation of review of documents at our office are to be paid on or before arrival for review appointment. Fees and costs to be paid in advance of work to produce requested information.

Let me know if you have any questions.

CREST KEY

personal business international
legal and accounting partners

YOUR FIRST
advisor

Kirk D. Kaplan
Attorney at Law, Certified Public Accountant

6980 O'Bannon Drive, Suite 100. Las Vegas NV 89117
t (702) 202 4153 f (702) 837 1879 e kirk@crestkey.com
www.crestkey.com

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Please consider the environment before printing this e-mail

EXHIBIT K

DECLARATION OF VALUE AND GRANT BARGAIN SALE DEED (RE: WEST ROSADA WAY PROPERTY)

(See Attached)

EXHIBIT K

STATE OF NEVADA
DECLARATION OF VALUE

1. **Assessor Parcel Number(s)**
   a) 125-34-310-047
   b) _____
   c) _____
   d) _____

2. **Type of Property:**
   a) ☐ Vacant Land b) ☒ Single Fam Res
   c) ☐ Condo/Twnhse d) ☐ 2-4 Plex
   e) ☐ Apt. Bldg f) ☐ Comm'l/Ind'l
   g) ☐ Agricultural h) ☐ Mobile Home
   Other _____

FOR RECORDER'S OPTIONAL USE ONLY
Book: _____ Page: ___
Date of Recording: ____
Notes: [illegible]

3. **Total Value/Sales Price of Property:** $____
   Deed in Lieu of Foreclosure Only (value of property) ($____)
   Transfer Tax Value per NRS 375.010, Section 2: $____
   Real Property Transfer Tax Due: **$ 0.00**

4. **If Exemption Claimed**
   a. Transfer Tax Exemption, per NRS 375.090, Section Exempt 04
   b. Explain Reason for Exemption: Deed removing co-owner without consideration

5. Partial Interest: Percentage being transferred: 25 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. **Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.**

Signature Stella P. Adkins **Capacity** GRANTOR

Signature _____ **Capacity** GRANTEE

SELLER (GRANTOR) INFORMATION (REQUIRED)
Print Name: Stella P. Adkins
Address: 702 OVERHILL Av.
City/State/Zip: Las Vegas, Nev 89129

BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Ella E. Horst Revocable Trust
Address: 7475 W. ROSADA WY.
City/State/Zip: LAS VEGAS, NV. 89149

COMPANY/PERSON REQUESTING RECORDING (required if not seller or buyer)

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

1820

20080229-0001820

Fee: $15.00 RPTT: EX#004
N/C Fee: $25.00

02/29/2008 11:19:10
T20080034792
Requestor:
E HORST

Debbie Conway ADF
Clark County Recorder Pgs: 3

APN: 125-34-310-047
WHEN RECORDED MAIL TO and MAIL TAX STATEMENT TO:

Ella Horst
7475 W ROSADA WAY
LAS VEGAS NV 89149

(C3-1)

GRANT, BARGAIN, SALE DEED

R.P.T.T. **Exempt 04**

THIS INDENTURE WITNESSETH: That

Stella P. Adkins, an unmarried woman

FOR A VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, do(es) hereby Grant, Bargain, Sell and Convey to

Ella E. Horst, Trustee of the Ella E. Horst Revocable Trust UDT DTD 5-21-91

all that real property situated in the County of Clark, State of Nevada, described as follows:

For legal description of the real property, see Exhibit A attached hereto and made a part hereof.

SUBJECT TO:
1. Taxes for the fiscal year 07-08
2. Rights of Way, reservations, restrictions, easements, and conditions of record.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Witness my hand this 26 day of Feb, 2008.

Stella P. Adkins

STATE OF Oklahoma }
COUNTY OF Creek } ss:

On Feb 26 2008, personally appeared before me, a Notary Public in and for said County and State, Stella P. Adkins, who acknowledged to me that she executed the same.

WITNESS my hand and official seal.

RAE ANN YOUNG #05008252 NOTARY PUBLIC IN AND FOR STATE OF OKLAHOMA CREEK COUNTY

Rae Ann Young Creek County Oklahoma
NOTARY PUBLIC in and for said County and State.
Exp Sept 2.2009

Exhibit "A"

Lot Two (2) of that Certain Parcel Map on File in File 72, Page 40, In the Office of The County Recorder of Clark County, nevada and recorded May 14, 1992 In Book 920504 of Official Records as Document No. 00796.

TO: COMMONWEALTH LAND TITLE INSURANCE COMPANY

NOTARY AFFIDAVIT

(for out of office notary acknowledgement)

I hereby certify, under penalty of perjury, that I am authorized to act as a Notary Public, in and for the County of Creek, State of Oklahoma and that in performing my duties as a Notary Public I have complied with all applicable State and Local Laws.

I notarized the signature of: **Stella P. Adkins**

Date of Notary Acknowledgement: 02/26/08

Type of Identification used: Drivers License

Description of Document(s): Grant, Bargain, Sale Deed

PLEASE ATTACH A PHOTOCOPY OF THE ABOVE MENTIONED IDENTIFICATION.

If there are any questions and/or concerns regarding the notary acknowledgement, COMMONWEALTH LAND TITLE INSURANCE COMPANY Title may contact me, the undersigned Notary Public, at the following location:

Notary Public Name (please print): RaeAnn Young

Notary Public Mailing Address: PO Box 1408 Sapulpa OK 74056

Notary Public Daytime Phone: 918-227-8248

RAE ANN YOUNG #05008252 NOTARY PUBLIC IN AND FOR STATE OF OKLAHOMA CREEK COUNTY

WITNESS my hand and official seal.

RaeAnn Young Creek County Oklahoma
NOTARY PUBLIC in and for said County and State. exp. Sept 2, 2009

This form is a requirement of COMMONWEALTH LAND TITLE INSURANCE COMPANYto be used when escrow documents that require a Notary are signed OUTSIDE of our office by another party. DO NOT attach this form to the document, as it is for internal uses and purposes only and will not be recorded.

EXHIBIT L

E-MAIL REQUESTS WERE MADE FOR INVENTORY/ACCOUNT OF TRUST ASSETS BY BRIAN UPON PATRICIA'S PRIOR COUNSEL

(See Attached)

EXHIBIT L

Mullins, Gwen Rutar

From: Kristin Tyler <ktyler@Gtg.legal>
Sent: Friday, June 02, 2017 3:53 PM
To: Mullins, Gwen Rutar
Cc: Carie Tofanelli
Subject: FW: Ella Horst Revocable Trust

Hi Gwen,

I am not going to respond to Brian if you have been retained. I have a meeting with the trustee on June 19 to finalize and send out what we hope will be a first and final accounting.

In addition, I will be sending all the beneficiaries a letter regarding whether or not they want any items of family memorabilia. Please confirm that I should send Brian's letter to you.

Happy to discuss this and answer any questions.

KT

Kristin M. Tyler
Partner

P 725 777 3000 | F 725 777 3112

GARMAN | TURNER | GORDON

650 WHITE DRIVE, SUITE 100
LAS VEGAS, NV 89119

website | vCard | map | email

From: Brian [mailto:bjholiday888@gmail.com]
Sent: Friday, June 2, 2017 1:54 PM
To: Kristin Tyler <ktyler@Gtg.legal>
Cc: sniglett@cox.net; Carie Tofanelli <ctofanelli@Gtg.legal>; Gwen Rutar Mullins <gmullins@HowardandHoward.com>
Subject: Re: Ella Horst Revocable Trust

Hello Kristin,

Despite requesting and waiting months, and your assurance below that one would be provided in the "near future", I still have not received an inventory of the trust assets. Grandma past away more than 7 months ago now and none of the beneficiaries, that I know of, have been provided this information. Nor have I received any explanation as to why one can't be provided.

This is not normal.

I have CC'd local counsel, Gwen Mullins, on this email.

A simple and open inventory of the assets of the trust is not a difficult request and should not take 7 months.

Best Regards,

Brian

On Apr 26, 2017, at 11:27 AM, BJ Holiday <bjholiday888@gmail.com> wrote:

> Hi Kristin,
>
> I still have not received the accounting of assets per your March 14 email below.
>
> Thanks,
>
> Brian
>
> > On Mar 14, 2017, at 10:52 AM, Kristin Tyler <ktyler@Gtg.legal> wrote:
> >
> > At some point in the near future, the trustee will provide an accounting of assets that will give you a better idea of what the trust held at the time of Ella's passing. I am not aware of any other Schedule A documents.
> >
> > Kristin Tyler
> >
> > **From:** Brian [mailto:bjholiday888@gmail.com]
> > **Sent:** Thursday, March 9, 2017 5:44 PM
> > **To:** Kristin Tyler <ktyler@Gtg.legal>
> > **Cc:** sniglett@cox.net; Carie Tofanelli <ctofanelli@Gtg.legal>
> > **Subject:** Re: Ella Horst Revocable Trust
> >
> > Thank you Kristin. Were there any additions to the Schedule A you've attached?
> >
> > Brian
> >
> > On Mar 9, 2017, at 12:56 PM, Kristin Tyler <ktyler@Gtg.legal> wrote:
> >
> > > Hi Brian,
> > >
> > > I am representing Tricia Horst in her role as successor trustee of THE ELLA E. HORST REVOCABLE TRUST created May 21, 1991 and any amendments thereto.
> > >
> > > Attached is the Schedule A which was inadvertently omitted. It is essentially an inventory of assets at that snapshot in time when the Exhibit A was written. I am informed that Ella may not have owned all of these properties at the time of her death.

Amendments 2 and 3 do reference the date of May 1, 1991. I did not prepare those amendments. We are not aware of any documents dated May 1, 1991 related to this trust and believe this to be a typo and should have been May 21, 1991. The date of May 21, 1991 is the date the original trust document was created and this date is used as a reference point to the trust.

Please let me know if you have any further questions.

Kristin M. Tyler
Partner

P 725 777 3000 | F 725 777 3112

GARMAN | TURNER | GORDON

650 WHITE DRIVE, SUITE 100
LAS VEGAS, NV 89119

website | vCard | map | email

<image001.jpg> <image008.jpg> <image002.jpg>

From: BJ Holiday [mailto:bjholiday888@gmail.com]
Sent: Monday, February 27, 2017 9:02 AM
To: Kristin Tyler <ktyler@Gtg.legal>
Cc: sniglett@cox.net
Subject: Ella Horst Revocable Trust

Hello Kristin,

I received your letter on February 8 regarding the Ella Horst trust documents.

Unfortunately, my set of documents is incomplete. Could you please provide me the following items:

1. Schedule A of May 21, 1991 Trust, along with any additions thereto. This schedule sets forth the property transferred to the trust.

2. May 1, 1991 Trust documents referenced to in the Amendment 2 and 3.

Finally could you please clarify who you represent?

Best Regards,

Brian Holiday
<Schedule A.PDF>

EXHIBIT M

A COPY OF LETTER DATED JULY 25, 2017

(See Attached)

EXHIBIT M

Howard & Howard
law for business

Ann Arbor | Chicago | Detroit | Las Vegas | Peoria

Direct dial: 702.257.1483 | Gwen Rutar Mullins | email: grm@h2law.com

July 25, 2017

Kristin M. Tyler, Esq.
GARMAN TURNER GORDON
650 White Drive, Suite 100
Las Vegas, Nevada 89119

RE: The Ella E. Horst Revocable Trust ("Trust")
Our File No: 114692-00001

Dear Ms. Tyler:

Thank you for your letter of June 27, 2017 and the Initial Inventory that was provided listing the assets of The Ella E. Horst Revocable Trust ("Trust") as of October 31, 2016. The assets set forth in the Initial Inventory totaling $741,723.75 are significantly less than expected. My client believes that Ella E. Horst had approximately Four Million Dollars in cash and assets in the Trust at the time when she moved to Las Vegas. Unless something drastically changed, our client found his grandmother to be extremely frugal in nature. He recalls that for the past 20 years his grandmother basically sat in her chair and watched the game show, The Wheel of Fortune. Thus, it came as a complete surprise to our client, to find out that at the time of her death, there were only $741,723.75 worth of assets remaining in the Trust.

With the meager assets remaining in the Trust, our client requests that an audit of the Trust be performed from 2000 forward to remove any hard feelings and answer questions that any family members may have as to "where did all that money go?" Our client is willing to personally pay for the costs of such an audit. He would like to retain forensic accountants as soon as possible and commence with the audit by Sept 1, 2017 and hopes the audit could be finished this fall.

Please let me know by no later than August 10, 2017 if your client will cooperate in this regard and allow the audit to be conducted at my client's own expense. Again, it is our client's belief that the audit should alleviate any concerns, questions and negative feelings that any beneficiary may currently have relative to the Trust. Presumably, Patricia Horst would be amenable to this request to set aside any suspicions of "wrongdoing" and to "clear the air" once and for all. There is nothing worse than having a family split apart by suspicions and hard feelings that could easily be avoided or explained through an audit, and that's precisely why he is

willing to spend a material amount of money to answer the questions and provide a report for everyone involved.

I look forward to hearing from you in this regard by no later than August 10, 2017.

Very truly yours,

HOWARD & HOWARD ATTORNEYS, PLLC

Gwen Rutar Mullins, Esq.

GRM:ddm
cc: Brian Holiday (via e-mail)
4822-9731-2587, v. 2

EXHIBIT N

KIRK KAPLAN'S E-MAIL DATED AUGUST 10, 2018 WITH TRUST FINANCIALS

(See Attached)

EXHIBIT N

Mullins, Gwen Rutar

From: Kirk D. Kaplan <kirk@crestkey.com>
Sent: Friday, August 10, 2018 4:57 PM
To: Mullins, Gwen Rutar
Subject: Accounting for Ella E. Horst Revocable Trust for the period, October 27, 2016 to October 26, 2017
Attachments: Ella E Horst Revocable Trust Financials.pdf

Gwen,

Accompanying this email are the following statements for the Ella E. Horst Revocable Trust. Let me know if you have any questions.

1) Balance Sheet at Date of Death as of October 26,2016 (Cash Basis).
2) Statement of Increases and Decreases for the Period October 27, 2016 to October 26, 2017 (Cash Basis).
3) Balance Sheet as of October 26, 2017 (Cash Basis).

Please note, Retained Earnings on the Balance Sheet dated October 26, 2017 of ($75,309.38) and Net Income of $9,616.83 sum to ($65,692.55), the net loss on the Statement of Increases and Decreases. The net loss is to be spread among the remainder interests according to each beneficiary share.

Be advised the Trust assumed half of the mortgage for the purchase of Stella's interest in the Rosando Residence. The Trust's share of the mortgage balance at the date of Ella's death was $88,449.79. This amount is identified on the Statement of Inflows and Outflows as Discovered Liability. The reason for its classification is it should have been disclosed on the original inventory previously submitted to your client.

You or an identified authorized agent are welcome to come to the office to observe documents supporting amounts on the statements. Or if you choose, documents produced will be billed at $0.25/physical page and for bookkeeper compilation at $65.00/hour for either physical or electronic productions, plus my review time estimated at one-half hour. Time estimate for preparation of review of documents at our office are to be paid on or before arrival for review appointment. Fees and costs to be paid in advance of work to produce requested information.

Let me know if you have any questions.

CREST KEY

personal | business | international
legal and accounting partners

YOUR FIRST
advisor

Kirk D. Kaplan
Attorney at Law, Certified Public Accountant

6960 O'Bannon Drive, Suite 100. Las Vegas NV 89117
t (702) 202 4163 f (702) 837 1879 e kirk@crestkey.com
www.crestkey.com

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Please consider the environment before printing this e-mail.

