

In The
Supreme Court of Virginia

RECORD NO. 020162

**WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III LIVING TRUST,**

Appellant,

v.

**CITY OF ALEXANDRIA,
ALEXANDRIA LIBRARY BOARD and
NATIONWIDE CH LLC,**

Appellees.

APPENDIX

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TABLE OF CONTENTS

Appendix Page

Bill of Complaint, with Exhibits, filed February 15, 2001	1
---	---

Exhibits:

A. Deed in Trust, with Attached Clerk's Receipt, dated September 7, 1993	10
B. Second Amended Order Confirming that the Real Property Parcels are Trust Assets of The Honorable Randall D. White, Judge of the Superior Court of California dated September 26, 2000	14

Respondents City Parties' Cross-Bill of Complaint, with Exhibits, filed March 13, 2001	16
--	----

Exhibits:

1. Declaration of the James M. Duncan, III Living Trust, with Attachments, dated September 7, 1993	24
2. J. M. Duncan, III Charitable Remainder Unitrust Agreement, with Exhibit, dated August 4, 1999	53

Respondents City Parties' Answer filed March 13, 2001	71
Respondent Nationwide CH LLC's Answer filed March 16, 2001	74
Respondent Nationwide CH LLC's Counterclaim, with Exhibits, filed March 30, 2001	79
 <u>Exhibits:</u>	
A. Declaration of the James M. Duncan, III Living Trust, with Attachments, dated September 7, 1993	88
B. J. M. Duncan, III Charitable Remainder Unitrust Agreement, with Exhibit, dated August 4, 1999	118
C. Purchase Contract, with Attachments, dated October 20, 1999	137
Respondent Nationwide CH LLC's First Amended Counterclaim filed June 5, 2001	155
Complainant's Amended Answer to Respondents City Parties' Cross-Bill of Complaint filed June 13, 2001	164

Complainant's Amended Answer to Respondent Nationwide CH LLC's First Amended Counterclaim filed June 13, 2001	170
--	-----

Complainant's Motion for Summary Judgment, with Exhibits, filed August 8, 2001	175
--	-----

Exhibits:

A. Complainant's Requests for Admission to Respondents City Parties, with Attachments, dated June 21, 2001	191
--	-----

B. Complainant's Requests for Admission to Respondent Nationwide CH LLC, with Attachments, dated June 21, 2001	202
--	-----

Stipulation of Facts, with Exhibits, filed August 13, 2001	213
--	-----

Exhibits:

1. Declaration of the James M. Duncan, III Living Trust, with Attachments, dated September 7, 1993	218
--	-----

2. Deed in Trust, with Attached Clerk's Receipt, dated September 7, 1993	244
---	-----

Exhibits, continued:

3.	First Amendment to the James M. Duncan, III Living Trust dated June 30, 1994	248
4.	J. M. Duncan, III Charitable Remainder Unitrust Agreement, with Exhibit, dated August 4, 1999	251
5.	Deed of Contribution, with Exhibit, dated August 3, 1999	269
6.	Purchase Contract, with Attachments, dated October 20, 1999	274

Respondents City Parties' Opposition to Complainant's Motion for Summary Judgment/ Respondents City Parties' Cross-Motion for Summary Judgment filed August 17, 2001	292
---	-----

Respondent Nationwide CH LLC's Motion for Summary Judgment and Cross-Motion for Summary Judgment filed August 21, 2001	303
---	-----

Respondent Nationwide CH LLC's Opposition to Complainant's Motion for Summary Judgment/Respondent Nationwide CH LLC's Cross-Motion for Summary Judgment filed August 21, 2001	306
---	-----

Transcript of Motions Hearing before The Honorable Alfred D. Swersky on August 24, 2001	309
Letter Opinion of The Honorable Alfred D. Swersky filed August 31, 2001	319
Decree of The Honorable Alfred D. Swersky entered October 31, 2001	322
Assignments of Error	326

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST
(Declaration dated September 7, 1993)

Complainant

v.

Chancery No. CH 01 0249

THE CITY OF ALEXANDRIA, VIRGINIA
Serve: Ignacio Pessoa, Esquire, City Attorney
301 King Street, Suite 1300
Alexandria, Virginia 22314

and

ALEXANDRIA LIBRARY COMPANY
Serve: Howard W. Smith, Esquire
200 South Fairfax Street
Alexandria, Virginia 22314

and

LOUISE FORSTALL,
DOROTHY KOOPMAN,
LELIA SAUNDERS-BAILEY,
ELIZABETH PORTER SIBOLD,
WILLIAM FRANCIS SMITH,
*HOWARD W. SMITH and
JOYCE WOODSON,
comprising the Alexandria Library Board
Serve: Howard W. Smith, Esquire
200 South Fairfax Street
Alexandria, Virginia 22314

and

FILED
CITY OF ALEXANDRIA
FEB 15 10 55 AM '01
EDWARD W. SMITH, CLERK
BY _____

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST
(Declaration dated September 7, 1993)

Complainant

v.

THE CITY OF ALEXANDRIA, VIRGINIA
Serve: Ignacio Pessoa, Esquire, City Attorney
301 King Street, Suite 1300
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HOWARD W. SMITH and
JOYCE WOODSON,
comprising the Alexandria Library Board
Serve: Howard W. Smith, Esquire
200 South Fairfax Street
Alexandria, Virginia 22314

and

Chancery No. CN010249

ST. PAUL OF THE DESERT EPISCOPAL CHURCH,)
a California not-for-profit Religious Entity acting through)
its Rector, Wardens and Vestrymen,)
125 West El Alameda)
Palm Springs, California 92262-5662)
))
Serve: Secretary of the Commonwealth of Virginia)
830 East Main Street, 14th Floor)
Richmond, Virginia 23219)
))
and)
))
GAMMA MU FOUNDATION)
8350 Greensboro Drive)
McLean, Virginia 22102)
))
Serve: Any Officer)
))
and)
))
NATIONWIDE CH LLC)
c/o Ira Bloom)
2801 New Mexico Avenue, N.W., Suite 1221)
Washington, D. C. 20007)
Serve: Demetrius P. Voudouris, Esquire)
Registered Agent)
3106 Trenhom Drive)
Vienna, Virginia 22124)
))
Defendants.)

TO: THE HONORABLE JUDGES OF THE AFORESAID COURT

BILL OF COMPLAINT

COMES NOW, William Y. Austin in his capacity as Trustee of the James M. Duncan, III, Living Trust created by Declaration dated September 7, 1993, and amended by First Amendment to the James M. Duncan, III, Living Trust, said Amendment dated June 30, 1994 ("Complainant"), and respectfully submits this Bill of Complaint seeking a declaratory judgment pursuant to Virginia

Code (1950, as amended) § 8.01-184, declaring that title to certain property (the "Property") located in the City of Alexandria, Virginia, and more fully described in that certain deed recorded in Deed Book 1498 at Page 1240, among the land records of the City of Alexandria, Virginia, being Tax Map Nos. 107-11-000 and 107-10-500 on the Tax Parcel Map of the City of Alexandria, Virginia, and commonly known as 200 North Henry Street and 1115 North Cameron Street, be declared to be vested in your Complainant; and/or a decree, pursuant to Virginia Code (1950, as amended) § 55-153, removing any cloud on the title to the Property as vested in your Complainant. As grounds for this request, your Complainant respectfully states as follows:

The Living Trust

1. The property is located entirely within the City of Alexandria, Virginia.
2. On or about September 7, 1993, James M. Duncan, III ("Duncan") executed a certain Declaration of Trust creating and establishing the James M. Duncan, III, Living Trust (the "Living Trust"), naming himself as Trustee of the Living Trust.
3. On or about the same day, September 7, 1993, Duncan also made, executed and delivered a certain Deed in Trust (the "First Trust Deed") conveying the Property from himself, individually, to himself as Trustee of the Living Trust.
4. The First Trust Deed was recorded on June 15, 1994, in Deed Book 1498 at Page 1240 among the land records of the City of Alexandria, Virginia. A true, accurate and complete copy of the First Trust Deed and the recorder's receipt therefor is attached hereto as Exhibit "A".
5. On or about June 30, 1994, Duncan executed a certain First Amendment to the James M. Duncan, III, Living Trust (the "Living Trust Amendment"). The Living Trust

Amendment, among other things, provided that, upon the death of Duncan or his resignation as the original Trustee of the Living Trust, Burke & Herbert Bank & Trust Company of Alexandria, Virginia, and William Y. Austin should succeed him, serving as Co-Trustees.

6. On March 2, 2000, Duncan departed this life.

7. On July 19, 2000, Burke & Herbert Bank & Trust Company declined the office of Successor Co-Trustee of the Living Trust.

8. Your respectful Complainant has accepted and succeeded to the office of Successor Trustee of the Living Trust. This office was confirmed by order of the Superior Court of the State of California in and for the County of Riverside in Case No. INP017168. A true, accurate and complete copy of the said Order is attached hereto as Exhibit "B".

9. The Living Trust has never been revoked or terminated. No amendments or modifications other than the Living Trust Amendment have been made. No grant or conveyance of the Property has been made by any trustee of the Living Trust subsequent to the First Trust Deed.

The Unitrust

10. On or about August 4, 1999, Duncan, acting in his individual capacity, executed a certain instrument styled as "The J.M. Duncan III Charitable Remainder Unitrust" (the "Unitrust"). In that August 4, 1999, document, Duncan named himself as Trustee of the Unitrust.

11. On August 3, 1999, the day prior to creation of the Unitrust, Duncan, again acting in his individual capacity, executed a deed (the "Second Trust Deed"), purporting to convey the Property from himself individually to himself in his capacity as Trustee of the Unitrust.

12. On October 20, 1999, Duncan, acting in his capacity as Trustee of the Unitrust, executed an agreement for the sale of the Property (the "Sales Contract") to Defendant

Nationwide CH LLC ("Nationwide").