Ella E Horst Revocable Trust u/a/d 05/21/91 (as Amended)
Balance Sheet at Date of Death
October 26, 2016

	Oct 26, 16	
ASSETS		
Current Assets		
Checking/Savings		
CCCU (00)		269.23
CCCU (30)		55,450.69
CCCU (75)		100.00
Checking - NSB (9266)		5,301.64
M/M - NSB (9041)		27,598.14
Total Checking/Savings		88,719.70
Total Current Assets		88,719.70
Fixed Assets		
Real Property		
Real Prop - 7125 Village Shore	227,646.00	
Real Prop - 7475 W. Rosada(75%)	367,450.00	
Total Real Property		595,096.00
Total Fixed Assets		595,096.00
Other Assets		
Promissory Note- Kent Holiday		52,087.82
Prudential		5,820.23
Total Other Assets		57,908.05
TOTAL ASSETS		**741,723.75**
LIABILITIES & EQUITY		
Equity		
Beneficiary Equity		
01. Patricia L. Horst		
Remainder (7.141%)	10,470.69	
Specific Gifts	595,096.00	
Total 01. Patricia L. Horst		605,566.69
02. William R. Horst (7.143%)		10,473.62
03. Kristi Horst (7.143%)		10,473.62
04. Robert K. Holiday (7.143%)		10,473.62
05. Blaine C. Holiday (7.143%)		10,473.62
06. Jill Linford (7.143%)		10,473.62
07. Gail Herr (7.143%)		10,473.62
08. Kent R. Holiday (7.143%)		10,473.62
09. Brian Holiday (7.143%)		10,473.62
10. Craig Holiday (7.143%)		10,473.62
11. Dawn H Blanchard (7.143%)		10,473.62
12. Blake Holiday (7.143%)		10,473.62
13. Steven Holiday (7.143%)		10,473.62
14. Nathan Holiday (7.143%)		10,473.62
Total Beneficiary Equity		741,723.75
Total Equity		741,723.75
TOTAL LIABILITIES & EQUITY		**741,723.75**

Ella E Horst Revocable Trust u/a/d 05/21/91 (as Amended)
Statement of Increases and Decreases
October 27, 2016 through October 27, 2017

	Oct 27, '16 - Oct 27, 17
Income	
Discovered Assets	
IRA Distribution (Dreyfus)	12,959.48
Opening Balances Difference	17,389.18
Total Discovered Assets	30,348.66
Other Income	
Credit Card Refund	6.46
Dividend Received	10.82
Interest Received	74.22
Total Other Income	91.50
Social Security	0.00
Total Income	30,440.16
Expense	
Bank Service Charge	57.50
Discovered Liability	
Mortgage	84,449.79
Total Discovered Liability	84,449.79
Funeral Expenses	7,693.78
Legal Fees	3,969.54
Medical Insurance	-37.90
Total Expense	96,132.71
Net Income	-65,692.55

Ella E Horst Revocable Trust u/a/d 05/21/91 (as Amended)
Balance Sheet
As of October 26, 2017

		Oct 26, 17
ASSETS		
Current Assets		
Checking/Savings		
Checking - NSB (9266)		10,964.85
M/M - NSB (9041)		80,464.78
Total Checking/Savings		91,429.63
Other Current Assets		
Due from Patricia Horst		19,259.86
Total Other Current Assets		19,259.86
Total Current Assets		110,689.49
Fixed Assets		
Real Property		
Real Prop - 7125 Village Shore	227,646.00	
Real Prop - 7475 W. Rosada(75%)	367,450.00	
Total Real Property		595,096.00
Total Fixed Assets		595,096.00
Other Assets		
Promissory Note- Kent Holiday		52,087.82
Total Other Assets		52,087.82
TOTAL ASSETS		757,873.31
LIABILITIES & EQUITY		
Liabilities		
Current Liabilities		
Other Current Liabilities		
Mortgage Payable - Rosada		81,842.11
Total Other Current Liabilities		81,842.11
Total Current Liabilities		81,842.11
Total Liabilities		81,842.11
Equity		
Beneficiary Equity		
01. Patricia L. Horst		
Remainder (7.141%)	10,470.69	
Specific Gifts	595,096.00	
Total 01. Patricia L. Horst		605,566.69
02. William R. Horst (7.143%)		10,473.62
03. Kristi Horst (7.143%)		10,473.62
04. Robert K. Holiday (7.143%)		10,473.62
06. Blaine C. Holiday (7.143%)		10,473.62
06. Jill Linford (7.143%)		10,473.62
07. Gail Herr (7.143%)		10,473.62
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09. Brian Holiday (7.143%)		10,473.62
10. Craig Holiday (7.143%)		10,473.62
11. Dawn H Blanchard (7.143%)		10,473.62
12. Blake Holiday (7.143%)		10,473.62
13. Steven Holiday (7.143%)		10,473.62
14. Nathan Holiday (7.143%)		10,473.62
Total Beneficiary Equity		741,723.75
Retained Earnings		-75,309.38
Net Income		9,616.83
Total Equity		676,031.20
TOTAL LIABILITIES & EQUITY		757,873.31

EXHIBIT O

JUNE 9, 2017 LETTER TO PATRICIA'S COUNSEL

(See Attached)

EXHIBIT O

Direct dial: 702.257.1483 | Gwen Rutar Mullins | email: grm@h2law.com

June 9, 2017

VIA E-MAIL (ktyler@Gtg.legal)
AND FIRST CLASS U.S. MAIL

Kristin M. Tyler, Esq.
GARMAN TURNER GORDON
650 White Drive, Suite 100
Las Vegas, Nevada 89119

RE: The Ella E. Horst Revocable Trust ("Trust")
Our File No: 114761-00001

Dear Ms. Tyler:

I am in receipt of your e-mail dated June 2, 2017. This letter is to confirm that our firm has been retained by Brian Holiday relative to the above-reference matter. Please direct all future correspondence and mailings to my attention. From your e-mail I understand that you will be meeting with the Successor Trustee on June 19, 2017 to finalize the accounting for the Trust and that you will be providing the accounting to the beneficiaries of the Trust, including our client, shortly thereafter. We look forward to receipt of the Trust accounting, as our client has been requesting one for quite some time. I presume that the accounting that will be provided will meet the requirements of Nevada law, including NRS 165.135. We look forward to the receipt of the accounting for the Trust shortly after your June 19, 2017 meeting.

Although we realize that the Trust accounting should be provided shortly, at this time, we again request that the Successor Trustee provide a copy of the Inventory of the Trust's property that should have been provided months ago. More specifically, pursuant to NRS 165.030, the Successor Trustee was required to provide the beneficiaries the inventory of the Trust assets within 75 days after a trustee receives possession of trust property. More specifically, NRS 165.030 provides:

> **NRS 165.030 Inventory of trust property.** Within 75 days after a trustee receives possession of trust property, the trustee

> shall serve a copy of an inventory setting forth all the trust property which has come into the possession or knowledge of the trustee. The trustee shall serve the notice in the manner set forth in NRS 155.010 to each interested person and beneficiary to whom the trustee is required to account pursuant to this chapter.

Ella Horst died on October 26, 2016 and Patricia L. Horst accepted and assumed the responsibilities of the Successor Trustee of the Trust on November 18, 2016 upon which she came into possession of all of the trust property of the Trust. Thus, pursuant to NRS 165.030, the Successor Trustee was to serve an inventory of Trust's assets by no later than February 1, 2017. This did not occur despite of our client's prior requests, which were simply ignored. Again, despite prior requests for Inventory, to date, Brian Holiday, and presumably the remaining beneficiaries of the Trust, have not been served, nor received such Inventory. Demand is hereby made once again upon the Successor Trustee to serve the Inventory of the assets of the Trust as of the date of Ella Horst's death be provided by no later than June 19, 2017. We presume that the Successor Trustee should have a list of all assets of the Trust handy as a beginning balance of the Trust (i.e. the value of all assets of the Trust as of October 26, 2016) is required in order to proceed with the accounting which you indicate is in the process of being finalized.

Thank you for giving this matter your immediate attention. We look forward to the receipt of the Inventory of the Trust assets that your client was required to provide by February 1, 2017 by no later than June 19, 2017. We also look forward to the receipt of the accounting of the Trust, which you believe should be finalized shortly after your meeting with your client on June 19, 2017.

Should you have any questions in this regard, please do not hesitate to contact me.

Very truly yours,

HOWARD & HOWARD ATTORNEYS, PLLC

Gwen Rutar Mullins, Esq.

GRM:ddm
cc: Brian Holiday (via e-mail)
4815-4621-9082, v. 2

Marana, Debbie

From:	Marana, Debbie
Sent:	Friday, June 9, 2017 9:39 AM
To:	'ktyler@Gtg.legal'
Cc:	Mullins, Gwen Rutar
Subject:	The Ella E. Horst Revocable Trust
Attachments:	Kristin M. Tyler Letter.pdf

Please see the attached from Gwen Mullins.

Thank you.

Debbie Marana, Legal Assistant

Howard & Howard

law for business

Debbie Marana
Legal Assistant

Direct: 702.667.4810
Fax 702.567.1568

3800 Howard Hughes #1000
Las Vegas, NV 89169
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P-18-095314-T

DISTRICT COURT
CLARK COUNTY, NEVADA

Probate - Trust/Conservatorships **COURT MINUTES** **September 13, 2018**

P-18-095314-T In the Matter of the Trust of:
Ella E. Horst Revocable Trust

September 13, 2018 **09:30 AM** **All Pending Motions**

HEARD BY: Sturman, Gloria **COURTROOM:** RJC Courtroom 10D

COURT CLERK: Shell, Lorna

PARTIES PRESENT:

Patricia L. Horst, Petitioner, Not Present **Kirk D Kaplan, Attorney, Present**

Ella E. Horst Revocable Trust, Trust, Not Present **Kirk D Kaplan, Attorney, Present**

Brian Holiday, Other, Not Present **Thomas W. Davis, Attorney, Present**

JOURNAL ENTRIES

PETITION .. OPPOSITION TO HORST'S PETITION; COUNTER-PETITION

Mr. Davis argued Patricia Horst had been successor trustee for two years and never provided any information. Mr. Davis argued his client was told the estate was worth approximately $3 million; however the balance sheet indicated $750,000, a $19,000 loan to the trustee, and a mortgage that was not previously listed. Mr. Davis requested an independent trustee be appointed and an independent audit conducted.

Court inquired regarding the allegation of undue influence. Mr. Davis stated the granddaughter lived with the decedent for 15 years prior to her death and there could be undue influence.

Mr. Kaplan argued they missed the 120 days to challenge the second and third amendments; therefore they stand. Mr. Kaplan further argued the $19,000 was spent on the residence and if the court were to find Patricia Horst doesn't receive the residence then the funds would be paid back, and that the mortgage was discovered after the fact.

Mr. Davis stated he'd heard more answers today than he'd been given in two years, that Mr. Kaplan never indicated the tax returns were in his office and available for review, and that by negligence or concealing things an independent audit and trustee were needed.

Court stated concern regarding the 2011 letter and what affect it had on the trust, the issue of undue influence, and the breach of fiduciary duty. COURT THEREFORE ORDERED, Forensic Accounting DENIED; decision regarding the second and third amendments CONTINUED as it appeared discovery was needed, Mr. Kaplan to file an accounting within 60 days; Court RETAINS JURISDICTION over the trust, Trustee CONFIRMED.

INTERIM CONDITIONS:

FUTURE HEARINGS:

Notice: Journal Entries are prepared by the courtroom clerk and are not the official record of the Court.

Electronically Filed
9/24/2018 2:48 PM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Trust of:	CASE#: P-18-095314
Ella E. Horst Revocable Trust	DEPT. XXVI

BEFORE THE HONORABLE GLORIA J. STURMAN,
DISTRICT COURT JUDGE
THURSDAY, SEPTEMBER 13, 2018

RECORDER'S TRANSCRIPT OF PROCEEDINGS
PETITION OPPOSITION & COUNTERMOTION: OPPOSITION TO HORST'S PETITION; COUNTER-PETITION

APPEARANCES:

For Petitioner & Trust:
Patricia L. Horst & Ella E. Horst Revocable Trust — KIRK D. KAPLAN, ESQ.

For Other:
Brian Holiday — THOMAS W. DAVIS, ESQ.

RECORDED BY: KERRY ESPARZA, COURT RECORDER

Las Vegas, Nevada, Thursday, September 13, 2018

[Case called at 9:40 a.m.]

MR. DAVIS: Good morning, Your Honor.

THE COURT: Good morning.

MR. DAVIS: Tom Davis here on behalf of Gwen Mullins for the beneficiary, Mr. Holiday.

THE COURT: Okay.

COURT CLERK: Bar number, please.

MR. DAVIS: Bar Number 2431, I think.

COURT CLERK: Thank you.

THE COURT: Yeah, we're very close.

MR. DAVIS: 2531?

THE COURT: Yeah. Our numbers are very close, yeah.

MR. KAPLAN: Kirk Kaplan on behalf of Tricia Horst and the Ella Horst Trust.

THE COURT: All right. We have a number of matters. We have a Petition to Assume Jurisdiction. Patricia has filed a Petition to Assume Interim Jurisdiction, Confirm the Trust, Confirm her as Trustee, and a Petition for Instruction. And then there's a separate Petition for Removal of In Rem Jurisdiction over the Trust.

And then, I believe that we have a counter petition by Mr. Holiday, for removal. So we'll start with, I think the, the first thing, just for the record. The Court has jurisdiction over the Trust. I believe that at the time of the settlor's death she was a resident of, of Clark County.

MR. KAPLAN: Uh-huh.

THE COURT: Had been living here for some time, I believe. So we've got jurisdiction. The – we can assume in rem jurisdiction over the trust. The second issue is confirming a trustee, and that's the one that appears to be in dispute.

MR. DAVIS: Correct, Your Honor.

THE COURT: If we – if you want to – she is the Successor Trustee in the trust, so I think it's really all your, your issue is, Mr. Davis.

MR. DAVIS: Thank you, Your Honor.

THE COURT: We – so then we can move onto – and then we'll let Mr. Kaplan respond to all of it.

MR. DAVIS: Sure. Sure.

THE COURT: So if you just want to address all of the other issues then.

MR. DAVIS: Our position is that the Trustee has been the Successor Trustee for two years. We've been trying to get information on the trust and an accounting, whether by negligence or whether there's some kind of misconduct. We've not been able to get any information. We understood that Ms. Horst had an estate in the area of 3 million dollars. The balance sheet that we finally got about a month ago shows about a $750,000 estate.

In this case, it also shows, from the time of death till a year later, that the Trustee has loaned herself money, about $19,000; and there's a mortgage that appears on the second balance sheet that didn't appear on the first. We don't have any information as to what that is.

That may be perfectly innocent, but we'd like the details to see what it is.

The Trustee really hasn't been fulfilling her obligations. And our position is that there should be either an independent trustee appointed or that the next successor trustee, I think that is Blaine Holiday listed in the trust, should take over for Patricia Horst.

Did I say that name right? That sounds like a kidnapping from the 1970s, Horst.

MR. KAPLAN: Patricia Horst. Patricia Horst.

THE COURT: Uh-huh.

MR. DAVIS: I did mispronounce it. [Laughs]. So on the basis of –

THE COURT: And on the grounds.

MR. DAVIS: -- not fulfilling her Trustees duties and the mishandling of at least some funds. We believe an independent trustee is warranted.

THE COURT: Okay. The – there are some other issues in here. I mean, it seems there's an argument of undue influence is part -- one argument. So at this point, I mean, that's largely a factual inquiry, so what are we –

MR. DAVIS: But the granddaughter and the grandmother lived together about 15 years and the Trust dissipated. We don't know how. Maybe it was all innocent and properly done, but that goes back to the accounting to see what happened, where we are. Again, the only thing we see on the face is this mortgage that appeared and the $19,000 that she loaned herself out of the Trust.

And, again, that's why we think somebody independent in there, who isn't in the middle of the situation should be the trustee as opposed to Ms. Horst.

THE COURT: Okay. All right. So your objection to her Petition to – for Appointment to Confirm Herself as Trustee is based largely on failure to account. And are you also pursuing the separate grounds of the undue influence issues?

MR. DAVIS: Well the second ground is the unauthorized loan to herself out of the Trust Estate. I think that's clearly not allowed under the statutes without court approval or agreement among the parties.

THE COURT: Uh-huh.

MR. DAVIS: So there is some misconduct there. As to the undue influence –

THE COURT: And is that because of the amendments. I mean, are you looking to inquire into everything all the way back to like -- because I think the First Amendment was like 2004 or something. So this is a – I think you said, you know, she'd been living with her granddaughter for 15 years.

MR. DAVIS: Since 2001, Your Honor.

THE COURT: Yeah. So we're – it may have been even earlier than that. There were two and then there was the third – the fourth one was the letter so –

MR. DAVIS: And we – and we think we're okay with the first two or three. The letter we have an issue with.

THE COURT: Uh-huh.

MR. DAVIS: But, again, we haven't been able to get the information. We haven't had any discovery yet.

THE COURT: Now this –

MR. DAVIS: It doesn't look right and there's been a boatload of delays --

MR. KAPLAN: Am I going to –

MR. DAVIS: -- and, and we feel it should be pursued.

THE COURT: And there was a reference to an audit. And an audit is different from an accounting, so what are you looking for in requesting an audit?

MR. DAVIS: One, was there a 3 million dollar estate; and did it dissipate to 750,000. Two, was that appropriate? I mean, maybe it was living expenses, maybe she made some bad investments. Again, we're somewhat fumbling in the dark. We have other grandchildren that are the residual beneficiaries. Ms. Horst gets the main asset which is the house.

And having lived with and taken care of her grandmother for quite some time, that may very well be the appropriate and what was intended. But the fact that the, the assets beyond that have not been accounted for and what should have been there, I think warrants an investigation.

And if Ms. Horst remains as Trustee, our alternative request would be that an independent accountant come in and do an evaluation, and report back to the court and the parties. I mean, that's sort of an in between alternative; but if we did that I think we'd have to have some

orders in place prohibiting any more loans out of the Trust to the Trustee, and some of the other things that we've seen that have happened.

THE COURT: Because Ms. Horst has only been the Trustee for the last two years since her grandmother died.

MR. DAVIS: Correct.

THE COURT: Okay. All right. Thanks. Mr. Kaplan.

MR. KAPLAN: Your Honor, first let's clear up the loan issue. Since the matter has come – because the – Mr. Holiday has challenged the Second and Third Amendment, which appears like they're not challenging the Second and Third Amendment anymore.

THE COURT: Full ownership, yeah.

MR. KAPLAN: And it's not really a question of fact. They, they have missed the timeframe in which to – in order to challenge it. There's a 120-day requirement to challenge it after notice under 164.0214. And it says:

> No person upon whom notice is served, pursuant to this section, may bring an action to contest the validity of the trust, being the amendments, more than 120 days from the date the notice is served upon the persons, unless the person proves that he did not receive actual notice."

So, as far as we're concerned right now --

THE COURT: Uh-huh.

MR. KAPLAN: -- their challenge, right now, is unbounded in that regard. And we believe the Second and Third Amendment stands.

All right. And then that also bases our Petition or our counterargument in regards to – since there's no basis here that she's a vexatious litigant in this regard.

In regards to the loan, let's talk about the loan. Since they are challenging the loan – I mean, not the – the amount due from Mrs. Horst. Since Mrs. Horst, after counseling, took the conservative position that there were amounts that were spent on behalf of the Trust for the real property, and that amount – that loan right there of 19,000 consists, in large part, of amounts that were expended on behalf of the Trust.

And if the Court decides, today, or sometime in the future that the assets or the Trust is to – there was assets. The residence and the Village Shore residence is to go out to Mrs. Horst, then she will happily write the check to pay that amount. So there is no borrowing, that I know of, in that account right there.

That is a conservative position right now that one, Counsel could have called and asked me about and did not. And we would explain that to Counsel, but yet, they had to spend fees to argue that, which they didn't know the basis of that argument. Number – so there's that.

If the Court decides that – which we will – I think we're going to disagree that the Second and Third Amendment are not valid, which I previously discussed the basis of that. Then what's going to happen is that those are amounts, in large part, will be amounts that will be attributable to the Trust, and needs to be incurred by the Trust to maintain the property.

So it's either going to come off the balance sheet as her paying it back because she – those are her – those -- she believes those are her properties in the first place. Or number two is, if the Court says no, then it's going to be attributed back to the estate, to the Trust and incur those expenses. So there was, in substantial part, no borrowing on her part, okay. So that right there is that issue.

The mere fact, also they're talking about that they want an independent trustee. There is no remedy if you have a late accounting. There's no remedy to remove her as Trustee. That is not a remedy to remove her if there's a late accounting.