The Controversy

13. Nationwide asserts that the Sales Contract is a valid and enforceable agreement, creating rights in Nationwide to acquire the Property.

14. The Living Trust, in general terms, upon the death of Duncan, provides a lifetime income benefit to William Y. Austin, in his individual capacity. Under the Living Trust, the remaining assets of the Living Trust, after the death of William Y. Austin, are to pass to the James M. Duncan, Jr., Library Foundation, a foundation to be formed (the "Foundation"). The Foundation is to endow projects at the James M. Duncan, Jr., Library located in the City of Alexandria.

15. The Unitrust, provides, in general terms, that upon the death of Duncan the assets of that Trust shall be distributed as follows:

(1) 49% to the James M. Duncan, Jr., Library ("Library"), in
Alexandria, Virginia;

(2) 50% to Defendant St. Paul of the Desert Episcopal Church
("Church"), of Palm Springs, California; and

(3) 1% to Defendant Gamma Mu Foundation ("Gamma Mu"),
8350 Greensboro Drive, McLean, Virginia, 22102.

16. Defendant Library is owned by the Alexandria Library Company and operated by the Library Board of the City of Alexandria, "an independent board which oversees library services in the City". For convenience, the interests of the City of Alexandria, Virginia, a municipal corporation, the Alexandria Library Company and the Library Board of the City of Alexandria are

herein referred to collectively as "Defendant Library".

17. On information and belief, some or all of Defendants Library, Church and Gamma Mu assert or may assert rights to the Property premised upon the instrument purporting to create the Unitrust and/or the Second Trust Deed.

COUNT I

Declaratory Judgment

18. The existence of (i) the Sales Contract; (ii) the document purporting to create the Unitrust; and (iii) the Second Trust Deed and the assertion of rights by Defendants Nationwide, Library, Church and Gamma Mu create an actual controversy between Complainant and each or all of these Defendants.

19. Because the First Trust Deed, executed and delivered in September 1993, and recorded in July 1994, conveyed the Property from Duncan in his individual capacity to Duncan in his capacity as Trustee of the Living Trust, your respectful Complainant, as Successor Trustee of the Living Trust, is entitled to a declaratory judgment that he is vested with legal and equitable title to the Property and that none of the said Defendants hold any right, title or interest therein.

COUNT II

Decree to Remove Cloud on Title


20. The existence of the Sales Contract and assertion of rights under the Sales Contract by Nationwide and the existence of the document purporting to create the Unitrust and the Second Trust Deed and the assertion of rights thereunder by Defendants Library, Church and Gamma Mu, each and all create a cloud upon your Complainant's title to the Property.

21. Because the First Trust Deed made and delivered on September 7, 1993, and recorded among the aforesaid City land records on July 19, 1994, conveyed title to the Property from Duncan in his individual capacity to Duncan in his capacity as Trustee of the Living Trust and the Living Trust has never been terminated or revoked, your respectful Complainant, in his capacity as Successor Trustee of the Living Trust, is entitled to a decree removing the cloud on title created by the Second Trust Deed, the execution of the document purporting to create the Unitrust, the execution of the Sales Contract and the assertion of rights under each or all of those documents.

WHEREFORE, your respectful Complainant prays that this Court enter a declaratory judgment or, in the alternative, a decree removing the cloud on title establishing and setting out that your respectful Complainant in his capacity as Successor Trustee of the Living Trust is vested with legal title to the Property and that the Defendants are entitled to no claim therein. Further, Complainant prays for such other and further relief as may in the circumstances be appropriate.

Respectfully Submitted,

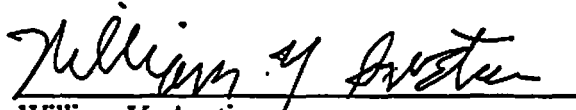
William Y. Austin, Trustee, by
WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST *Counsel*
Elizabeth S. Engle



Peter A. Dingman, VSB #14378
Elizabeth G. Engle, VSB #40010
Counsel for Complainant
Dingman Labowitz, P.C.
526 King Street, Suite 209
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Telephone (703) 519-0999
Facsimile (703) 519-1511

DECLARATION

I, William Y. Austin, in my capacity as Successor Trustee of the James M. Duncan, III, Living Trust, hereby give oath, declare and affirm that I have read the foregoing Bill of Complaint and that the facts therein recited are true, accurate and complete to the best of my knowledge and belief.



William Y. Austin

STATE OF CALIFORNIA


CITY/COUNTY OF RIVERSIDE, to-wit:

The foregoing Bill of Complaint was subscribed to, sworn to and acknowledged before me this 20th day of JANUARY, 2001, by William Y. Austin.

My commission expires: 8/20/02

[Seal]





Notary Public

BX 1498PG 1240

Exempt pursuant to
Section 58.1-811(12)
of the 1950 Code of Virginia.

200 N. Henry Street - Tax # 107-11-000
1115 N. Cameron St. - Tax # 107-10-500

16350

DEED IN TRUST

THIS DEED, made this 7th day of September, 1993, between ~~JAMES~~ M. DUNCAN, III, unmarried, Grantor, and ~~JAMES~~ M. DUNCAN, III, Trustee under a certain Intervivos Trust Agreement of even date herewith (known as "THE JAMES M. DUNCAN, III LIVING TRUST" on file in the law offices of Timothy J. Callahan, 8280 Greensboro Drive, Suite 730, McLean, Virginia 22102), Grantee, provides:

The said Grantor does hereby grant and convey, with General Warranty and English covenants of title, unto the said Grantee in Trust as aforesaid, all that certain parcel of real estate lying in the City of Alexandria, Virginia, as more fully described below:

BEGINNING at the northwest corner of Henry and Cameron Street; thence in a westerly direction along the northerly line of Cameron Street 246 feet 10 inches to the northeast corner of Cameron and Fayette Streets; thence from said front back between parallel lines 176 feet 7 inches, the easterly line of said lot being the westerly line of Henry Street and the westerly line of said lot being the easterly line of Fayette Street, containing 43,587 square feet.

AND BEING the same property conveyed to the Grantor by Deed recorded in Deed Book 715 at Page 117 and by the Will of the late Ruth Birch Deahl Duncan in Will Book 175 at Page 281 among the said land records.

The foregoing grant and conveyance is subject to all conditions, restrictions, easements, rights of way, and deeds of trust duly of record and the deeds forming the chain of title to the property conveyed.

As set forth in Section 55-17.1 of the Code of Virginia, the trust created by this conveyance shall not fail, nor shall any use relating to the above-described real estate be defeated because no beneficiaries are specified by name herein or because no duties are imposed upon the Trustee.

The Grantor hereto agrees, and this conveyance is made upon the express condition, that the Grantee shall have, and is hereby granted, full power and authority, without the joinder of any person whatsoever, to sell, exchange, lease, encumber, dedicate for public use, or otherwise dispose of the property interest transferred above or any part thereof, at one time or from time to time, and no person dealing with the Grantee shall be required to make further inquiry as to the right of the Grantee so to act, nor

Tax bills on 200 N. Henry St. To:
Duncan Living Trust c/o Suleiman Hossaini
200 N. Henry Street
Alexandria, VA 22314

Return to Timothy J. Callahan, Esq.
8280 Greensboro Dr. Suite 730
McLean, VA 22102

Tax bills on 1115 Cameron Street to:
Duncan Living Trust c/o Hopkine Furniture Co.
810 King Street, Alexandria, VA 22314

shall such person be required as to the disposition of any proceeds.

The Grantee shall have no individual liability or obligation whatsoever arising from his ownership, as Trustee, of the legal title to said property, or with respect to any act done or contract entered into or indebtedness incurred by him in dealing with said property, or in otherwise acting as Trustee, except only so far as said trust property and any trust funds in the actual possession of the Grantee shall be applicable to the payment and discharge thereof.


Such Trust Agreement currently further provides that in the event of the death of the original Trustee, she shall assume the office of Trustee.


In accordance with the Trust Agreement, the Grantor reserves the right in his lifetime to substitute Trustees, which he shall do by filing a deed of appointment or substitution among the said land records.

Any revocation of the Trust Agreement by the Grantor shall not be effective as to the property herein conveyed unless he execute a deed, duly recorded, evidencing such revocation and reversion of title.

There is no consideration passing hands in this conveyance which is made pursuant to a revocable inter vivos trust in which the Grantor is Grantor and sole beneficiary of such trust during his lifetime and, as such, this conveyance is intended to be exempt from state and local recordation taxes pursuant to Section 58.1-811(12) of the 1950 Code of Virginia, as amended. No examination of title has been made in connection with this deed.

IN WITNESS WHEREOF, the said JAMES M. DUNCAN, III, Grantor, and JAMES M. DUNCAN, III, Trustee, as indicating acceptance of this deed and its terms, has hereunto set his hand and seal as of the date as first written.

 (SEAL)
JAMES M. DUNCAN, III
Grantor

 (SEAL)
JAMES M. DUNCAN, III, Trustee
Grantee

BK1498PG1242

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

The undersigned, a Notary Public in and for the aforesaid County and State, whose commission expires 1.31.92, does hereby certify that JAMES M. DUNCAN, III, individually and as Trustee, whose name is signed to the foregoing Deed in Trust, has personally acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand and seal this 7th day of September, 1993.

Samuel C. Cullen
Notary Public

BK1498PG1243

VIRGINIA: IN THE CLERK'S OFFICE OF THE
CIRCUIT COURT OF THE CITY OF ALEXANDRIA

This deed was presented and with the
certificate annexed, admitted to record.

CONSIDERATION \$ _____

ASSUMPTION \$ _____

STATE GRANTEE'S TAX _____

CITY GRANTEE'S TAX _____

TRANSFER FEE 1.00

CLERK'S FEE 12.00

1.00

STATE GRANTOR'S TAX _____

CITY GRANTOR'S TAX _____

TOTAL 14.00

TESTE: Cliff Thompson, CLERK

by Ronikka Marshall DEPUTY CLERK

RECORDED ALEX. VA.
STATE TAX
CITY TAX
TRANSFER FEE
4 15 11 20 AM '94

016356

P-OCT-0006

Any provision contained herein which
purports to restrict or affect the holding,
occupancy, ownership, rental, lease or
transfer of any interest on the basis of
race, color, sex, religion, ancestry,
national origin, familial status, age
sexual orientation or disability is
invalid and unenforceable.