Number two, the next thing is is the promissory – the, the mortgage on the property. Yes, that was discovered after the fact. And after I was retained to assist that regard, I was – I was looking at all of the books and records, since I am a CPA and I do a lot of fiduciary accountings. I was looking at what was produced to the heirs before.

And I discovered, through discussion with her and documents, that there was a mortgage that went along with the portion of the mortgage that she obtained from Stella Adkins. If you look back at the facts, the house was originally purchased, I believe, back in 2001. Ms. Horst paid – the Trust paid for half of the purchase of the property with cash. The other half was taken out with a mortgage.

And in that mortgage it was Patricia Horst. It was Stella Adkins, and then also Ella also signed on the mortgage. Then when Stella left the relationship with Patricia, which by the way, the deed was signed when she was in if I – if you look at the notary, she was signed --

it was signed in Wyoming is where she was. So that indicates she was out of the house.

And we also -- I, I can get testimony from her that she was out of the house, so she conveyed the property. Now that deed was created, from what I understand, without assistance of any legal counsel. And as you know, and I believe everyone knows that, when lay individuals execute documents on their own behalf, that they don't cross all the t's and dot all the i's. That they're looking for the most easiest way through the route or through the situation. And, in this regard, they claim to be removing somebody off title.

And when they said they removed off title, they're saying, "zero exchange of consideration." They did not consider the mortgage that was going along with that interest. And the reason why I'm talking about the mortgage going along with the interest is that, if the mortgage did not go with the interest, then all of a sudden Patricia Horst, which was a quarter owner of the property at that time; all of a sudden her one quarter interest is encumbered with all the mortgage that is attributable, at least to that portion that Stella Adkins conveyed to the Trust. So there's that issue right there.

So let's – that, that – I'm done with that argument, but it's going to – I'm going to come back to a point in this – regards to the argument. In regards to the fourth – by the letter of -- written by Ella Horst on November 11th, 2000 and – was it '5? I believe it was November of 2005. We believe that that –

THE COURT: You were saying that --

MR. KAPLAN: -- yeah, it was – now let me go back. Oh October 11th, 2001, Your Honor. Okay, is my – that's, that's my – this is for my timeline. I'm just waiting for – you want me to continue arguing?

THE COURT: Yeah.

MR. KAPLAN: Oh, okay, all right. So we believe that that document is a Trust Amendment to her Trust. It's not required that the Statute of Wills be in place, which means it has to be notarized and all of that stuff. That she can go ahead and she can draft that document. The one thing that they have here today is -- all they've said is that one, they were roommates. Two, Patricia Horst was a granddaughter of Ella Horst. That's all they have.

And the only other thing to that is, they were joint owners of the property. So that right there alone is not enough to say that they have to investigate that there is material participation if you want to pull that term in from, I guess it's 155.0972 where the person supposing -- participated in 4 million dispositive provision of the trust instrument. That's what they're arguing in that regard.

The mere fact that there are family members, according to *Bethurem,* which is a sentinel case; you probably have heard it argued many times in this case right here. The mere fact that they are family members and that there is possible motivation to have that, doesn't fly. I mean, that's not enough to say that we need discovery on this thing.

Also, you look at the fact that Ella Horst and Patricia were joint co-owners on this house for the whole time, so it makes sense. Even in quoting with the Second Amendment that was unsigned, but was in Ella

Horsts' handwriting back when she never signed it, it is indication that she always wanted to convey all of the house property, the Rosetta – Rosanda Way; was it Rosanda Way?

MR. DAVIS: Rosada?

MR. KAPLAN: Rosada Way residence, to her. That is the indication that we have. Then the flip side to that is going back to the original – the argument that I was making about -- that the – if the mortgage did not go along with the interest that she acquired from Stella Adkins, that we believe that there was an improper title there.

They're going to argue that no such mortgage went with that interest, because they signed a deed saying, "zero consideration." And we'll go over that argument again.

But what I'm saying is, is that actually, in equity, is that Patricia Horst should be able to have that interest, since she was paying all of the mortgage from the date of that transfer on. From the date of the transfer from Stella to the Trust, my client, Patricia Horst, continued paying that mortgage payment.

And her name is still on it, and she's still paying it to this day, which by the way, the loan on the – that's supposedly due from Mrs. Horst, that includes part of her payments on behalf of the Trust. That is until the Court decides that she gets the property. And, again, she'll pay the rest off. All right.

So, we believe that one of two things, either the amendment, the letter is fourth -- is a Fourth Amendment and it should stand. And if they want to go down the road and say that she materially participated,

then they have the obligation that they have to come up and at least show, by a preponderance of the evidence, that she material [sic] participated in the formulation of the disposition of the transferred instrument.

That they can't rely solely upon the fact that they're family members and that there was merely a possession or a motivation to influence Mrs. Horst. Just because you're a family member doesn't mean that they destroyed her free agency of the testator.

Finally, in closing, is that we have had tax returns at my office and I've reviewed the tax returns, and I am a tax preparer. And, you know, they can do their own decision making and come and look at it. They've known the tax returns have been in my office this whole time and they've not made any effort to come and look at Ella Horsts' tax returns.

And they are more than welcome to come and sit at my office and look at the tax returns and investigate for themselves. And from what I'm seeing, there's nothing indicating in that tax returns, that Ms. Horst was worth 3 million dollars.

And, in fact, what Mr. Holiday is saying here is just a bare assertion. There's no – there's no supporting evidence. He was never around her. He only came around on holidays. And what he said is just hearsay. So there's no basis for them, right here, to say that she conclusively or she formulated, materially participated in formulation of the document. Thank you.

THE COURT: All right. Thanks. Mr. Davis.

MR. DAVIS: Had we heard that presentation a year ago it might have solved a good chunk of the problems. You see the string of emails in the attachments from both pleadings. We've been asking for information for over a year. We've gotten three sheets of paper: A ballot sheet, a change of position, another one. Gwen told me yesterday that she'd been trying to get tax returns, now I hear they're at his office and available.

MR. KAPLAN: She knows that.

MR. DAVIS: I don't see that at any of –

MR. KAPLAN: She's known that.

MR. DAVIS: -- I don't see that –

THE COURT: Please don't interrupt, he didn't –

MR. DAVIS: I don't see that in any of the papers. I think he's more or less put together my, my case in terms of discovery being needed. And as I said, "Now, I'm hearing that this loan is all for trust expenses." Why wasn't some kind of accounting sent when that loan was made? Why wasn't something done? I think her – again, whether by negligence or intentionally concealing things, she's not handling her duties as a Trustee, properly.

And if an independent trustee is not to be appointed, we're willing to either agree with Counsel or select an independent accountant who can come in and look at those tax returns and do an audit. And when that's done, and maybe a deposition of Ms. Horst, there may be something there or there may not, but it sure looks suspicious at this point; and we've been kept in the dark for two years.

THE COURT: Okay.

MR. DAVIS: So that's our position.

THE COURT: Well going back through the issues, the Second, Second and Third Amendments, is there – are – is there any concern that with respect to those particular amendments, you know, it's a pretty long Trust -- that there was any issue with – we've got – actually we had a First, Second and Third. But I think the only two that were of concern were Second and Third.

It looks like she would make an amendment when one of her children passed away and -- because they seem to predecease her. So I'll – shouldn't say that, but it looked like from the way the distributions changed, that that's what she was accounting for in those distributions. So is – are you – do you have issues or concerns with those?

Because the Second Amendment was in 2004 after she'd moved to Las Vegas with her granddaughter. Then we've got the Third – oops, I lost my Third Amendment. Third Amendment was signed – let's see.

MR. KAPLAN: Third Amendment was signed on – September 26th, 2005.

THE COURT: So again, after, you know, after she'd moved and was living with her – with her granddaughter. And then we've got this letter of – odd letter dated 2011.

MR. KAPLAN: 11, I apologize –

THE COURT: October 2000 –

MR. KAPLAN: -- 2011. Yes, you're right, correct.

THE COURT: Thank you.

MR. KAPLAN: Thank you. I apologize. My timeline was wrong.

THE COURT: Yeah. So what -- what are you looking at here? Because as Mr. Kaplan's raised – he's raised a legal defense which is, you know, this is untimely, you should've – you should've challenged this within 120 days of receiving your notice of the Trust. You know, arguably, you know, when she doesn't account, you didn't know you had an issue with it. But so, are, are we really talking about those? Or, is it just the interpretation of this third – beg your pardon, what would – the letter, which would be, purportedly a Fourth Amendment.

MR. DAVIS: Unless something else would come up it would just be the Third, the letter.

THE COURT: The, the – well, the Fourth I got left.

MR. DAVIS: The Fourth, okay. The letter.

MR. KAPLAN: What do you mean by something coming up? What do you mean by that?

THE COURT: Okay. All right, so moving on. You don't get to ask the questions. So, so moving on we've got a – so if we've clarified that issue that the – that the concern is the legal interpretation of: What, what does that letter mean? Is that an adequate amendment of a trust? So that's a legal question, but it does involve some, some factual issues.

The other issues are these undue influence issues. As Counsel has pointed out, prior to – in 2011, we didn't have an undue

influence statute – well, we did. We had an Undue Influence Statute that was bad because you couldn't even, you know, if you were living in the same house with your spouse with alzheimer's you couldn't even give that person a meal. I mean it was – it was really bad. Too restrictive.

So then – so shhh, when that final letter was, was signed, we by then had our statute in place, I believe. So, is that really the focus? Is the issue of what's the meaning – because by then we had this whole transaction with Stella's share coming to Ella. And, and I think he's probably right, I mean, even though they didn't sign it over. I'm sure that it was assumed by these parties that, that Stella wasn't living there anymore; she'd signed over her interest. Clearly she wasn't going to be responsible for the mortgage anymore.

I mean, I don't think we can argue with that, that that makes – I – appreciating his point that these were – these were like people doing it themselves, and you know, maybe that was something that, that it might have helped if they'd included it for us, but they didn't. So – but I don't know that anybody's going to be able to dispute that. So what we've got then is, we just really are focused on the significance of the 2011 letter, one.

Two, whether there was any kind of undue influence, and three, whether there's been any breach of fiduciary duty. And as Mr. Kaplan pointed out, merely not producing accountings as timely a fashion as one might wish one – the trustee had, that alone isn't usually grounds to remove a trustee. Because the whole idea is that you leave them in place, so they have access to everything and they have the

fiduciary duty as the, the trustee, to account to the other beneficiaries.

So merely being untimely in that, alone, wouldn't typically be enough to remove a trustee. I just didn't hear anything that really got to removal, because –

MR. DAVIS: The, the only other –

THE COURT: -- she's gone now, so.

MR. DAVIS: -- point it was, again, the loan and the mortgage appearing, I've --

THE COURT: Uh-huh.

MR. DAVIS: -- now heard what the mortgage is. I've heard that the loan was for trust related items. I haven't seen any kind of an accounting of that, if it was and it chose to be that, then it's probably not an appropriate conduct.

THE COURT: Okay.

MR. DAVIS: It may be should have been accounted for better. The issue is snowballing, from our client's perspective, because of the non-transparency and the secrecy. We've asked for – again, the emails show repeated requests for information about these various items, and all we get is stonewalling. I've heard more today in 20 minutes, in this argument, then I think Ms. Mullins has heard in a year's worth of exchanges.

THE COURT: Okay.

MR. DAVIS: So, again, it's a matter of getting to the bottom of it, and maybe the bottom of it turns out that all is well, but that's not the way it looks. And why don't you show the information to the other side if,

in fact, there's no culpability or wrong doing.

THE COURT: I mean, I don't know how long Mr. Kaplan's been involved, but some of this sounds like, perhaps, again, a lay person trying to handle this themselves and not realizing that what goes into an accounting. You know, we are not all accountants as Mr. Kaplan, and that a layperson might not have realized that they needed to disclose certain of these things, earlier.

So I don't know how long she's had Mr. Kaplan as her counsel, but it may be that when she initially made these disclosures she didn't know she needed to explain that. And as Mr. Kaplan is indicating -- considered – she considers the property to be 100 percent hers. So that, again, may have influenced her, we don't know.

So, again, it's difficult to say that we rise to the level of needing to replace a trustee. I just don't – I just, with all due respect, I just don't see that we do. It also seems to be -- to be a needless expense to involve a forensic accountant in this thing at this point. If, if the records are made available – and remember she's only been the Trustee since 2016 when grandma passed.

So we can't – it's, it's difficult to force a trustee to go all the way back to some period of time before they ever held that – held that position. You, you can't really ask them to account for that, they don't have any obligation to account for that. That's not under their control. May be a different issue with respect to all this undue influence issue if that – if that goes anywhere, but it's not really her obligation to account for the previous trustee. So she does need to account for -- like from a

starting basis as what – what was there when I took over and forward. So yes, you're right, that – she needs to do that and she needs to do that expeditiously. But, again, I just don't see anything here that rises to the level to remove her.

And I – and I do really feel, at this point, before we know anything -- and it may help if, if we – if you open discovery and you do your 16.1 and you get your – ask for the tax returns as far as that and, and review them. It may end up being nothing. So – because I think that they – what mister – I don't know how far back the tax returns go, but what, what I'm taking from Mr. Kaplan's argument is, is she's never really had that, that much of assets. And it just may have been family myth that she did have this 3 million dollars socked away. And, you know, that happens.

MR. DAVIS: What we had – apparently a couple of grandchildren had gone with her to some charitable groups –

THE COURT: Uh-huh.

MR. DAVIS: -- as a possible donation a few years back.

THE COURT: Right.

MR. DAVIS: And that's where we got it from and again --

THE COURT: And I don't know what she was doing –

MR. DAVIS: Maybe she made the donation.

THE COURT: -- or who knows if, if she was one of those people – just listening in the car on the radio, this morning coming in they're talking about, you know, the 2008 timeframe and how it hit us worse than anybody else. So I don't know if she was investing in rental

properties and, you know, that went bad. I mean there could have been all sorts of things. That's a long period of time. 15 years is a long period of time.

And I don't know, I could probably live on 3 million dollars for 15 years. I don't know, but maybe she couldn't. So it may or may not be that that aid that was ever there. Like you said, she could have donated some money and now she no longer had 3 million or, you know, economic forces. It was a really rough patch between 2008 and about 2012. And so if, if for any reason she had owned an investment property, that could have accounted for just a, a huge loss.

MR. KAPLAN: She did have large capital loss carry forwards.

THE COURT: Yeah. So there may – there may be some explanations there that are just outside anybody's control, they're just economic forces. So, at this point I, I would decline to suggest that you guys need a forensic accountant to go back. Because remember, Patricia's obligation is the two-years she's been the Trustee from starting point to going forward.

But if there's this curiosity about what happened to grandma's money, there could be a number of different explanations that have nothing to do with anything. So, for now, really the only things that I see merit any kind of further inquiry would be the, the letter – the 2011 letter; because there are some factual issues with that. And it kind of corresponds with the Caregiver Statute, so that's one.

And the – I – just the general: Was there undue influence over a period of time? I kind of viewed these – the series of

amendments as making sense given I – not knowing when like, it's too – it's -- she had two children and one – her son, I think had just like a couple of kids, but her daughter had like 10. I mean, 7 or 8 kids at least. So, you know, it looks like she changed things as her children passed away before her, she made adjustments. And more and more went to the – yeah, the person who she was living with. But that doesn't mean that was undue influence. I guess that's kind of where I – where I struggle with just finding any reason to remove her.

So, at this point, I just think it's really a matter of clarifying the accounting, and an inquiry into the legal issue that we do have, which is that letter, and what's the force and effect of that letter? And was there anything surrounding that letter? But other than that, I think those are really our, our issues.

MR. KAPLAN: Your Honor, may I –

THE COURT: Yes.

MR. KAPLAN: -- may I just ask a couple clarifying questions?

THE COURT: Yes.

MR. KAPLAN: So, is there a ruling today that the Second – the Second and Third Amendment is, is outside the date of challenge and that they, they stand?

THE COURT: So Mr. Davis, I really didn't see or hear any – really any challenge to them at this point.

MR. DAVIS: Again –

THE COURT: I, I just –

MR. DAVIS: -- I don't think the, the statutory date for closure's

applicable, but we're not challenging the Second and Third Amendment. If something in the accounting -- or would show something different, which I think is unlikely, I think it makes logical sense too in terms of how she changed the Trust.

If, if there is a showing in the relatively short discovery process of undue influence then we might look at that again. But as of now, I don't think it's disqualifying on the basis of the statute. I mean, they brought the, the letter – the alleged Fourth Amendment after --

THE COURT: Uh-huh.

MR. DAVIS: -- the 120 days passed.

THE COURT: Yeah. I mean, for my purposes, when I look at these -- and that's why I had a question about the rental property, and was that maybe not a good investment? Because that's in the Third Amendment, a reference to a rental property. I mean I – to me it, it seems to all flow pretty logically from – she's – there's – she doesn't say, "My son's died now, so this is how I'm changing things. My daughter's died now."

But that was the assumption I made, because that's where the changes were in the Trust document. The amendments seem to relate to this – the survivors of one of her children. So I made the assumption, nobody told me this. I made the assumption that the children had passed away, correspondingly, and so that's why she was making the adjustments. It made total sense. I, I didn't see anything questionable there, so I really –

MR. DAVIS: My brief for you –

MR. KAPLAN: Your Honor –

MR. DAVIS: -- for my brief for you between yesterday and today I, I felt the same, but I haven't –

THE COURT: The only thing that appears to be an issue is this letter and whether that's really a Fourth Amendment.

MR. KAPLAN: Your Honor.

THE COURT: It doesn't say it is so it – it's – that's the only – that's really the only question I saw in this whole thing.

MR. KAPLAN: So, I'm still not getting a clear answer. Is the Court ruling today that they are foreclosed on the Second and Third Amendment? I'm trying to get an answer to that. So I think the only thing that's in play is the – is the – is the September or the October 11 letter.

THE COURT: But that's my --

MR. KAPLAN: But I think the Second and Third is – the amendment it stands, because I think the statute protects it.

MR. DAVIS: I would ask that all give --

MR. KAPLAN: They're protected.

MR. DAVIS: -- all that get resolved at the same time –

MR. KAPLAN: No.

MR. DAVIS: -- as the Fourth.

THE COURT: Well I, you know, I would like --

MR. DAVIS: He says, "No."

THE COURT: -- because I didn't see that you guys – I didn't see that you had briefed that.