James E. Reynolds, Esq. (40558)
REYNOLDS PRICE CASAS & RILEY, LLP
5150 El Camino Real, Suite C-21
Los Altos, CA 94022-1527
Telephone: (650) 960-3400
Fax: (650) 960-0666

Attorney for Petitioner,
William Y. Austin

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

SEP 26 2000

G. PRADER

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF RIVERSIDE**

In re:

TRUST ESTATE OF JAMES M. DUNCAN,
III,

Decedent.

Case No. INP 017168

**SECOND AMENDED ORDER
CONFIRMING THE REAL PROPERTY
PARCELS ARE TRUST ASSETS**
[Probate Code § 17200]

Date: September 18, 2000
Time: 8:45 a.m.
Dept: 3S

This proceeding for instructions regarding the James M. Duncan, III, Living Trust, submitted on the verified Petition of William Y. Austin, successor trustee, came on regularly for hearing on September 18, 2000, before this court. Petitioner appeared by counsel, James E. Reynolds, Esq.

On proof made to the satisfaction of the court, the Petition ought to be granted.

IT IS THEREFORE ORDERED as follows:

1. That notice of this hearing for the Petition on Instructions was duly given as required by law.
2. That the following described real property is included in and herewith confirmed as being titled in the James M. Duncan, III, Living Trust dated September 7, 1993, as amended by

1 the First Amendment to the James M. Duncan Living Trust, said Amendment dated June 30,
2 1994:

3 a. Three quarters (75%) interest in 1552 East Twin Palms Drive, Palm Springs,
4 California; Assessor's Parcel No. 511-024-002 and described as:

5 The real property located in the City of Palm Springs, County of
6 Riverside, Parcel 1: Unit 2 as shown upon the condominium plan
7 recorded June 25, 1979 as Instrument No. 131606 of Official
8 Records of Riverside County, California. Parcel 2: An undivided
9 1/4th interest in and to Lot 3 of Tract No. 7639, in the City of Palm
10 Springs, County of Riverside, State of California, as shown by map
11 on file in Book 89 Pages 99 and 100 of Maps, records of Riverside
12 County, California; Excepting therefrom Units 1 through 4 as
13 shown upon the condominium plan recorded June 25, 1979 as
14 Instrument No. 131606 of official records of Riverside County,
15 California.

16 b. 859 Camino Condor, Palm Springs, California; Assessor's Parcel No. 507-492-003 and
17 described as:

18 The real property located in the City of Palm Springs, County of Riverside, Lot 49
19 of Tract No. 10736 as per map recorded in Book 96 Pages 90 of Maps of Record,
20 the office of the County Recorder of said County.

21 3. That William Y. Austin is confirmed as the sole successor trustee of the James M. Duncan, III,
22 Living Trust dated September 7, 1993, as amended by the First Amendment to said Trust dated
23 June 30, 1994.

24 **RANDALL D. WHITE**

25 Dated: Sept. 26, 2000

26 **JUDGE OF THE SUPERIOR COURT**

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST
(Declaration dated September 7, 1993)

Complainant,

v.

In Chancery No. CH010249

THE CITY OF ALEXANDRIA, *et al.*,

Defendants.

THE CITY OF ALEXANDRIA, VIRGINIA,

and

ALEXANDRIA LIBRARY COMPANY,

and

LOUISE FORSTALL,
DOROTHY KOOPMAN,
LELIA SAUNDERS-BAILEY,
ELIZABETH PORTER SIBOLD,
WILLIAM FRANCIS SMITH,
HOWARD W. SMITH and
JOYCE WOODSON
(Comprising the Alexandria Library Board),

Defendants and Cross-Complainants,

v.

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST
(Declaration dated September 7, 1993),

Complainant and Cross-Defendant.

FILED
CITY OF ALEXANDRIA
JUL 13 3 29 PM '01
CLERK OF COURT
BY _____

TO: THE HONORABLE JUDGES OF SAID COURT:

CROSS-BILL OF COMPLAINT

COME NOW The City of Alexandria, Virginia; Alexandria Library Company; and Louise Forstall, Dorothy Koopman, Lelia Saunders-Bailey, Elizabeth Porter Sibold, William Francis Smith, Howard W. Smith and Joyce Woodson (comprising the Alexandria Library Board), and for their Cross-Bill of Complaint against William Y. Austin, Trustee, respectfully represent as follows:

1. William Y. Austin, Trustee, asserts that he is Trustee of the James M. Duncan, III, Living Trust created by Declaration dated September 7, 1993, and amended by First Amendment to the James M. Duncan, III, Living Trust, said Amendment being dated June 30, 1994. He is hereafter referred to as the Cross-Defendant.

2. The City of Alexandria, Virginia, a municipal corporation; Alexandria Library Company, and the Alexandria Library Board (which is comprised of Louise Forstall, Dorothy Koopman, Lelia Saunders-Bailey, Elizabeth Porter Sibold, William Francis Smith, Howard W. Smith and Joyce Woodson) are hereafter referred to as Cross-Complainants. The Cross-Complainants claim an interest in certain real property and the proceeds of sale of such property which is adverse to the interest of the Cross-Defendant.

3. The property at issue is located in the City of Alexandria, Virginia, and is described in a certain deed recorded in Deed Book 1498 at Page 1240, among the land records of the City of Alexandria, Virginia, being Tax Map Nos. 107-11-000 and 107-10-500 on the Tax Parcel Map of the City of Alexandria, Virginia, and commonly known as 200 North Henry Street and 1115 North Cameron Street.

The Living Trust

4. On or about September 7, 1993, James M. Duncan, III ("Duncan") executed a certain Declaration of Trust creating and establishing the James M. Duncan, III, Living Trust (the "Living Trust"), naming himself as Trustee and Beneficiary of the Living Trust. A true copy of the Living Trust is attached hereto as Exhibit 1 and is incorporated herein by this reference.

5. On or about the same day, September 7, 1993, Duncan also made, executed and delivered a certain Deed in Trust (the "First Trust Deed") conveying the Property to himself as Trustee of the Living Trust.

6. The First Trust Deed was recorded on June 15, 1994, in Deed Book 1498 at Page 1240 among the land records of the City of Alexandria, Virginia.

7. On or about June 30, 1994, Duncan executed a certain First Amendment to the James M. Duncan, III, Living Trust (the "Living Trust Amendment"). The Living Trust Amendment, among other things, provided that, upon the death of Duncan or his resignation as the original Trustee of the Living Trust, Burke & Herbert Bank & Trust Company of Alexandria, Virginia, and William Y. Austin should succeed him, serving as Co-Trustees. If Burke & Herbert did not serve, "another professional Bank and Trust Company shall serve." There is no provision for authorizing William Y. Austin to serve or act alone.

8. On March 2, 2000, Duncan departed this life.

9. On July 19, 2000, Burke & Herbert Bank & Trust Company declined the office of Successor Co-Trustee of the Living Trust.

10. The Cross-Defendant claims to have succeeded to the office of the Successor Trustee of the Living Trust. No professional Bank and Trust Company has been appointed to serve with him as co-trustee.

The Unitrust

11. On or about August 4, 1999, Duncan, executed a certain instrument styled as "The J.M. Duncan III Charitable Remainder Unitrust" (the "Unitrust"). In that August 4, 1999, document, Duncan named himself as Trustee and a beneficiary of the Unitrust. A true copy of the Unitrust Agreement is attached hereto as Exhibit 2 and is incorporated herein by this reference.

12. At the time he executed the Unitrust Agreement, Duncan was Settlor, Trustee and Beneficiary of the Living Trust.

13. On or about August 3, 1999, Duncan executed a deed (the "Second Trust Deed"), conveying the subject real property to James M. Duncan, III, as Trustee of the Unitrust.

14. At the time he executed the Second Trust Deed, Duncan was Settlor, Trustee and Beneficiary of the Living Trust.

15. On October 20, 1999, Duncan executed an agreement for the sale of the subject property (the "Sales Contract") to Nationwide CH LLC.

16. At this time he executed the Sales Contract, James M. Duncan, III, was Donor, Trustee and Beneficiary of the Unitrust, as well as Settlor, Trustee and Beneficiary of the Living Trust to the extent such Living Trust was still operative.

The Controversy

17. Cross-Complainants assert that the Unitrust and the Second Trust Deed are the controlling documents, with respect to the subject real property, that the Sales Contract is a valid and enforceable agreement, and that Cross-Complainants have a right to a portion of the proceeds of sale under the provisions of the Unitrust.

18. The Living Trust, in general terms, upon the death of Duncan, provides a lifetime income benefit to William Y. Austin, in his individual capacity. Under the Living Trust, the remaining assets of the Living Trust, after the death of William Y. Austin, are to pass to the James M. Duncan, Jr., Library Foundation, a foundation to be formed (the "Foundation"). The Foundation is to endow projects at the James M. Duncan, Jr., Library located in the City of Alexandria.

19. The Unitrust, provides, in general terms, that upon the death of Duncan the assets of that Trust shall be distributed as follows:

- (1) 49% to the James M. Duncan, Jr., Library ("Library"), in Alexandria, Virginia;
- (2) 50% to Defendant St. Paul of the Desert Episcopal Church ("Church"), of Palm Springs, California; and
- (3) 1% to Defendant Gamma Mu Foundation ("Gamma Mu"), 8350 Greensboro Drive, McLean, Virginia 22102.