MR. KAPLAN: I did brief that.

THE COURT: He, he – Mr. Kaplan did, but I didn't see that you, you had responded, Mr. Davis. I don't know – I didn't see a response.

MR. DAVIS: Was that the last filing that they did?

THE COURT: Yeah, I think so, so.

MR. KAPLAN: I, I briefed my response and my reply –

THE COURT: Yeah.

MR. KAPLAN: -- and then there was a response. And it was not even addressed in there.

THE COURT: Yeah. And that – that's –

MR. KAPLAN: So it's been waived, actually.

THE COURT: It was -- that was kind of my – that was kind of my –

MR. KAPLAN: It's waived.

THE COURT: -- my question. I – I didn't know if you had realized that as an issue. I didn't see any briefing on it from your office.

MR. DAVIS: I, I would, again, I would have to check with Gwen on that. I wasn't involved in it. Again, her main concern addressing to me and with what documents I reviewed, were getting full disclosure, finding out what's going on here. And as I said, "Maybe our client, one of the beneficiaries is going to be fine with it." But I don't understand why we've had two years of obstruction and secrecy.

THE COURT: Okay. Well, but, you know, that doesn't get us anywhere.

MR. DAVIS: Yeah, I understand.

THE COURT: Mr. Kaplan's point being: He's got a legal defense. I didn't see it addressed. So, you know, I, I would – I'll continue it for a period of time, but we – I mean, we need to know –

MR. KAPLAN: Your Honor.

THE COURT: -- if that's going to be an issue, because I only – as I've said, I've only seen – when I try to figure out what it was -- because there's a lot covered in, in your client's petition. The only thing I saw that really -- it seemed was really an issue, by the time we got to the end of it was: What's the effect of the 2011 letter? Was there any undue influence in, you know, all these – getting to this point. And then, you know, as I said, I just really didn't see grounds to remove her at this point so --

MR. DAVIS: And, Your Honor, if we can start discovery.

THE COURT: -- that's probably the only issue.

MR. DAVIS: If we could do a 16.1 and start us.

MR. KAPLAN: Why don't you just –

THE COURT: Well, I think that Mister, Mr. Kaplan's point is, he doesn't want to do discovery if, if –

MR. KAPLAN: Just come to the office.

THE COURT: -- there's going to be – if there's going to be a bar to the -- a legal bar to any litigation involving –

MR. KAPLAN: Right.

THE COURT: -- Second and Third Amendments. So I – I mean, we need to resolve that issue. And I know you're here for Ms.

Rutar and Ms. Mullins. But we, we need to know if, if that – is that really something she's contending –

MR. DAVIS: But I –

THE COURT: -- is protected? It does – not barred by the statute or I, you know, we need to know that.

MR. DAVIS: And I, and again, I don't know that, but I still think we need some discovery on those other two issues, the –

THE COURT: No, but what I'm saying that Mr. Kaplan, I --

MR. DAVIS: He wants us to limit our discovery and not –

THE COURT: Exactly.

MR. DAVIS: -- look at those two items.

THE COURT: Thank you. Yes. That's, that's what I'm trying to get at is –

MR. DAVIS: I, I think I –

THE COURT: -- they don't –

MR. DAVIS: -- can – if the Court's withholding on the order I – we may be able to stipulate to that order; but I can agree that the discovery would not encompass that.

THE COURT: I mean she's not here. She's not here today. I don't want to put you on the spot of waiving something that she didn't intend to waive. I didn't really see that that was -- I mean, there's some mention of it, but it, it drops off and –

MR. DAVIS: And –

THE COURT: -- so I really didn't – and it didn't seem that you really – she really opposed the argument that he made that that's

statutorily barred, but she's not here.

MR. KAPLAN: Yeah.

THE COURT: I don't want to foreclose her from something that, that she did intend.

MR. DAVIS: She did discuss with me, briefly, saying that if, in fact, it's statutorily barred, then the submission of the Fourth Amendment letter –

THE COURT: Uh-huh.

MR. DAVIS: -- should similarly be statutorily barred and that should resolve everything.

THE COURT: Uh-huh.

MR. DAVIS: But I think I would defer to her also, Your Honor. I don't know precisely what her thought process was. I -- she did all –

THE COURT: Well, there's other –

MR. DAVIS: -- the briefing.

THE COURT: -- there's other issues with that – with that letter. So, yeah that's – we want to do discovery – do we want to waste her time? I --

MR. DAVIS: Got it.

THE COURT: -- it looks to me like the Second and Third Amendments are not at issue. And when Mr. Kaplan raised the statutory bar it wasn't objected to. And so, he's operating under the assumption that he's got a concession that the statutory bar applies, but she's not here. And I am reluctant to rule against her in her absence. Appreciate you being her, but it's not your case.

MR. KAPLAN: And – yeah.

THE COURT: So I – we need to know that, so that we can say what your discovery is. When I looked at it it looked like, boiled down, all we're talking about is the 2011 letter. What's the legal effect of that? Is that really an amendment? Is that – there's some other kind of like an inter vivos gift. What was it? Because that's why I said, "It might not be barred by the statute, because it might be some other kind of a gift." So, I don't know, it's kind of odd.

MR. KAPLAN: Your Honor, there's no –

THE COURT: That's really the only issue and –

MR. KAPLAN: -- exceptions to the challenge. There's no exceptions, and I don't think this is the – I think the proper court --

THE COURT: Okay, listen to me one more time, Mr. Kaplan. I said that might still be an issue that's not barred by the statute because it might be an inter vivos gift. It might not be effective as an amendment to the Trust.

MR. KAPLAN: No.

THE COURT: And it wouldn't be affected by the statute under the Trust.

MR. KAPLAN: Your Honor.

THE COURT: But if it's a gift, it's a gift.

MR. KAPLAN: Your Honor, I'm not talking about the Fourth – the letter, I'm talking about the Second and Third Amendments.

THE COURT: Thank you.

MR. KAPLAN: I'm talking about Second, Third Amendments.

I'm not –

THE COURT: Okay.

MR. KAPLAN: -- I understand your, your concern about the Fourth. I understand that. What I'm saying though is that, "The statute does not have the exception of undue influence." It says, "Shall not challenge." So that means --

THE COURT: Right.

MR. KAPLAN: -- even undue influence, so I don't –

THE COURT: And I'm assuming she's conceding that --

MR. KAPLAN: -- understand why I can't get a ruling that –

THE COURT: -- but she's not here.

MR. KAPLAN: -- the Second Third Amendment is, is valid, it's protected.

THE COURT: That – okay. Again, one more time. She's not here. I am reluctant to rule against her and put Mr. Davis on the spot for something that he had a conversation with her about, but he doesn't quite know what her conclusion was. To me, it appears she's conceding that. But –

MR. KAPLAN: If I could offer a suggestion.

THE COURT: So, no. So we need to know so we can have an order that says, "Here's what your discovery's on." Only 2011. I mean that's what it looks like to me.

MR. DAVIS: When I get back and talk to Ms. Mullins, why don't I prepare a proposed order and submit it to Mr. Kaplan; maybe we can draft that issue as a part of the discussion --

THE COURT: Right. I mean --

MR. DAVIS: -- and go from there.

THE COURT: -- if there is anything that she's raising.

MR. DAVIS: If she thinks she's challenging it, we can –

THE COURT: She –

MR. DAVIS: -- contact the Court –

THE COURT: -- nothing's in writing.

MR. DAVIS: -- to come back.

THE COURT: Nothing's in writing, so I don't know what her intention was. If she was saying – because she didn't say, "Oh, I looked it up, he's right, there's no – there's no – there's nothing I can do. I can't raise any defenses to that. I concede on those two amendments."

MR. DAVIS: Yeah, and, and I'd –

THE COURT: She didn't say that. It just isn't addressed.

MR. DAVIS: Yeah, her thought process to me was: The statute did not bar it, but we don't think we're challenging that anyway, so let me check with her –

THE COURT: Okay.

MR. DAVIS: -- to have her contact Mr. Kaplan, directly.

THE COURT: Because the idea is the scope of, of yeah, I think you need –

MR. DAVIS: The scope or the scope of discovery?

THE COURT: I think you need some discovery, so yes, you need an accounting; but it's only an accounting for the period of time that Patricia's been the Trustee. Do you need to look at other records?

MR. DAVIS: Does – could –

THE COURT: Well, yes, you do.

MR. DAVIS: Can we have a rough date on the accounting? I don't know how far along –

THE COURT: 90 days?

MR. DAVIS: -- Mr. Kaplan is.

THE COURT: 90 days? 60 days?

MR. KAPLAN: We can have it before that. Let me go back and –

THE COURT: Okay.

MR. KAPLAN: It – probably within 60 days.

THE COURT: So 60 days, that seems reasonable. So we're going to do 60 days. And then our other issue is going to be on this 2011 – that's, that's really the --

MR. DAVIS: Right.

THE COURT: That's what it seems to me to be about in the end.

MR. DAVIS: And, and I appreciate the offer to look at the tax returns. And I assume either Ms. Mullins or I will do that and come over to Mr. Kaplan's office --

MR. KAPLAN: So you can come anytime.

MR. DAVIS: -- because that may allay a lot of the concerns.

MR. KAPLAN: You can come anytime. We've had him –

THE COURT: It -- yeah, exactly.

MR. KAPLAN: -- for them available at any time.

THE COURT: Okay. So I just need to know because that's – we have to make it – we either have to make a decision on it as a matter of law; you do or don't have something here. Or if there's a stipulation for parties, that that's not really our concern, because we don't have to then focus any discovery on it, but we need to know.

Mr. Kaplan's right we, we have to know --

MR. DAVIS: Understood.

THE COURT: -- whether those are being disputed. And then it seems to me that our focus is the 2011 forward, hopefully. That cut – narrows it down to only five years.

MR. DAVIS: So we'll, we'll do a draft order. And as I said, "After Ms. Mullins talked to Mr. Kaplan, maybe that issue will be eliminated on the Second and Third Amendments."

MR. KAPLAN: Actually -- we're actually the one that filed the Petition.

THE COURT: Uh-huh.

MR. KAPLAN: So I think we should be the one drafting the order.

MR. DAVIS: I'm okay with that too, Your Honor.

THE COURT: Okay. All right, so.

MR. DAVIS: So we'll wait for an order draft from them.

THE COURT: So what we're doing is, we are granting the following things: We're assuming in rem jurisdiction over the Trust. We're confirming the trustee because, as I said, "I see nothing here that rises to the level to remove her." And then her petitions for instructions

is the issue that we're waiting on, which is this 2011 amendment or, was it a gift?

MR. KAPLAN: And you're going to maintain jurisdiction over the Trust?

THE COURT: Correct.

MR. DAVIS: And we agree with that too, Your Honor –

THE COURT: Okay.

MR. DAVIS: -- no objection.

THE COURT: All right.

MR. KAPLAN: So I mean, one more thing. We're not really going to have discovery. He can just come on over and look at tax returns? Is that what they're going to do?

THE COURT: No. No, you're, you're free to open your discovery, but we have to know what it is first. If, if it can be satisfied – don't spend money you don't have to spend.

MR. DAVIS: Uh-huh.

THE COURT: If all it takes is to look at the tax returns then that's a good place to start. That's why I said, "You can start at your 16.1 by just looking at those." It might help. But the – the focus appears to me to just be on this Fourth – the legal effect, and are the facts of this Fourth letter amendment thing.

MR. KAPLAN: Yeah, fourth letter. Thank Your Honor.

THE COURT: Okay.

MR. DAVIS: Thank Your Honor.

MR. KAPLAN: Thank you.

THE COURT: So an end to that and we'll see you back, again.

MR. KAPLAN: So we're not rescheduling any hearing date or anything on this?

THE COURT: No. I –

MR. KAPLAN: No, we'll just put it on calendar.

THE COURT: Yeah. I mean we'll –

MR. KAPLAN: How do we communicate to the court with the limitation of discovery? We'll agree to that, submit an order to the Court?

THE COURT: Yes. Yes, you have –

MR. DAVIS: I think that can be part of the order that you're drafting.

THE COURT: The Discovery Commissioner does not do scheduling orders for us for probate cases, you have to do your own. So you know, just whatever you think you then need. And that – and after looking at those, you may know that it's going to be much narrower, and you just need to wait until we get the accounting. That may be the best thing to do is to wait for that, and then start, but I'm not going to tell you what to do. I just think that may be –

MR. DAVIS: All right. Thank you, Your Honor.

THE COURT: Some of these things may be like, easily solved.

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MR. KAPLAN: Thank Your Honor.

THE COURT: See.

MR. KAPLAN: Uh-huh.

THE COURT: Okay. All right.

[Hearing concluded at 10:24 a.m.]

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Kerry Esparza

Kerry Esparza
Court Recorder/Transcriber

DISTICT COURT
CLARK COUNTY, NEVADA
* * * *

In the Matter of the Trust of: Ella E. Horst Revocable Trust	Case No.: P-18-095314-T Department 26

ORDER SCHEDULING STATUS CHECK

TO: Kirk D. Kaplan; Gwen Rutar Mullins

YOU ARE HEREBY ORDERED TO APPEAR in District Court, 200 Lewis Avenue, Department 26, **October 17, 2018, at 10:30AM** for a Discovery Conference regarding this matter, to this Court, as required by law.

Appearance is required.

DATED this 4th day of October, 2018.

GLORIA J. STURMAN,
DISTRICT COURT

I hereby certify that on the date filed, I mailed a copy to, or placed a copy in the attorney folder(s) of the following parties;

Kirk D. Kaplan
Gwen Rutar Mullins

Linda Denman

DISTRICT COURT
CLARK COUNTY, NEVADA

Probate - Trust/Conservatorships **COURT MINUTES** **October 17, 2018**

P-18-095314-T In the Matter of the Trust of:
Ella E. Horst Revocable Trust u/a/d 05/21/1991

October 17, 2018 **10:30 AM** **Status Check**

HEARD BY: Sturman, Gloria COURTROOM: RJC Courtroom 10D

COURT CLERK: Shell, Lorna

PARTIES PRESENT:

Patricia L. Horst, Petitioner, Trustee, Not Present

Kirk D Kaplan, Attorney, Present

Ella E. Horst Revocable Trust u/a/d 05/21/1991, Trust, Not Present

Kirk D Kaplan, Attorney, Present

Brian Holiday, Other, Not Present

Gwen Rutar Mullins, Attorney, Present

Thomas W. Davis, Attorney, Present

JOURNAL ENTRIES

Mr. Kaplan stated he wanted to conform the first, second, third, and fourth amendments to the trust.

Ms. Mullins stated they objected to all assets being directed toward Patricia Horst as they should be going to all three kids and argued that Ms. Horst had access to all documentation and wouldn't disclose.

Mr. Kaplan argued that adding another document or amendment to the trust did not allow a challenge for the entire trust, that the beneficiaries didn't object to the first and second amendments and now they were challenging the third; however they must challenge within 120 days.

Court stated the trust became irrevocable upon the death of Ella Horst, that any challenges must be done within the 120 days and further inquired if the amendment dates were set out anywhere of if they happened over a number of years.

Mr. Davis argued notice must be included for any change of the trust, that notice was faulty since it didn't include all parts that effected his client, and that it was sent piece by piece.

Mr. Kaplan argued he didn't have to include the entire trust in the notice.

Court stated notice must contain any information or provision of the trust that pertains to the beneficiary or that the heir was not a beneficiary.

Mr. Kaplan stated the parties only had the ability to challenge the fourth amendment of the trust.

Court stated the evolution of the trust was important.

Mr. Kaplan argued they where requesting to challenge the second and third amendments and that they were time barred; however they could conduct discovery on the rest.

Mr. Davis argued they took a little more with each amendment to the trust and that each one had an additional 120 days to object.

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COURT FINDS the second and third amendments cannot be challenged as the 120 days ran; however later amendments were discoverable regarding how the trust evolved and how the fourth amendment happened AND THEREFORE ORDERED, Discovery allowed; however no challenge to the second and third amendments as they were time barred; Mr. Kaplan to prepare the order.

INTERIM CONDITIONS:

FUTURE HEARINGS:

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Steven D. Grierson
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Attorneys for Brian Holiday

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1991	**CASE NO.: P-18-095314-T** **DEPARTMENT 26**

ORDER ON PATRICIA A. HORST'S PETITION, OPPOSITION TO PATRICIA A. HORST'S PETITION AND COUNTER-PETITION

Date of Hearing: September 13, 2018
Time of Hearing: 9:30 a.m.

Patricia A. Horst's Petition to Confirm Trustee, Petition For Instructions and Petition For Removal Of In Rem Jurisdiction Over Trust, filed on May 9, 2018 ("Petition") and Brian Holiday's Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148, and (3) for Instructions ("Objection and Counter-Petition), came on for hearing before the Honorable Judge Gloria Sturman on September 13, 2018, at 9:30 a.m., Kirk D. Kaplan, Esq. of the law

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firm of CREST KEY, PROF., L.L.C., appearing on behalf of Patricia H. Horst, and Thomas W. Davis II, Esq. of the law firm of HOWARD & HOWARD ATTORNEYS, PLLC appearing on behalf of Brian Holiday, the Court having considered the papers and pleadings on file herein and oral argument at the time of hearing, the Court being fully advised in the premises, the Court FINDS:

(1) No objection being made, the Court should assume in rem jurisdiction over the Ella E. Horst Revocable Trust u/a/d 05/21/1991 (the "Trust");

(2) The issues raised by Objector are not sufficient to remove Patricia A. Horst as Trustee and Patricia A. Horst should be confirmed as Trustee of the Trust at this time;

(3) Issues have been raised regarding the October 2011 handwritten letter and what effect it has on the Trust;

(4) Issues have been raised on the issue of undue influence and breach of fiduciary duty;

(5) Ordering a forensic accounting of the Trust at this time would be an unnecessary expense to the Trust;

(6) Although Patricia A. Horst does not have a duty to account for the prior trustee, to the extent that she has Trust financial records pre-dating her appointment, she should provide those documents through discovery;

(7) Trustee Patricia A. Horst should provide an accounting of the Trust from October 26, 2016 through the present;

(8) Discovery is needed regarding the Second and Third Amendment to the Trust, as well as other issues relating to the October 2011 letter and undue influence; and

(9) Jurisdiction over the Trust should be retained by this Court.