20. The James M. Duncan, Jr. Library is owned by the Alexandria Library Company and operated by the Library Board of the City of Alexandria, "an independent board which oversees library services in the City." The interests of the City of Alexandria, Virginia, a municipal corporation, the Alexandria Library Company and the

Library Board of the City of Alexandria lie in receiving 49% of the assets of the Unitrust for the James M. Duncan, Jr. Library.

21. The subject real property constitutes the only known asset of the Unitrust.

COUNT I

Declaratory Judgment

22. The existence of (i) the Sales Contract; (ii) the document creating the Unitrust; and (iii) the Second Trust Deed and the assertion of rights by Cross-Complainants create an actual controversy between Cross-Complainants and Cross-Defendant.

23. The Living Trust, by its own terms, was revocable in whole or in part, and Duncan could withdraw property from the trust in any amount at any time under the terms of Article 3 of the Living Trust.

24. At all relevant times, the Living Trust was merely an alter ego of James M. Duncan, III.

25. At all relevant times, James M. Duncan, III, united within himself all capacities necessary to complete fee simple ownership and transfer of subject property.

26. By his execution of the Unitrust Agreement and the Second Trust Deed, James M. Duncan, III, effectively exercised his power under Article 3 of the Living Trust to amend or revoke the Living Trust and to withdraw the subject property from the Living Trust and transfer it to the Unitrust,.

27. There is no provision of the Living Trust as amended which gives William Y. Austin the power to act alone as Trustee without an institutional co-trustee being appointed to serve with him.

28. Northern Trust Bank of California, N.A., named as successor trustee of the Unitrust, has declined to accept appointment as successor trustee, and there is presently no trustee serving the Unitrust.

WHEREFORE, the Cross-Complainants pray this Honorable Court for entry of a declaratory judgment or decree under Section 8.01-184 of the Code of Virginia (1950) as amended declaring that William Y. Austin cannot validly represent the interests of the Living Trust as sole trustee and that an institutional co-trustee must be appointed to serve with him; that the execution of the Unitrust Agreement and the Second Trust Deed operated to remove the subject real property from the Living Trust and to transfer it to the Unitrust and effectively amended or revoked the Living Trust as to the subject real property; that the Sales Contract is valid and enforceable; that Cross-Complainants are entitled to receive 49% of the proceeds of the sale of the subject real property upon settlement of said sale; that the Court appoint a Trustee to act on behalf of the Unitrust to complete the terms of the Sales Contract, to distribute the proceeds of sale as provided by the Unitrust, and to carry out the other terms of the Unitrust; that the Unitrust Agreement and the Second Trust Deed be declared valid, enforceable and the controlling documents concerning the ownership of the subject real property and the right to transfer and convey the same; and that they have such other further and general relief as equity as the nature of the case may require.

Respectfully submitted,

THE CITY OF ALEXANDRIA, VIRGINIA;
ALEXANDRIA LIBRARY COMPANY;
LOUISE FORSTALL,
DOROTHY KOOPMAN,

LELIA SANDERS-BAILEY
ELIZABETH PORTER SIBOLD,
WILLIAM FRANCIS SMITH,
HOWARD W. SMITH
JOYCE WOODSON
(Comprising the Alexandria Library Board)

By Counsel

D. BRIAN COSTELLO, P.C.

By

D. Brian Costello, VSB #15123
8136 Old Keene Mill Road, Suite A-210
Springfield, Virginia 22152-1843
(703) 644-9200 Telephone
(703) 644-9400 Facsimile

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed to Peter A. Dingman and Elizabeth G. Engle, Dingman Labowitz, P.C., Counsel for Complainant, 526 King Street, Suite 209, St. Paul of the Desert Episcopal Church, 125 West El Almeda, Palm Springs, California 92262-5662, Gamma Mu Foundation, 8350 Greensboro Drive, McLean, Virginia 22102, Nationwide CH LLC c/o Ira Bloom 2801 New Mexico Avenue, N.W., Suite 1221, Washington, D.C. 20007 and c/o Demetrius P. Voudouris, Esq., Registered Agent, 3106 Trenholm Drive, Vienna, Virginia 22124, Defendants, this 13th day of March, 2001.

D. Brian Costello

THE JAMES M. DUNCAN, III LIVING TRUST

I, JAMES M. DUNCAN, III, of Riverside County, California, make this Declaration of Trust dated September 7, 1993, with myself as the initial Trustee ("my Trustee"). References in this document to "my Trustee" shall refer to myself, as the initial Trustee or to the successor Trustee(s), as the context requires. All references to "my Trust" or "trust," unless otherwise stated, shall refer to this Living Trust and the trusts created in it. Notwithstanding anything in my Trust to the contrary, when I am serving as a Trustee under my Trust, I may act for and conduct business on behalf of my Trust as Trustee without the consent of any other Trustee.

ARTICLE 1

CREATION AND DISPOSITION OF TRUST

1.1 Creation of Trust. I have initially funded my trust with the sum of Ten Dollars. I may transfer additional assets to my Trustee, either during my lifetime or by my will or by other means. Such additional assets shall be listed, for convenience, on the attached schedule. My Trustee shall hold, invest and distribute all assets received in trust under the terms of this Agreement. For reference, all assets transferred to this trust shall be referred to as the "Trust Estate."