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NOW THEREFORE, based on the foregoing findings, and other good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this Court hereby assumes in rem jurisdiction over the Trust;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Patricia A. Horst is hereby confirmed as the Trustee of the Trust;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the request for a forensic accounting to be performed by the Trust is hereby denied;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties are allowed discovery on this matter after they conduct the 16.1 Case Conference;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that to the extent that Patricia A. Horst has any Trust financial records pre-dating her appointment that Patricia A. Horst is ordered to provide them through discovery or otherwise;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the decision regarding the Second and Third Amendment is CONTINUED as it appears to the Court that further discovery is needed;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that further discovery is appropriate and allowed on the issue of the October 11, 2011 handwritten letter and the letter's effect on the Trust, as well as the issues of undue influence and breach of fiduciary duty;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Patricia A. Horst shall provide and file with the Court an accounting of the Trust covering the period from October 26, 2016 through the present within 60 days; and

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court retains jurisdiction over the Trust.

Dated this 17th day of October, 2018.

DISTRICT COURT JUDGE

THE HONORABLE GLORIA STURMAN

Respectfully Submitted By:

HOWARD & HOWARD ATTORNEYS PLLC

Gwen Rutar Mullins, Esq.
Nevada Bar No. 3146
Thomas W. Davis, II, Esq.
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3800 Howard Hughes Pkwy., Ste. 1000
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Attorneys for Brian Holiday

Approved as to Form and Content:

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Kirk D. Kaplan, Esq.
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Attorneys for Petitioner Patricia L. Horst

4846-0816-3955, v. 2

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Attorneys for Brian Holiday

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1991	**CASE NO.: P-18-095314-T** **DEPARTMENT 26**

NOTICE OF ENTRY OF ORDER ON PATRICIA A. HORST'S PETITION, OPPOSITION TO PATRICIA A. HORST'S PETITION AND COUNTER-PETITION

Date of Hearing: September 13, 2018
Time of Hearing: 9:30 a.m.

PLEASE TAKE NOTICE that an Order on Patricia A. Horst's Petition, Opposition to Patricia A. Horst's Petition and Counter-Petition was entered on the 17th day of October, 2018, a

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Las Vegas, Nevada 89169
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copy of which is attached hereto and incorporated herein by this reference.

DATED this 18th day of October, 2018.

HOWARD & HOWARD ATTORNEYS PLLC

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Nevada Bar No. 3146
THOMAS W. DAVIS II, ESQ.
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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October 2018, I served a true and correct copy of the foregoing NOTICE OF ENTRY OF ORDER ON PATRICIA A. HORST'S PETITION, OPPOSITION TO PATRICIA A. HORST'S PETITION AND COUNTER-PETITION by placing the above referenced document in the US Mail first class, postage prepaid, addressed to the following:

Kirk D. Kaplan, Esq.
Crest Key, Prof., L.L.C.
6980 O'Bannon Drive, Ste. 100
Las Vegas, NV 89117
Attorneys for Petitioner Patricia L. Horst

William "Bill" R. Horst
7475 W. Rosada Way
Las Vegas, NV 89149

Blaine Holiday
1747 Orchard Drive
Woodbury, MN 55125

Kent Holiday
2402 Cedar Court
Cody, WY 82414

Dawn Holiday Blanchard
3247 E. 81st N.
Idaho Falls, ID 83401

Kristi Horst
1000 S. Williams St. #35
Westmont, IL 60559

Jill Holiday Linford
1298 Eastridge Circle
Logan, UT 84321

Craig Holiday
2299 Orange Cove Avenue
La Crascenta, CA 91214

Blake Holiday
5403 Rise Bend Lane
Katv, TX 77494

Robert Holiday
6878 W. Ainsley Circle
Highland, UT 85002

Gail Holiday Herr
10630 E. Realgar Place
Tucson, AZ 85747

Steven Holiday
602 N. Beaufort Avenue, Unit B
Lubbock, TX 79416

Nathan Holiday
45 Radiance Lane
Las Flores, CA 92688

and that there is regular communication by mail between the place of mailing and the places so addressed.

I further certify that on the 18th day of October 2018, I caused a copy of the above referenced documents to be served electronically via the Court's ECF system on the following parties listed on the electronic service list:

Kirk Kaplan kirk@crestkey.com

Cheryl Klukas, an Employee of
HOWARD & HOWARD ATTORNEYS PLLC

4820-1283-3913, v. 1

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Attorneys for Brian Holiday

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of

ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1991

CASE NO.: P-18-095314-T

DEPARTMENT 26

ORDER ON PATRICIA A. HORST'S PETITION, OPPOSITION TO PATRICIA A. HORST'S PETITION AND COUNTER-PETITION

Date of Hearing: September 13, 2018
Time of Hearing: 9:30 a.m.

Patricia A. Horst's Petition to Confirm Trustee, Petition For Instructions and Petition For Removal Of In Rem Jurisdiction Over Trust, filed on May 9, 2018 ("Petition") and Brian Holiday's Counter-Petition to (1) Remove Patricia L. Horst as Trustee and Appoint Successor Trustee; (2) Compel Accounting and Impose Personal Liability Under NRS 165.148, and (3) for Instructions ("Objection and Counter-Petition), came on for hearing before the Honorable Judge Gloria Sturman on September 13, 2018, at 9:30 a.m., Kirk D. Kaplan, Esq. of the law

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Case Number: P-18-095314-T

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firm of CREST KEY, PROF., L.L.C., appearing on behalf of Patricia H. Horst, and Thomas W. Davis II, Esq. of the law firm of HOWARD & HOWARD ATTORNEYS, PLLC appearing on behalf of Brian Holiday, the Court having considered the papers and pleadings on file herein and oral argument at the time of hearing, the Court being fully advised in the premises, the Court FINDS:

(1) No objection being made, the Court should assume in rem jurisdiction over the Ella E. Horst Revocable Trust u/a/d 05/21/1991 (the "Trust");

(2) The issues raised by Objector are not sufficient to remove Patricia A. Horst as Trustee and Patricia A. Horst should be confirmed as Trustee of the Trust at this time;

(3) Issues have been raised regarding the October 2011 handwritten letter and what effect it has on the Trust;

(4) Issues have been raised on the issue of undue influence and breach of fiduciary duty;

(5) Ordering a forensic accounting of the Trust at this time would be an unnecessary expense to the Trust;

(6) Although Patricia A. Horst does not have a duty to account for the prior trustee, to the extent that she has Trust financial records pre-dating her appointment, she should provide those documents through discovery;

(7) Trustee Patricia A. Horst should provide an accounting of the Trust from October 26, 2016 through the present;

(8) Discovery is needed regarding the Second and Third Amendment to the Trust, as well as other issues relating to the October 2011 letter and undue influence; and

(9) Jurisdiction over the Trust should be retained by this Court.

NOW THEREFORE, based on the foregoing findings, and other good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this Court hereby assumes in rem jurisdiction over the Trust;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Patricia A. Horst is hereby confirmed as the Trustee of the Trust;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the request for a forensic accounting to be performed by the Trust is hereby denied;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties are allowed discovery on this matter after they conduct the 16.1 Case Conference;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that to the extent that Patricia A. Horst has any Trust financial records pre-dating her appointment that Patricia A. Horst is ordered to provide them through discovery or otherwise;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the decision regarding the Second and Third Amendment is CONTINUED as it appears to the Court that further discovery is needed;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that further discovery is appropriate and allowed on the issue of the October 11, 2011 handwritten letter and the letter's effect on the Trust, as well as the issues of undue influence and breach of fiduciary duty;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Patricia A. Horst shall provide and file with the Court an accounting of the Trust covering the period from October 26, 2016 through the present within 60 days; and

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court retains jurisdiction over the Trust.

Dated this 17th day of October, 2018.

DISTRICT COURT JUDGE

THE HONORABLE GLORIA STURMAN

Respectfully Submitted By:

HOWARD & HOWARD ATTORNEYS PLLC

Gwen Rutar Mullins, Esq.
Nevada Bar No. 3146
Thomas W. Davis, II, Esq.
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Attorneys for Brian Holiday

Approved as to Form and Content:

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4846-0816-3955, v. 2

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DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Trust of:	CASE#: P-18-095314-T
ELLA E. HORST Revocable Trust	DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN,
DISTRICT COURT JUDGE

WEDNESDAY, OCTOBER 17, 2018

RECORDER'S TRANSCRIPT OF PROCEEDINGS
STATUS CHECK: DISCOVERY CONFERENCE

APPEARANCES:

For Patricia Horst, Trustee, and the Horst Trust:	KIRK D. KAPLAN, ESQ.
For the Beneficiary:	THOMAS W. DAVIS, II, ESQ. GWEN RUTAR MULLINS, ESQ.

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

Las Vegas, Nevada, Wednesday, October 17, 2018

[Case called at 10:28 a.m.]

THE COURT: -- Horst, 095314. It's on for a discovery conference.

[Colloquy between counsel]

MR. DAVIS: Good morning, Your Honor. Tom Davis and Gwen Mullins --

THE CLERK: Can I get Bar numbers, please?

MR. DAVIS: -- on behalf of the beneficiary.

Mine is -- Tom Davis is 2531.

MS. MULLINS: And Gwen Mullins is 3146.

THE CLERK: Thank you.

THE COURT RECORDER: How do you spell your last name?

MS. MULLINS: Mullins, M-u-l-l-i-n-s.

THE COURT RECORDER: Thank you.

THE COURT: Okay.

MR. KAPLAN: Good morning, Your Honor. Kirk Kaplan, Bar number 5685, on behalf of Patricia Horst, Trustee of the trust, and the Horst Trust.

THE COURT: Okay. I have an order from Howard & Howard on Patricia trust petition opposition and counterpetition from the hearing on September 13th. So neither -- it wasn't signed or countersigned by either counsel so was -- had this been reviewed by you, Mr. Kennedy

[sic]?

MR. KAPLAN: The only reason why we're here today -- yes, I have, Your Honor. The only reason why we're here today is we need to still resolve the one issue that was left hanging. And once we address that issue, I think that we can place that in the order and we can be off and running.

THE COURT: Okay. All right.

So Mr. Davis, because since neither side nobody -- no attorney had signed this order, I was like I don't know if I'm supposed to sign this.

MR. DAVIS: Thank you, Your Honor. In fact, that must have been an oversight. I know I signed a draft. I don't know why you got the one that was unsigned but Mr. Kaplan because of the one issue had declined to sign --

THE COURT: Okay.

MR. DAVIS: -- and that's why I submitted it.

Our position is that the last issue is premature. We had a little bit of a discussion on whether we had opposed their request that they get a finding that there's no issues as to the second and third amendments. What we wanted to do was -- and I wasn't sure. Ms. Mullins said she had briefed that and said no, we have to see the documents and determine whether there is. There may very well not be, but we're putting the cart ahead of the horse by making a decision on that without doing discovery.

Basically their first submission was here's the full trust. It

included those amendments. Then they redid it adding a letter as a proposed fourth amendment and we want to look into the history of how those amendments were made. We may very well drop any objections on second and third, but we can't do that before we see the documents.

And from our perspective we still have seen no documents. The agreed-upon documents we don't have yet. We offered to have the tax returns sent out to an accountant. Mr. Kaplan says until this issue is resolved he's not comfortable exchanging documents --

THE COURT: Okay.

MR. DAVIS: -- so that's where we are.

THE COURT: All right. So one thing in reviewing the minutes again of our last hearing, I noted that specifically you said that your client had been advised that the estate was worth three million, but there was a balance sheet of 750 so when we talk about estate, I always -- I'm curious because, you know, there's a trust estate and just a probate estate. So I guess that's my confusion. I think we need to clarify are we talking about the trust, are we talking about an estate? I don't think there is a separate --

MR. DAVIS: We were talking about the trust estate, Your Honor, and --

THE COURT: The trust, okay.

MR. DAVIS: -- again, if we see the tax returns and the documents, it may very well that -- be that the loss is explained and it may be less than what we think it is. Our client, however, was part of a charitable donation and at the time the asset list was around $3 million.

Now if that's wrong and we see the documents, obviously that will not be an issue.

THE COURT: Okay. All right. So that was one question I had is if there was maybe --

MS. MULLINS: There's no probate pending.

THE COURT: Yeah, that there's maybe some --

MR. KAPLAN: There's no probate that I know of, Your Honor.

THE COURT: -- probate estate over there somewhere. Okay, got it.

All right. So the -- where's my order again? Okay, so with respect to the order, I didn't see that really there was an issue otherwise with it other than as you pointed out that the -- the issue that Mr. Kaplan wishes resolved one way or the other and put into the order so there's one order that covers the rest of the case ongoing.

Were there any other objections to the order, Mr. Kaplan, other than you just feel that we need to have in this order that one last issue so the whole case is outlined and we have a plan going forward?

MR. KAPLAN: Yeah, I just want to make sure that the order is clear that depending upon the court order today, if the Court orders that the trust first, second and third amendments are good, that the discovery is limited to revolving around the -- what the petitioner is proposing is the fourth amendment and also their contended undue influence.

THE COURT: Okay. So on that issue then I think that was your petition, Mr. Kaplan?

MR. KAPLAN: To confirm the trust the first, second and third

amendment.

THE COURT: Okay. All right.

UNIDENTIFIED SPEAKER: Okay.

THE COURT: All right. So -- I'm trying to find the -- where's our date on that hearing? The 14th --

MS. MULLINS: Was May 9th, Your Honor, the petition was filed on May 9th.

THE COURT: Okay, and then I think first we had -- okay, yes, the first hearing then was Yamashita referring it here and we had a hearing on the 14th, but that was just our initial status. So yeah, looks like the 13th of September. Okay. All right. Find the right one. Here we go. Pull that one up. Oops. Wrong day.

MS. MULLINS: And Your Honor, just to be clear, the reason that we're objecting to the second or the second and the third is because it kind of -- in the beginning we didn't know about the fourth but it kind of the second, third and fourth all started to shift all of the assets toward Patricia even though Patricia if you're looking at to where the father was -- initially her father was one of the trust- -- one of the beneficiaries and it would go to all three of his children and all of a sudden little by little it started trickling and everything now goes to her. So that's the reason that when the fourth amendment came in we wanted, you know I mean, and we weren't aware that had the fourth amendment provided in the beginning we would have challenge within 120 days. Unfortunately it took him a year and a half even though Patricia lived in the home and had access to all of the documents at the time --

THE COURT: Okay.

MS. MULLINS: -- and she was represented by counsel --

THE COURT: All right.

MS. MULLINS: -- prior counsel from the onset.

THE COURT: Okay, thanks.

And Mr. Kennedy, as I understand your client's -- Mr. Kaplan, your client's concern or position is you had 120 days you didn't challenge it so therefore as a matter of law --

MR. KAPLAN: Yeah, I think the 164.0214 is very I think -- I hardly ever use the word clear, but I think the -- it's express it says the only exception is if you didn't have actual notice. It does not have an exception that says oh by the way, conduct of trustee that by adding another document also includes that you have a right to challenge all the trust.

Further, the logic saying that the trust and the first amendment are okay but yet the second third the logic just does not seem to follow, Your Honor. Everything's good with the first and second but yet it was all before provided to them but yet they still want to challenge the second and third. It's six of one half a dozen the other. Which is it, Your Honor?

THE COURT: Well but isn't that the whole point of the litigation?

MR. KAPLAN: The whole point of the litigation is, is we can go ahead and look at the fourth amendment. Fourth amendment has nothing to do with the second -- first, second and third. And we can look

at their claim for undue influence and if they challenge and if they happen to beat the fourth amendment, then guess what, the fourth amendment goes back to according to what the statute says under 155.097.

The statute of 164.021 is very clear. The only exception is if they didn't have actual notice. And now they're trying to bootstrap outside that statute which the legislature is very clear that the only way you challenge it is by challenging it within the 120 days which they did not.

THE COURT: Okay.

MR. DAVIS: Your Honor, if I can respond, I mean there's two issues. One, they reconstituted the trust a second time saying oh by the way, this is part of it too. And second the undue influence overlaps the entire history. So if -- again, maybe if we did the discovery and saw the documents we could resolve some of the issues or maybe we'll be fighting over every one --

THE COURT: Okay. So --

MR. DAVIS: -- but I really think we have to look at what happened here, Judge.

THE COURT: All right, and our timing because the statute reads when a revocable trust becomes irrevocable because of the death of a settlor or by the express terms of the trust, the trustee may, after the trust becomes irrevocable, provide notice to any beneficiary of the irrevocable trust, any heir to the settlor or any other interested persons. The notice must provide the identity of the settlor of the trust, the date of

the execution of the trust instrument, the name and address of everybody bah bah bah, any provision of the trust which pertains to the beneficiary, any information required to be included in the notice expressly provided by the trust instrument and -- and a statement set forth in separate paragraph in 12-point type on -- or an equivalent, you may not bring an action to contest this trust more than 120 days from the date of this notice served upon you.

So the timing of these various amendments and when did the trust become irrevocable, I mean all those -- just the timeline, if that's set out anywhere because part of the issue here is these amendments took place over a period of years and once a notice is given, the 120-day notice starts the clock running, we don't have any case law on whether there is anything that tolls that. As was pointed out, the language of the statute is one exception, but the question is, you know, what if any kind of -- I don't know of any tolling or other grounds for -- so I mean the question is are there any issues with the dates is -- any other way around, because that's what I don't know, the 120 days.

MR. DAVIS: Well the portion you mentioned is that the notice has to include any provision of the trust that's applicable, and again, that alleged fifth amendment was not included. It's like you do the basic trust and send your notice out. And then piecemeal at 120 days get it approved. Then pull up a new one, the trust was amended by this one, so on this amendment you lose about half of what you want -- what you're supposed to get. Hundred and 20 days that good. Then the third amendment you lose everything. Now we're just going to litigate the

third amendment, not go back to the second the first.

That's not the way the statute was designed to work, Your Honor. And again, if we see the documentation as to the progression what happened, the notice is faulty. It did not include every provision of the trust that they claim is applicable to our client. They're trying to now separate that out and pull this new one out and say all that settled and this new one we're going to litigate over even though you got piecemeal deleted going up to that.

THE COURT: Okay. Thank you.

MR. KAPLAN: Your Honor, in response to that right there, it does -- I don't think the statute says you have to provide every thing with the trust. That's the first misnomer. Number two is, is I think Mr. Davis's interpretation of the law is broader than what the law is actually written to say is that it includes that if you happen to -- a trustee's action after the fact all sudden takes the -- makes an exception which is not provided in the statute. I just think that that's a very broad interpretation that is not in the statute.

THE COURT: Okay. Well and the -- well what's not in the statute is whether this is one notice or multiple notices and that does -- that is a little unusual and seems a little out of the norm. So when a revocable trust becomes irrevocable because of the death of a settlor or by the express terms, the trustee may, after the --

MR. KAPLAN: May.

THE COURT: -- after the trust becomes irrevocable, provide notice to any beneficiary of the irrevocable trust.

So that's the question. You don't have to provide notice, in which case the 120 days never runs. If you provide notice, what are you providing notice off? Well, the statute tells us that the minimum that it has to contain and the -- what I'm hearing Mr. Davis and -- because as mentioned, there's no case law on this that I know of. His objection is not that there's some sort of a tolling of the time to investigate the notice, it's that the notice wasn't a notice. The notice was multiple notices and that because there is an obligation -- because this is mandatory. This is what has -- must, must, must contain: Any information required to be included expressly in the trust is the provision of the trust -- any provision, any provision of the trust instrument which pertains to the beneficiary or notice that the heir or intended [sic] person is not a beneficiary.

So that's their objection is that a 120-day notice is sent, but then it's like oh wait a minute, there were some other changes, here's another 120-day notice. And so is any one of those notices adequate in and of itself? Which one is the one that triggers because --

MR. KAPLAN: Your Honor, we're not giving notice of --

THE COURT: You can just keep it to yourself, ma'am.

MR. KAPLAN: Okay.

UNIDENTIFIED SPEAKER: I have it in my hand.

THE COURT: No, ma'am. I'm not talking about that. This isn't for you to make nonverbal --

UNIDENTIFIED SPEAKER: I'm sorry. I'm sorry. Okay.

THE COURT: Okay. All right. Sorry. So this is -- as I

understand what their objection is, is why are we having multiple notices? How do we know what pertains to us? Are we cut off at the end of 120 days on the first one when we didn't know about the second one and we didn't know about the third one?

MR. KAPLAN: Your Honor --

THE COURT: So that's not in here anywhere. I mean it seems to me to envision a notice.

MR. KAPLAN: Your Honor --

THE COURT: Here's everything that pertains to you. You're either a beneficiary, you're not. Here it is --

MR. KAPLAN: Right, and what --

THE COURT: -- one time.

MR. KAPLAN: -- what came up with that is that after the fact I was looking through the papers that was provided and I was looking at that and it looked like that was a trust amendment to the trust after researching all the stuff --

THE COURT: That what?

MR. KAPLAN: -- and I believe --

THE COURT: The fifth?

MR. KAPLAN: The letter.

THE COURT: Oh the letter.

MR. KAPLAN: The letter. The fourth amendment and that's why we petitioned the Court to ask the Court for confirmation. Now the -- the parties now have the ability to challenge that fourth amendment which is the last part of the trust. They have that opportunity to

challenge that. The second and third amendment are not challengeable. They were given provided full notice. And just after the fact had after the fact the trustee said you know what, I discovered this, I want to ask the Court for permission on this, if the Court says no, it's not a fourth amendment, then we go on with it. But the first, second, third amendments are valid, they stand, they gave them full notice and now they're asking for a second bite of the apple saying notice is defective. It is not defective in regards to the first, second and third notice.

THE COURT: Okay. So I'm trying to understand then that even if the court says you received your notice, you didn't take action on the first -- when you were sent your initial notice, you didn't take any action based on that, what's the objection -- I'm trying to understand is your objection to doing any discovery in that because isn't it all relevant? Discovery --

MR. KAPLAN: It's not relevant to the -- I'm sorry.

THE COURT: I beg your pardon.

MR. KAPLAN: It's not relevant to the second --

THE COURT: I beg your pardon.

MR. KAPLAN: It's not --

THE COURT: Let's define relevancy.

MR. KAPLAN: Okay.

THE COURT: Relevancy is anything anticipated to lead to the discovery of admissible evidence.

MR. KAPLAN: Right.

THE COURT: So how is that not going to be admissible

evidence?

MR. KAPLAN: It's not admissible evidence because they failed by statute --

THE COURT: Anything anticipated to lead to the discovery of admissible evidence.

MR. KAPLAN: Right, Your Honor --

THE COURT: It doesn't have to be admissible. It leads to the discovery of admissible evidence.

MR. KAPLAN: Right.

THE COURT: How is it irrelevant?

MR. KAPLAN: What I'm saying, Your Honor, is --

THE COURT: It's -- how is it irrelevant?

MR. KAPLAN: May I speak now?

THE COURT: I've ask you my question. I would like you to answer my question.

MR. KAPLAN: What I'm trying to tell Your Honor the relevancy is, is that the challenge that they are right now they have a challenge the fourth amendment and supposedly to undue influence. All right? They can do all the --

THE COURT: Stop.

MR. KAPLAN: -- discovery to that --

THE COURT: Please --

UNIDENTIFIED SPEAKER: I'm sorry.

THE COURT: -- stop.

UNIDENTIFIED SPEAKER: I'm sorry, I'm sorry.

THE COURT: Mr. Lee.

THE MARSHAL: Yes, Judge.

THE COURT: Thank you.

UNIDENTIFIED SPEAKER: I'm sorry, I'm sorry.

THE COURT: Thank you.

THE MARSHAL: Let's go.

THE COURT: Sorry.

UNIDENTIFIED SPEAKER: Hold on a second.

THE COURT: Sorry for the interruption.

THE MARSHAL: Come on. Come on.

[Unidentified female exits at 10:46 a.m.]

THE COURT: Okay. I think we can proceed without interruption. Thank you, sir.

MR. KAPLAN: What this is, is I'm talking about is this is what, for lack of a better word, is mission creep here that they're trying to get in under the nose of saying that hey we are trying to discover that's -- that could -- is admissible evidence that may not be admitted, but they're trying to get a nose up under something that they have foreclosed upon by statute here of challenge the second third amendment.

THE COURT: But it doesn't mean that the -- that it's not evidence -- information that might lead to the discovery of admissible evidence. Very commonly in any trust proceeding we look at every amendment and see how did this evolve because we have to know what the -- we're looking for the intention of a dead person and the evolution of their estate planning is relevant because it shows how their intent

changes over time, if it does. I mean why else are you changing your trust unless your testamentary intentions have changed? So how do they evolve? And that's relevant. It leads to the discovery of admissible evidence. It doesn't have to mean that they are or are not able to challenge it. That's a different issue.

So I mean even if you're correct on the 120-day notice that they're -- they are barred from any kind of objection to it -- because I think we're mixing the two. Being barred from objecting is one thing. Does that information lead to the discovery of other admissible information because it shows the evolution of the testamentary intent?

MR. KAPLAN: I got it, Your Honor. What I'm saying is this, is that they can conduct all the discovery they want. All we're asking for is right now is that their challenge to the second and third amendment is barred. And if they lead -- have discoverable evidence and things like that and that they decide they want to challenge the fourth amendment and/or go after the undue influence, that's their prerogative, but we've always asked from the very beginning under the statute that the challenge the second third amendment is barred and then they can discover all they want to. They can conduct discovery all they want --

THE COURT: Including about the second and third amendment.

MR. KAPLAN: No. If they want to go back and look second third amendment it's fine, but it's not going to be -- they can't use that to challenge the trust.

THE COURT: But we're mixing this -- I think we're mixing this

all -- this discovery issue up and I think this --

MR. KAPLAN: Okay.

THE COURT: -- may be something that maybe is more appropriate for the discovery commissioner --

MR. KAPLAN: Okay.

THE COURT: -- because if you get the finding that you -- that -- because as you say, statute doesn't provide, there's nothing that says there's tolling --

MR. KAPLAN: Right.

THE COURT: I do think it anticipates one notice and they may have a legal issue on the one notice that they want to preserve. I think it's -- I think it reads as if you're going to get one notice that you're told here's everything that you may be entitled to because based on our due diligence this is everything we found. Okay, fine. That's one issue. If the court says I agree that the 120 days is hard and fast there's no exceptions -- well there's one exception, but we don't have any tolling, we don't have any equitable tolling issues, it's not like a statute of limitations, it's a notice period, it runs, it runs. So even if you get the finding that the court agrees it is too late to challenge these amendments, that doesn't mean that the information about them is not discoverable.

MR. KAPLAN: They can discover all they want. I'm fine with that.

THE COURT: Okay, I want to just make --

MR. KAPLAN: I'm fine with that.

THE COURT: -- sure that we're separating --

MR. KAPLAN: I'm totally fine with that.

THE COURT: We are -- that they can get the information on the second and third amendments.

MR. KAPLAN: Yeah.

THE COURT: They can get them, they can get all the trust planning documents because it shows the evolution.

MR. KAPLAN: Right.

THE COURT: I think we're mixing up whether they can challenge them with whether they can discover them.

MR. KAPLAN: They can discover all they want.

THE COURT: Totally different issues. Okay.

MR. KAPLAN: Discover all they want. They just can't challenge second third --

THE COURT: Now that I understand what the issue is because I -- we were mixing discovery versus challenging. So Mr. Davis.

MR. DAVIS: Yeah. Our position is that the mission creep is going the other way. Again, the statute contemplates one notice and it had all been prepackaged. So be it, but you can't take a little, take a little, take a little and by the time you're done, take everything. It's either one notice or if his analysis is right and I disagree with it, then that fifth amendment letter is out because they submitted this as this is the one trust that's there and they can't propound that as a new addition to the trust unless it's a new notice and a new timeframe running. Otherwise

as I said, the mission creep that he referred --

THE COURT: Okay.

MR. DAVIS: -- to would be --

THE COURT: I think the only thing we're talking about if I -- now that I figured out what Mr. Kaplan's issue is because I had discovery mixed up with his argument on whether you can challenge. I'd gotten -- I thought we were talking about different things. What I understand from Mr. Kaplan is he's looking for an order -- and once you get this kind of an order, the choice of bankruptcy it's -- of probate it's appealable; that the second and third amendments cannot be challenged because notice was given, the 120 days ran. We have this issue that you've raised that we wouldn't have -- and that's why like there's no case law on this; that where you get a notice and you initially think there's nothing to challenge because you think that's all there is and then you get another notice and now you're starting to get suspicious what's going on with these previous documents that we've been noticed on. And then you get yet another one.

MR. DAVIS: And that's precisely our concern, Your Honor.

THE COURT: So it -- it's this is a fun statutory interpretation question for the court, as I said, because there is no law on it. It does say the notice and it does say that any -- paragraph (c), any provision of the trust instrument which pertains to the beneficiary or notice that the heir or interested person is not a beneficiary. And then you get your 120-day notice in 12-point font and then you -- the bar is in subparagraph 4, no person upon whom notice is served pursuant to this

section may bring action to contest the validity of the trust more than 120 days from that notice. That's Mr. Kaplan's point. You've gotten various notices. When it says the notice, is it supposed to all be in one, or --

MR. KAPLAN: I think it --

MR. DAVIS: We challenged after the second notice, Your Honor.

MR. KAPLAN: It contemplates more than one notice, Your Honor.

THE COURT: So that's Mr. Kaplan's position and if the court says I believe you're correct, the 120 days ran as to the second and third amendments, you can't challenge them, but they're relevant to understand the evolution of the testamentary intent of our settlor. You can absolutely discover them and I think that's -- now I understand --

MR. KAPLAN: Fine with that.

THE COURT: -- what Mr. Kaplan's point is. It's discoverable. He agrees. But he's just looking for the order that there -- that this challenge can only be a challenge that is brought within the 120 days -- whatever falls within that 120 days you can challenge, fine, but I -- and I think we got a little confused the last time about whether he was talking about you can't see them, which I think was your problem, Mr. Davis, you were concerned about your inability -- because even if Ms. Mullins raised it, his point is too late, it's the 120 days. So you're barred from challenging them. Doesn't mean you aren't barred from seeing what -- how this evolved. How did we get to this fourth and alleged fifth amendments?

MR. DAVIS: But he's been refusing to produce anything --

THE COURT: Right. Right, so this -- that's a different --

MR. DAVIS: -- pending this order --

THE COURT: -- that's a different point.

MR. DAVIS: -- as if they're impacting one against the other.

THE COURT: Right. And so I think that's where we got it all smooshed and we thought we were talking about different things. The issue -- the legal issue as raised by Mr. Kaplan is you received a notice. Hundred and 20 days ran on that notice so as to that whatever version of the trust he was noticing you on, your time ran and you can't object to that.

Now I get your point which is that Ms. Mullins wasn't really tipped off that why did it evolve this way, what's going on, how has this changed until you saw the third and maybe this alleged fifth. I get that. This statute's really rigid and it unfortunately doesn't provide us a whole lot of guidance as to what the trustee has to do. I mean does it say once the trustee has gathered all documents then and only then may the trustee send out a notice and they're stuck with whatever they notice you in that notice just as the beneficiary is stuck with 120 days, then the trustee is stuck and they can't do anything further. They can't propose any further amendments as being the one that takes place. That's the obvious counterargument.

MR. DAVIS: That's our secondary --

THE COURT: There's --

MR. DAVIS: -- position is they lose --

THE COURT: There's no --

MR. DAVIS: -- the letter then.

THE COURT: There's no law on that. So here you go, I'm going to make a ruling. And as I said, the joys of probate. I think this is probably appealable. I agree with Mr. Kaplan that the statute is very rigid and with respect to a notice received by a beneficiary which is adequate under the statute; 12 point notice, tells you what you're entitled to under that document, it's 120 days.

I understand and I think your argument has some merit, Mr. Davis, that the trustee needs to propound one. He needs to tell you one -- he/she once what it is the trust is that the trustee believes they're enforcing and give you one notice. It's just not clear from the statute and I think a 120-day notice is a 120-day notice. They don't tell us if for some reason the trustee finds a later trust instrument that they need to bring, you know, to the court's attention and want to proceed under a new trust document, that wipes out their previous 120-day notice. We don't have that exception. It makes sense to me and I -- if I wrote this, I would have put it in there, but I didn't write it. So this is what the legislature left us with.

MS. MULLINS: Your Honor, wouldn't you think that there may be an issue with a due process? I mean in the due process you would think you would get entire --

THE COURT: These are all excellent issues to be addressed in your petition to the supreme court. So therefore, Mr. Kaplan's argument that he put your clients on notice of the second and third

amendments in the first 120-day notice and therefore as to those two the time ran, I agree.

I further agree, however, Mr. Davis, that it's discoverable. Your -- the whole purpose of your litigation is to figure out how did this -- the settlor's testamentary intent evolve? How did we get from the original trust through the second and third amendments to what was the fourth and possibly this goofball fifth letter?

MR. KAPLAN: The fourth amendment it's the -- the fourth -- the letter is the fourth amendment.

THE COURT: Yeah. Oh, it's -- I thought it was the fifth?

MS. MULLINS: Yeah, it's fourth.

MR. KAPLAN: It's the fourth.

THE COURT: Okay, fourth.

MR. KAPLAN: It's the fourth.

THE COURT: Okay, so the fourth letter thing. Discovery absolutely okay. I don't believe, however, under the law that a challenge can be raised at this point to the second and third amendments. It's time barred.

MR. KAPLAN: Thank you, Your Honor.

THE COURT: That's the order. That's the appealable issue. If we put that in this order that you've otherwise drafted, Mr. Davis, I don't think anything else in here is, but so I don't know if you want that in a separate order.

And Mr. Kaplan, it might be better to have it in a separate order. If that's -- the rest of this is all about discovery and all this other

stuff --

MR. DAVIS: I'm okay with it in a separate order, Your Honor, we --

THE COURT: I'll leave it to you guys.

MR. DAVIS: -- we're going to talk to our client about whether we want to appeal that one issue.

THE COURT: Right. Right, and you -- your client may not. Once you've seen the second and third amendments, you know, if you got them right away you may not --

MS. MULLINS: Right.

THE COURT: -- care to pursue it.

MR. DAVIS: I assume though we can go forward now with discovery and --

THE COURT: Yeah.

MR. DAVIS: -- obtain our documents and do the ECC --

THE COURT: Oh that's the -- that is the joy of probate. You don't have to follow the rules of civil procedure on that.

MS. MULLINS: Now, Your Honor, would Your Honor --

THE COURT: You can start discovery immediately.

MS. MULLINS: -- entertain a rehearing in the event that discovery proves that there are significant --

MR. KAPLAN: No.

MS. MULLINS: -- undue influence based on --

THE COURT: Rehearing's very limited. I mean, you know, technically a rehearing, you know, it's got to be within the 10 days so I

can't rehear it.

MS. MULLINS: Or like reserve the right for us --

MR. DAVIS: I think she's asking for it to be made without prejudice, Your Honor.

MS. MULLINS: Right.

MR. KAPLAN: Your Honor --

MR. DAVIS: So --

THE COURT: The problem is.

MR. DAVIS: Depending on what discovery shows.

THE COURT: Right. The problem is I can't do that. I mean it's -- the problem is once you have -- because of the weird interim appeal statute, we have to make an order --

MS. MULLINS: I don't know that it would be appealable --

THE COURT: -- and then it's appealable.

MS. MULLINS: -- this order. Do you think that it's directly appealable? At this point I think --

THE COURT: Yeah. Oh yeah, it's absolutely appealable. Probate, yeah.

MS. MULLINS: Because I thought that --

THE COURT: They have --

MS. MULLINS: -- there's only certain ones that are appealable right away and then the rest --

THE COURT: Well I think this is one that falls in the statute because it's a determination of which trust --

MS. MULLINS: Okay.

THE COURT: -- amendment --

MS. MULLINS: So we have --

THE COURT: -- you can pursue.

MS. MULLINS: -- 30 days so -- okay.

THE COURT: I think that's absolutely falls in the appealable statute.

MS. MULLINS: Okay. I just --

THE COURT: The court can tell us if I'm wrong.

I'm going to sign this order and give it back to you, Mr. Davis, because I really with all due respect to the issue that Mr. Kaplan raised about why isn't it in this order, I don't think it belongs in this order because I think it's a separate issue and I think it's appealable. And I'd love to find out what they say about this statute because there's no case law on it. And there's no case law on it from when it was 90 days.

MR. DAVIS: That's why we have two --

THE COURT: Yeah, two law firms --

MR. DAVIS: -- contrary arguments about the same language.

THE COURT: -- fighting this out. Yeah, there's no -- not even any case law on it from when it was only 90 days. I mean this -- I can't believe that nobody's ever -- we don't have any published case law on this.

MS. MULLINS: Because otherwise you basically have to object, you know I mean, just --

THE COURT: Every time you get a notice --

MS. MULLINS: Right.

THE COURT: -- object.

MR. DAVIS: May I approach, Your Honor?

THE COURT: And that just seems like it's -- it's so counterintuitive all it does is invite people litigating.

MS. MULLINS: Well and when you say object does he have to bring it because our client did raise to the counsel he presented that he had questions about it, you know I mean --

THE COURT: Yeah. And that may -- and, you know, the court -- the supreme court might say that is an adequate objection. I think that they mean a filed --

MS. MULLINS: Because I do have that, Your Honor.

THE COURT: I think they mean a filed and --

MS. MULLINS: Right. Okay.

THE COURT: -- with the court kind of an objection is unfortunately --

MS. MULLINS: Okay, I just --

THE COURT: -- because it says may bring an action.

MS. MULLINS: Okay.

THE COURT: And so I don't think it's enough to say you're on notice that we have objections. I think it means you have to bring an action, so you might want to put that in the order as well because that's the reason why I'm ruling in favor of Mr. Kaplan's position. I mean I could be wrong.

MR. DAVIS: Mr. Kaplan --

THE COURT: They're not afraid to tell me when I'm wrong.

MR. DAVIS: I assume Mr. Kaplan's going to prepare a draft order and submit it to us to look at?

THE COURT: On that one. Yes.

MR. DAVIS: On the second part.

MR. KAPLAN: Of course. Of course.

THE COURT: I already signed the other order.

MR. KAPLAN: Of course.

THE COURT: You've got the other order.

MS. MULLINS: Right.

THE COURT: You're good to go on that. This issue I think it's separate, absolutely discoverable, but I don't think grounds for can't not be included in your -- you can't amend your petition in other words to include it. I think that's time barred. Okay.

MR. KAPLAN: Thank you, Your Honor.

MR. DAVIS: Thank you, Your Honor. Always nice to test the Court with new and unique issues.

MS. MULLINS: Thank you, Your Honor.

THE COURT: Lovely to see you guys. Bye.

[Proceedings concluded at 11:02 a.m.]

* * * * * *

ATTEST: I hereby certify that I have truly and correctly transcribed the audio/visual proceedings in the above-entitled case to the best of my ability.

Tracy A. Gegenheimer, CER-282, CET-282
Court Recorder/Transcriber

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DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of ELLA . HORST REVOCABLE TRUST, u/a/d 05/21/1991.	Date of Hearing: Wednesday, October 17, 2018 Time of Hearing: 10:30 AM Case No.: P-18-095314-T Dept. No.: 26

ORDER GRANTING PETITION TO CONFIRM TRUST

The Petition of Patricia L. Horst (hereinafter referred to as "Petitioner") to Confirm Trust, having this date come on for hearing, it appearing to the Court that:

Procedural Background

1. Petitioner filed the Petition, with other Petitions on Friday, May 9, 2018, for a hearing on May 25, 2018.

2. Gwen Rutar Mullins, Esq. filed on May 23, 2018 on behalf of Brian Holiday (herein after referred to as "Objector"), a Notice of Appearance and Request Pursuant to EDCR 4.08 to Have Matter Heard Before a Probate Judge.

3. At the hearing on May 25, 2018, the Probate Commissioner referred the matter to a Probate Judge.

4. On July 16, 2018, Objector filed an Objection to Petitioner petitions referred to in item 1 herein.

5. This Court set this matter for a hearing on August 2, 2018.

6. On July 31, 2018, Petitioner's and Objector's legal counsels submitted a Stipulation

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and Order to Continue Hearing. This Court reset the hearing to September 13, 2018 at 9:30 AM.

7. Petitioner filed on August 8, 2018, a Response to Objector's Objections referred to in Averment 4.

8. Objector filed a Reply on August 31, 2018 on his Counter-Petitions.

9. The Petition, the Objection, Response, and Reply, were initially heard before this Court on September 13, 2018, which resulted in the Order on Patricia A Horst's Petition, Opposition to Patricia A Horst's Petition, and Counter Petition, court-clerk filed stamped October 17, 2018. In the Order this Court, among other matters assumed jurisdiction over the trust, and confirmed Petitioner as trustee and opened discovery. During the hearing the Court deferred on ruling on confirming the Second and Third Amendments to the Trust for the parties to resolve the dispute over the same.

10. The Court issued on October 5, 2018, an Order Scheduling Status Check for October 17, 2018, at 10:30 AM revolving the Second and Third Amendments to the Initial Trust.

Issue Presented

11. Whether NRS §164.021(4) bars a challenge to a trust and amendment after a proper notice of irrevocability was provided, where after the expiration of the 120-day notice period a hand written note is asserted to be an amendment via a petition for instructions?

Legal Authority

12. NRS §164.021 (2009) provides:

> Notice by trustee to beneficiary concerning change of revocable trust to irrevocable trust; contents of notice; limitation of action to contest validity of trust.
>
> 1. When a revocable trust becomes irrevocable because of the death of a settlor or by the express terms of the trust, the trustee may, after the trust becomes irrevocable, provide notice to any beneficiary of the irrevocable trust, any heir of the settlor or to any other interested person.
> 2. The notice provided by the trustee must contain:
> (a) The identity of the settlor of the trust and the date of execution of the trust instrument;
> (b) The name, mailing address and telephone number of any trustee of the trust;
> (c) Any provision of the trust instrument which pertains to the beneficiary or notice that the heir or interested person is not a beneficiary under the trust;
> (d) Any information required to be included in the notice expressly provided by the trust instrument; and
> (e) A statement set forth in a separate paragraph, in 12-point boldface type or an equivalent type which states: "You may not bring an action to contest the trust more than 120 days from the date this notice is served upon you."

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3. The trustee shall serve the notice pursuant to the provisions of NRS 155.010.
4. No person upon whom notice is served pursuant to this section may bring an action to contest the validity of the trust more than 120 days from the date the notice is served upon the person, unless the person proves that he or she did not receive actual notice.

Facts Presented

13. Ella E. Horst (the "Deceased") died on October 26, 2016. At the date of death, she was resident of Clark County, Nevada.

14. Deceased created a trust named "Ella E. Horst Revocable Trust" on May 21, 1991, (hereinafter referred to as the "Initial Trust").

15. Deceased created a first amended on March 6, 1998.

16. Deceased created a second amendment on March 16, 2004

17. Deceased created a Third amendment on September 26, 2005. The Trust and the first, second and third amendments may hereinafter be referred to as the "Trust."

18. Objector is a beneficiary of the Trust.

19. On January 27, 2017, pursuant to §164.021 provided Notice to Beneficiaries, Heirs and Interested Persons of Irrevocable Trust regarding the Initial Trust and included the first, second and third amendments (hereinafter maybe referred to as the "Notice").

20. No dispute exists as to whether the Notice compiled with NRS §164.021, or whether Objector received actual notice.

21. The 120-day challenge period in NRS §164.021(4) expired on or about May 17, 2017.

22. As stated in item one above, On May 9, 2018, Petitioner filed a pleading that included a Petition to Confirm Trust, which requested the Court to confirm the Initial Trust, the first, second, and third amendments.

23. In the same pleading, Petitioner brought a Petition for Instructions, which asserted:

NRS §164.030(1) provides "any trustee...may petition the court for instructions in the administration of the trust or for a construction of the trust instrument." The relevant averments in the Petition for Instructions are provided:

a. NRS §153.031(1)(b) and (d) provides that Petitioner as trustee "may petition

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the court regarding any aspect of the affairs of the trust, including:

. . .

(b) Determining the construction of the trust instrument;
(d) Determining the validity of a provision of the trust;
. . . .

b. On October 11, 2011, Ella E. Horst handwrote a letter to the Trust which reads, "I purchased Stella Adkins interest in the property at 7475 W Rosada Way – Las Vegas Nevada 89149. This share is to be added to my other share and go to Patricia Horst." This letter was witnessed by Elizabeth A. Mendre.

c. Petitioner believes the letter is an amendment to the Trust, because it refers to the Trust, describes the Property subject to the Trust, and describes the distribution of the Property.

d. Thus, Petitioner believes this Honorable Court's confirmation of the addition of the one-quarter (25%) acquired interest to the original one-half (50%) interest to create a three-quarter (75%) interest in the Property and distribution to Patricia Lynn Horst of the undivided three-quarter (75%) interest of the trust in and to the Property is appropriate.

24. No dispute exists over the Initial Trust and the first amendment.

25. Objector filed his objection on July 16, 2018, to the second and third amendments.

Legal Arguments

26. Objector asserts the Petition for Instructions is a notice under §164.021, and thus renews or starts a 120-day challenge period thereunder for the Trust and all amendments, and as such, his objection is proper and the second and third amendment should not be confirmed. In support of Objector's claim, he asserts had he known of the handwritten letter, he would have surely challenged the second and third amendments.

27. Petitioner asserts the Petition for Instructions is not a Notice under §164.021, but instead is a request for construction and verification of a provision of trust; that proper notice was given to Objector for the Initial Trust, first, second and third amendments; his filed Objection on July 16, 2018, was after May 17, 2017, the end of the 120-day challenge period provided under §164.021(4), and thus the initial trust, first, second and third amendments should be confirmed.

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Tel: (702) 202-4153 Fax: (702) 837-1879

Findings

28. There is no dispute as to the Initial Trust and the First Amendment.

29. The only one exception to §164.021(4) is where a beneficiary has not received actual notice. In the case at bar, the Objector did not assert he lacked actual notice, as such, Objector is found to have possessed actual knowledge.

30. There is no case law interpreting whether the 120-day challenge period under NRS §164.021(4), as Objector asserts, starts another 120-day notice period to challenge all documents previously provided pursuant NRS §164.021, where a petition for instructions is presented introducing a proposed additional amendment.

Order

NOW THEREFORE, good cause appearing, it is hereby:

ORDERED the Ella E. Horst Revocable Trust" on May 21, 1991 is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED the First Amendment, dated on March 6, 1998, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED the the Second Amendment, dated March 16, 2004, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED that the Third Amendment, dated September 26, 2005, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED this Court's finding 8 in the Order On Patricia A. Horst's Petitions, Opposition to Patricia A. Horst's Petition and Counter Petition dated October 17, 2018, that "[d]iscovery is needed regarding the Second and Third Amendment to the Trust" is deleted in its entirety and replaced with the following language: Discovery is needed regarding issues related to the October 2011 letter and undue influence."

/ / / (This Order continues to and ends on the next page.)

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IT IS FURTHER ORDERED where the Order states "[t]hat the decision regarding the Second and Third Amendment is CONTINUED as it appears that the further discovery is needed" is deleted in its entirety and replaced with the following language: Discovery is allowed, including the Second and Third Amendments, but pursuant to §164.021(4) no action may be brought to contest the Trust and Amendments confirmed herein.

Dated: 5th day of ~~October~~ Nov, 2018.

District Court Judge

Submitted By:

Kirk D. Kaplan, Esq.
Nevada Bar No.: 005685
Jason M. Sadow
Nevada Bar No.: 14112
CREST KEY, PROF., L.L.C.
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Las Vegas, Nevada 89117
Telephone: (702) 202-4153
Facsimile: (702) 837-1879
Kirk@CrestKey.com
Attorneys for Petitioner, Patricia L. Horst

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Electronically Filed
12/27/2018 3:57 PM
Steven D. Grierson
CLERK OF THE COURT

NEOJ
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Nevada Bar # 5685
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Telephone: (702) 202-4153
Facsimile: (702) 837-1879
Kirk@CrestKey.com
Attorney for Petitioner, Patricia L. Horst

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the

ELLA E. HORST REVOCABLE TRUST
u/a/d 05/21/1991

Hearing Date: Wednesday, October 17, 2018
Hearing Time: 10:30 a.m.

Case No.: P-18-095314-T
Dept. No.: 26

NOTICE OF ENTRY OF ORDER

TO: ALL PERSONS INTERESTED IN THE ABOVE-REFERENCED ESTATE

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order Granting Petition to Confirm Trust, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A", was entered by the Court on the 27th day of December, 2018.

Dated this 27th day of December, 2018.

Submitted by:

Kirk D. Kaplan, Esq.
Nevada Bar # 5685
CREST KEY, PROF., L.L.C.
6980 O'Bannon Drive, Suite 100
Las Vegas, Nevada 89117
Telephone: (702) 202-4153
Facsimile: (702) 837-1879
Kirk@CrestKey.com
Attorney for Petitioner, Patricia L. Horst

CREST KEY PROF., L.L.C.
6980 O' Bannon Drive – Suite 100
Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879

Case Number: P-18-095314-T

CERTIFICATE OF MAILING

I HEREBY CERTIFY that service of the Order Granting Petition to Confirm Trust was made this 27 day of December, 2018, by depositing a copy of the same in the U.S. Mail, postage prepaid by first class mail, addressed to the following:

Nathan Holiday
45 Radiance Lane
Las Flores, CA 92688

Kristi Horst
1000 S. Williams St., #35
Westmont, IL 60559

Blaine Holiday
1747 Orchard Dr.
Woodbury, MN 55125

Gail Holiday Herr
10630 E. Realgar Place
Tucson, AZ 85747

Craig Holiday
2299 Orange Cove Avenue
La Crascenta, CA 91214

Dawn Holiday Blanchard
3247 E. 81st N.
Idaho Falls, ID 83401

Steven Holiday
602 N. Beaufort Ave., Unit B
Lubbock, TX 79416

William "Bill" R. Horst
7475 W. Rosada Way
Las Vegas, NV 89149

Robert Holiday
6878 W. Ainsley Circle
Highland, UT 85002

Jill Holiday Linford
1298 Eastridge Circle
Logan, UT 84321

Kent Holiday
2402 Cedar Court
Cody, WY 82414

Brian Holiday
c/o Gwen Rutar Mullins
3800 Howard Hughes Pkwy, #1000
Las Vegas, NV 89169

Blake Holiday
5403 Rise Bend Lane
Katy, TX 77494

Dated this 27 day of December, 2018.

Carla von Felden
An employee
of CREST KEY PROF., L.L.C.

CREST KEY PROF., L.L.C.
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EXHIBIT "A"

ORDER GRANTING PETITION TO CONFIRM TRUST

Electronically Filed
12/26/2018 11:21 AM
Steven D. Grierson
CLERK OF THE COURT

ORDR
Kirk D. Kaplan, Esq.
Nevada Bar No.: 005685
Jason M. Sadow
Nevada Bar No.: 14112
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Facsimile: (702) 837-1879
Kirk@CrestKey.com
Attorneys for Petitioner, Patricia L. Horst

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of ELLA . HORST REVOCABLE TRUST, u/a/d 05/21/1991.	Date of Hearing: Wednesday, October 17, 2018 Time of Hearing: 10:30 AM Case No.: P-18-095314-T Dept. No.: 26

ORDER GRANTING PETITION TO CONFIRM TRUST

The Petition of Patricia L. Horst (hereinafter referred to as "Petitioner") to Confirm Trust, having this date come on for hearing, it appearing to the Court that:

Procedural Background

1. Petitioner filed the Petition, with other Petitions on Friday, May 9, 2018, for a hearing on May 25, 2018.

2. Gwen Rutar Mullins, Esq. filed on May 23, 2018 on behalf of Brian Holiday (herein after referred to as "Objector"), a Notice of Appearance and Request Pursuant to EDCR 4.08 to Have Matter Heard Before a Probate Judge.

3. At the hearing on May 25, 2018, the Probate Commissioner referred the matter to a Probate Judge.

4. On July 16, 2018, Objector filed an Objection to Petitioner petitions referred to in item 1 herein.

5. This Court set this matter for a hearing on August 2, 2018.

6. On July 31, 2018, Petitioner's and Objector's legal counsels submitted a Stipulation

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and Order to Continue Hearing. This Court reset the hearing to September 13, 2018 at 9:30 AM.

7. Petitioner filed on August 8, 2018, a Response to Objector's Objections referred to in Averment 4.

8. Objector filed a Reply on August 31, 2018 on his Counter-Petitions.

9. The Petition, the Objection, Response, and Reply, were initially heard before this Court on September 13, 2018, which resulted in the Order on Patricia A Horst's Petition, Opposition to Patricia A Horst's Petition, and Counter Petition, court-clerk filed stamped October 17, 2018. In the Order this Court, among other matters assumed jurisdiction over the trust, and confirmed Petitioner as trustee and opened discovery. During the hearing the Court deferred on ruling on confirming the Second and Third Amendments to the Trust for the parties to resolve the dispute over the same.

10. The Court issued on October 5, 2018, an Order Scheduling Status Check for October 17, 2018, at 10:30 AM revolving the Second and Third Amendments to the Initial Trust.

Issue Presented

11. Whether NRS §164.021(4) bars a challenge to a trust and amendment after a proper notice of irrevocability was provided, where after the expiration of the 120-day notice period a hand written note is asserted to be an amendment via a petition for instructions?

Legal Authority

12. NRS §164.021 (2009) provides:

> Notice by trustee to beneficiary concerning change of revocable trust to irrevocable trust; contents of notice; limitation of action to contest validity of trust.
>
> 1. When a revocable trust becomes irrevocable because of the death of a settlor or by the express terms of the trust, the trustee may, after the trust becomes irrevocable, provide notice to any beneficiary of the irrevocable trust, any heir of the settlor or to any other interested person.
> 2. The notice provided by the trustee must contain:
> (a) The identity of the settlor of the trust and the date of execution of the trust instrument;
> (b) The name, mailing address and telephone number of any trustee of the trust;
> (c) Any provision of the trust instrument which pertains to the beneficiary or notice that the heir or interested person is not a beneficiary under the trust;
> (d) Any information required to be included in the notice expressly provided by the trust instrument; and
> (e) A statement set forth in a separate paragraph, in 12-point boldface type or an equivalent type which states: "You may not bring an action to contest the trust more than 120 days from the date this notice is served upon you."

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3. The trustee shall serve the notice pursuant to the provisions of NRS 155.010.
4. No person upon whom notice is served pursuant to this section may bring an action to contest the validity of the trust more than 120 days from the date the notice is served upon the person, unless the person proves that he or she did not receive actual notice.

Facts Presented

13. Ella E. Horst (the "Deceased") died on October 26, 2016. At the date of death, she was resident of Clark County, Nevada.

14. Deceased created a trust named "Ella E. Horst Revocable Trust" on May 21, 1991, (hereinafter referred to as the "Initial Trust").

15. Deceased created a first amended on March 6, 1998.

16. Deceased created a second amendment on March 16, 2004

17. Deceased created a Third amendment on September 26, 2005. The Trust and the first, second and third amendments may hereinafter be referred to as the "Trust."

18. Objector is a beneficiary of the Trust.

19. On January 27, 2017, pursuant to §164.021 provided Notice to Beneficiaries, Heirs and Interested Persons of Irrevocable Trust regarding the Initial Trust and included the first, second and third amendments (hereinafter maybe referred to as the "Notice").

20. No dispute exists as to whether the Notice compiled with NRS §164.021, or whether Objector received actual notice.

21. The 120-day challenge period in NRS §164.021(4) expired on or about May 17, 2017.

22. As stated in item one above, On May 9, 2018, Petitioner filed a pleading that included a Petition to Confirm Trust, which requested the Court to confirm the Initial Trust, the first, second, and third amendments.

23. In the same pleading, Petitioner brought a Petition for Instructions, which asserted:

NRS §164.030(1) provides "any trustee...may petition the court for instructions in the administration of the trust or for a construction of the trust instrument." The relevant averments in the Petition for Instructions are provided:

a. NRS §153.031(1)(b) and (d) provides that Petitioner as trustee "may petition

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the court regarding any aspect of the affairs of the trust, including:

. . .

(b) Determining the construction of the trust instrument;
(d) Determining the validity of a provision of the trust;
. . . .

b. On October 11, 2011, Ella E. Horst handwrote a letter to the Trust which reads, "I purchased Stella Adkins interest in the property at 7475 W Rosada Way – Las Vegas Nevada 89149. This share is to be added to my other share and go to Patricia Horst." This letter was witnessed by Elizabeth A. Mendre.

c. Petitioner believes the letter is an amendment to the Trust, because it refers to the Trust, describes the Property subject to the Trust, and describes the distribution of the Property.

d. Thus, Petitioner believes this Honorable Court's confirmation of the addition of the one-quarter (25%) acquired interest to the original one-half (50%) interest to create a three-quarter (75%) interest in the Property and distribution to Patricia Lynn Horst of the undivided three-quarter (75%) interest of the trust in and to the Property is appropriate.

24. No dispute exists over the Initial Trust and the first amendment.

25. Objector filed his objection on July 16, 2018, to the second and third amendments.

Legal Arguments

26. Objector asserts the Petition for Instructions is a notice under §164.021, and thus renews or starts a 120-day challenge period thereunder for the Trust and all amendments, and as such, his objection is proper and the second and third amendment should not be confirmed. In support of Objector's claim, he asserts had he known of the handwritten letter, he would have surely challenged the second and third amendments.

27. Petitioner asserts the Petition for Instructions is not a Notice under §164.021, but instead is a request for construction and verification of a provision of trust; that proper notice was given to Objector for the Initial Trust, first, second and third amendments; his filed Objection on July 16, 2018, was after May 17, 2017, the end of the 120-day challenge period provided under §164.021(4), and thus the initial trust, first, second and third amendments should be confirmed.

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Findings

28. There is no dispute as to the Initial Trust and the First Amendment.

29. The only one exception to §164.021(4) is where a beneficiary has not received actual notice. In the case at bar, the Objector did not assert he lacked actual notice, as such, Objector is found to have possessed actual knowledge.

30. There is no case law interpreting whether the 120-day challenge period under NRS §164.021(4), as Objector asserts, starts another 120-day notice period to challenge all documents previously provided pursuant NRS §164.021, where a petition for instructions is presented introducing a proposed additional amendment.

Order

NOW THEREFORE, good cause appearing, it is hereby:

ORDERED the Ella E. Horst Revocable Trust" on May 21, 1991 is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED the First Amendment, dated on March 6, 1998, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED the the Second Amendment, dated March 16, 2004, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED that the Third Amendment, dated September 26, 2005, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED this Court's finding 8 in the Order On Patricia A. Horst's Petitions, Opposition to Patricia A. Horst's Petition and Counter Petition dated October 17, 2018, that "[d]iscovery is needed regarding the Second and Third Amendment to the Trust" is deleted in its entirety and replaced with the following language: Discovery is needed regarding issues related to the October 2011 letter and undue influence."

/// (This Order continues to and ends on the next page.)

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IT IS FURTHER ORDERED where the Order states "[t]hat the decision regarding the Second and Third Amendment is CONTINUED as it appears that the further discovery is needed" is deleted in its entirety and replaced with the following language: Discovery is allowed, including the Second and Third Amendments, but pursuant to §164.021(4) no action may be brought to contest the Trust and Amendments confirmed herein.

Dated: 5th day of ~~October~~ Nov, 2018.

District Court Judge

Submitted By:

Kirk D. Kaplan, Esq.
Nevada Bar No.: 005685
Jason M. Sadow
Nevada Bar No.: 14112
CREST KEY, PROF., L.L.C.
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Las Vegas, Nevada 89117
Telephone: (702) 202-4153
Facsimile: (702) 837-1879
Kirk@CrestKey.com
Attorneys for Petitioner, Patricia L. Horst

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Electronically Filed
1/9/2019 2:56 PM
Steven D. Grierson
CLERK OF THE COURT

NEOJ

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Kirk@CrestKey.com
Attorney for Petitioner, Patricia L. Horst

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the ELLA E. HORST REVOCABLE TRUST u/a/d 05/21/1991	Hearing Date: Wednesday, October 17, 2018 Hearing Time: 10:30 a.m. Case No.: P-18-095314-T Dept. No.: 26

AMENDED NOTICE OF ENTRY OF ORDER

TO: ALL PERSONS INTERESTED IN THE ABOVE-REFERENCED ESTATE

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that an Order Granting Petition to Confirm Trust, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A", was entered by the Court on the 26th day of December , 2018.

Dated this 9th day of January, 2019.

Submitted by:

Kirk D. Kaplan, Esq.
Nevada Bar # 5685
CREST KEY, PROF., L.L.C.
6980 O'Bannon Drive, Suite 100
Las Vegas, Nevada 89117
Telephone: (702) 202-4153
Facsimile: (702) 837-1879
Kirk@CrestKey.com
Attorney for Petitioner, Patricia L. Horst

CREST KEY PROF., L.L.C.
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Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879

CERTIFICATE OF MAILING

I HEREBY CERTIFY that service of the Order Granting Petition to Confirm Trust was made this 9th day of January, 2019, by depositing a copy of the same in the U.S. Mail, postage prepaid by first class mail, addressed to the following:

Steven Holiday
13968 Knoll Point Drive
Northport, AL 35475

Blake Holiday
3938 Summerwood Drive
Billings, MT 59106

Dated this 9th day of January, 2019.

Carla von Fildan
An employee
of CREST KEY PROF., L.L.C.

CREST KEY PROF., L.L.C.
6980 O' Bannon Drive – Suite 100
Las Vegas, Nevada 89117
Tel: (702) 202-4153 Fax: (702) 837-1879

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EXHIBIT "A"

ORDER GRANTING PETITION TO CONFIRM TRUST

Electronically Filed
12/26/2018 11:21 AM
Steven D. Grierson
CLERK OF THE COURT

ORDR
Kirk D. Kaplan, Esq.
Nevada Bar No.: 005685
Jason M. Sadow
Nevada Bar No.: 14112
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Las Vegas, Nevada 89117
Telephone: (702) 202-4153
Facsimile: (702) 837-1879
Kirk@CrestKey.com
Attorneys for Petitioner, Patricia L. Horst

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of

ELLA . HORST REVOCABLE TRUST, u/a/d 05/21/1991.

Date of Hearing: Wednesday, October 17, 2018
Time of Hearing: 10:30 AM

Case No.: P-18-095314-T
Dept. No.: 26

ORDER GRANTING PETITION TO CONFIRM TRUST

The Petition of Patricia L. Horst (hereinafter referred to as "Petitioner") to Confirm Trust, having this date come on for hearing, it appearing to the Court that:

Procedural Background

1. Petitioner filed the Petition, with other Petitions on Friday, May 9, 2018, for a hearing on May 25, 2018.

2. Gwen Rutar Mullins, Esq. filed on May 23, 2018 on behalf of Brian Holiday (herein after referred to as "Objector"), a Notice of Appearance and Request Pursuant to EDCR 4.08 to Have Matter Heard Before a Probate Judge.

3. At the hearing on May 25, 2018, the Probate Commissioner referred the matter to a Probate Judge.

4. On July 16, 2018, Objector filed an Objection to Petitioner petitions referred to in item 1 herein.

5. This Court set this matter for a hearing on August 2, 2018.

6. On July 31, 2018, Petitioner's and Objector's legal counsels submitted a Stipulation

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and Order to Continue Hearing. This Court reset the hearing to September 13, 2018 at 9:30 AM.

7. Petitioner filed on August 8, 2018, a Response to Objector's Objections referred to in Averment 4.

8. Objector filed a Reply on August 31, 2018 on his Counter-Petitions.

9. The Petition, the Objection, Response, and Reply, were initially heard before this Court on September 13, 2018, which resulted in the Order on Patricia A Horst's Petition, Opposition to Patricia A Horst's Petition, and Counter Petition, court-clerk filed stamped October 17, 2018. In the Order this Court, among other matters assumed jurisdiction over the trust, and confirmed Petitioner as trustee and opened discovery. During the hearing the Court deferred on ruling on confirming the Second and Third Amendments to the Trust for the parties to resolve the dispute over the same.

10. The Court issued on October 5, 2018, an Order Scheduling Status Check for October 17, 2018, at 10:30 AM revolving the Second and Third Amendments to the Initial Trust.

Issue Presented

11. Whether NRS §164.021(4) bars a challenge to a trust and amendment after a proper notice of irrevocability was provided, where after the expiration of the 120-day notice period a hand written note is asserted to be an amendment via a petition for instructions?

Legal Authority

12. NRS §164.021 (2009) provides:

> Notice by trustee to beneficiary concerning change of revocable trust to irrevocable trust; contents of notice; limitation of action to contest validity of trust.
>
> 1. When a revocable trust becomes irrevocable because of the death of a settlor or by the express terms of the trust, the trustee may, after the trust becomes irrevocable, provide notice to any beneficiary of the irrevocable trust, any heir of the settlor or to any other interested person.
> 2. The notice provided by the trustee must contain:
> (a) The identity of the settlor of the trust and the date of execution of the trust instrument;
> (b) The name, mailing address and telephone number of any trustee of the trust;
> (c) Any provision of the trust instrument which pertains to the beneficiary or notice that the heir or interested person is not a beneficiary under the trust;
> (d) Any information required to be included in the notice expressly provided by the trust instrument; and
> (e) A statement set forth in a separate paragraph, in 12-point boldface type or an equivalent type which states: "You may not bring an action to contest the trust more than 120 days from the date this notice is served upon you."

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3. The trustee shall serve the notice pursuant to the provisions of NRS 155.010.
4. No person upon whom notice is served pursuant to this section may bring an action to contest the validity of the trust more than 120 days from the date the notice is served upon the person, unless the person proves that he or she did not receive actual notice.

Facts Presented

13. Ella E. Horst (the "Deceased") died on October 26, 2016. At the date of death, she was resident of Clark County, Nevada.

14. Deceased created a trust named "Ella E. Horst Revocable Trust" on May 21, 1991, (hereinafter referred to as the "Initial Trust").

15. Deceased created a first amended on March 6, 1998.

16. Deceased created a second amendment on March 16, 2004

17. Deceased created a Third amendment on September 26, 2005. The Trust and the first, second and third amendments may hereinafter be referred to as the "Trust."

18. Objector is a beneficiary of the Trust.

19. On January 27, 2017, pursuant to §164.021 provided Notice to Beneficiaries, Heirs and Interested Persons of Irrevocable Trust regarding the Initial Trust and included the first, second and third amendments (hereinafter maybe referred to as the "Notice").

20. No dispute exists as to whether the Notice compiled with NRS §164.021, or whether Objector received actual notice.

21. The 120-day challenge period in NRS §164.021(4) expired on or about May 17, 2017.

22. As stated in item one above, On May 9, 2018, Petitioner filed a pleading that included a Petition to Confirm Trust, which requested the Court to confirm the Initial Trust, the first, second, and third amendments.

23. In the same pleading, Petitioner brought a Petition for Instructions, which asserted:

NRS §164.030(1) provides "any trustee...may petition the court for instructions in the administration of the trust or for a construction of the trust instrument." The relevant averments in the Petition for Instructions are provided:

a. NRS §153.031(1)(b) and (d) provides that Petitioner as trustee "may petition

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the court regarding any aspect of the affairs of the trust, including:

. . .

(b) Determining the construction of the trust instrument;
(d) Determining the validity of a provision of the trust;
. . . .

b. On October 11, 2011, Ella E. Horst handwrote a letter to the Trust which reads, "I purchased Stella Adkins interest in the property at 7475 W Rosada Way – Las Vegas Nevada 89149. This share is to be added to my other share and go to Patricia Horst." This letter was witnessed by Elizabeth A. Mendre.

c. Petitioner believes the letter is an amendment to the Trust, because it refers to the Trust, describes the Property subject to the Trust, and describes the distribution of the Property.

d. Thus, Petitioner believes this Honorable Court's confirmation of the addition of the one-quarter (25%) acquired interest to the original one-half (50%) interest to create a three-quarter (75%) interest in the Property and distribution to Patricia Lynn Horst of the undivided three-quarter (75%) interest of the trust in and to the Property is appropriate.

24. No dispute exists over the Initial Trust and the first amendment.

25. Objector filed his objection on July 16, 2018, to the second and third amendments.

Legal Arguments

26. Objector asserts the Petition for Instructions is a notice under §164.021, and thus renews or starts a 120-day challenge period thereunder for the Trust and all amendments, and as such, his objection is proper and the second and third amendment should not be confirmed. In support of Objector's claim, he asserts had he known of the handwritten letter, he would have surely challenged the second and third amendments.

27. Petitioner asserts the Petition for Instructions is not a Notice under §164.021, but instead is a request for construction and verification of a provision of trust; that proper notice was given to Objector for the Initial Trust, first, second and third amendments; his filed Objection on July 16, 2018, was after May 17, 2017, the end of the 120-day challenge period provided under §164.021(4), and thus the initial trust, first, second and third amendments should be confirmed.

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Findings

28. There is no dispute as to the Initial Trust and the First Amendment.

29. The only one exception to §164.021(4) is where a beneficiary has not received actual notice. In the case at bar, the Objector did not assert he lacked actual notice, as such, Objector is found to have possessed actual knowledge.

30. There is no case law interpreting whether the 120-day challenge period under NRS §164.021(4), as Objector asserts, starts another 120-day notice period to challenge all documents previously provided pursuant NRS §164.021, where a petition for instructions is presented introducing a proposed additional amendment.

Order

NOW THEREFORE, good cause appearing, it is hereby:

ORDERED the Ella E. Horst Revocable Trust" on May 21, 1991 is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED the First Amendment, dated on March 6, 1998, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED the, the Second Amendment, dated March 16, 2004, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED that the Third Amendment, dated September 26, 2005, of the Ella E. Horst Revocable Trust is confirmed, valid, and enforceable.

IT IS FURTHER ORDERED this Court's finding 8 in the Order On Patricia A. Horst's Petitions, Opposition to Patricia A. Horst's Petition and Counter Petition dated October 17, 2018, that "[d]iscovery is needed regarding the Second and Third Amendment to the Trust" is deleted in its entirety and replaced with the following language: Discovery is needed regarding issues related to the October 2011 letter and undue influence."

/// (This Order continues to and ends on the next page.)

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IT IS FURTHER ORDERED where the Order states "[t]hat the decision regarding the Second and Third Amendment is CONTINUED as it appears that the further discovery is needed" is deleted in its entirety and replaced with the following language: Discovery is allowed, including the Second and Third Amendments, but pursuant to §164.021(4) no action may be brought to contest the Trust and Amendments confirmed herein.

Dated: 5th day of ~~October~~ Nov, 2018.

District Court Judge

Submitted By:

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Steven D. Grierson
CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of ELLA E. HORST REVOCABLE TRUST, u/a/d 05/21/1991	**CASE NO.: P-18-095314-T** **DEPARTMENT 26**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that BRIAN HOLIDAY, by and through his attorneys Gwen Rutar Mullins, Esq. and Thomas W. Davis II, Esq. of the law firm of HOWARD & HOWARD ATTORNEYS PLLC, hereby appeals to the SUPREME COURT OF NEVADA from the Order Granting Petition to Confirm Trust filed in this action on December 26, 2018.

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A Notice of Entry of Order Granting Petition to Confirm Trust was entered and served electronically via the Court's ECF system on December 27, 2018. An Amended Notice of Entry of Order Granting Petition to Confirm Trust was e-served via the Court's ECF system on January 9, 2019.

DATED this 14th day of January, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of January, 2019, I served a true and correct copy of the foregoing NOTICE OF APPEAL by placing the above referenced document in the US Mail first class, postage prepaid, addressed to the following:

Kirk D. Kaplan, Esq.
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and that there is regular communication by mail between the place of mailing and the places so addressed.

I further certify that on the 15th day of January, 2019, I also served a true and correct copy of the foregoing NOTICE OF APPEAL electronically via the Court's ECF system on the following parties and/or counsel listed on the electronic service list:

Attorneys for Patricia L. Horst, Trustee of Ella E. Horst:

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Amy Galenski, an Employee of
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