1.2 The Name of My Trust. For convenience, my trust shall be known as: THE JAMES M. DUNCAN, III LIVING TRUST, dated September 7, 1993. For purposes of beneficiary designations and transfers directly to my trust, my trust shall be referred to as: JAMES M. DUNCAN, III, original Trustee, or his successors in trust, under THE JAMES

M. DUNCAN, III LIVING TRUST, dated September 7, 1993, including any amendments thereto.

ARTICLE 2

PROVISIONS FOR ME DURING MY LIFETIME

2.1 General Management. The Trustee shall hold, manage, invest, and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

2.1.1 During my lifetime, the Trustee shall pay to me or apply for my benefit all the net income from this trust.

2.1.2 During my lifetime the Trustee may pay to me or apply for my benefit such sums from the principal of this trust as in its sole discretion shall be necessary or advisable from time to time for my medical care, comfortable maintenance, and welfare, taking into consideration to the extent the Trustee deems advisable, any other income or resources of mine known to the Trustee.

2.1.3 I shall have no power to direct the Trustee to make gifts of principal or income from the Trust to a third party. Any gift made directly by the Trustee to a third party in violation of this provision shall be construed as a distribution made directly to me, and then a gift from me to such third party.

2.2 During my Disability. During any period of time when I am disabled, my Trustee shall apply the trust property, including its income, exclusively for my benefit and for my valid obligations by observing the following procedural guidelines:

2.2.1 My Trustee shall provide as much of the principal and net income of my trust as is necessary or advisable, in its sole and absolute discretion, for my health, support, maintenance, and general welfare, and for the payment of any of my valid obligations as confirmed by my Trustee.

2.2.2 My Trustee shall provide as much of the principal and net income of my trust as my Trustee deems advisable for the payment of insurance premiums on policies owned by me, either directly or beneficially, or my trust.

2.2.3 I shall be deemed disabled during any period when, in the opinion of two licensed physicians, I am incapacitated or disabled because of illness, age, or any other cause which results in my inability to effectively manage my property or financial affairs.

2.2.4 Any net income which is not distributed annually under this Article shall be accumulated and added to principal.

ARTICLE 3

MY RIGHTS TO AMEND OR REVOKE TRUST

3.1 By signed instruments delivered to the Trustee during my lifetime, I may: (1) withdraw property from this trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Declaration of Trust in any other respect; (5) revoke this trust in its entirety or any provisions therein; provided, however, the duties or responsibilities of the Trustee shall

not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE 4

ADMINISTRATION OF MY TRUST UPON MY DEATH

4.1 Payment of Expenses, Claims, and Taxes. Upon my death, my Trustee is authorized, but not directed, to pay the following: expenses of my last illness, funeral, and burial, including memorials of all types and memorial services of such kind as my Trustee in its sole discretion shall approve; legally enforceable claims against me or my estate; expenses with regard to the administration of my estate; and Federal estate tax, applicable state inheritance or estate taxes, or any other taxes occasioned by my death.

4.1.1 The payments authorized under this Article are discretionary, and no claims or right to payment by third parties may be enforced against my trust by virtue of such discretionary authority.

4.1.2 My Trustee shall be indemnified from the trust property for any damages sustained by my Trustee as a result of its exercising, in good faith, the authority granted it under this Article.

4.2 Coordination with My Personal Representative. This Article shall be utilized to help facilitate the coordination between the personal representative of my probate estate and my Trustee with respect to any of my property owned outside of my trust at my death.

4.2.1 Authorized Payments. My Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Article either directly to the appropriate persons or institutions or to my personal representative of my probate estate. My Trustee may rely upon the written statements of my personal representative as to all material facts relating to these payments; my Trustee shall not have any duty to see to the application of such payments.

4.2.2 Purchase of Assets and Loans. My Trustee is authorized to purchase and retain in the form received, as an addition to my trust, any property which is apart of my probate estate. In addition, my Trustee may make loans, with or without security, to my probate estate. My Trustee shall not be liable for any loss suffered by my trust as a result of the exercise of the powers granted in this paragraph.

4.2.3 Distributions from My Personal Representative. My Trustee is authorized to accept distributions from my personal representative of my probate estate without audit and my Trustee shall be under no obligation to examine the records or accounts of my personal representative.

4.3 Apportionment. All expenses and claims and all estate, inheritance, and death taxes, excluding any generation-skipping transfer tax, resulting from my death shall be paid without apportionment and without reimbursement from any person, except as otherwise specifically provided in this trust.

4.3.1 Property Passing Outside My Trust. Notwithstanding anything to the contrary in my trust, estate, inheritance, and death taxes assessed with regard to property

passing outside of my trust or outside of my probate estate, but included in my gross estate for federal estate tax purposes, shall be chargeable against the persons receiving such property.

4.4 My Trustee's Authority to Make Tax Elections. My Trustee may exercise any available elections with regard to state or federal income, inheritance, estate succession, or gift tax law.

ARTICLE 5

TANGIBLE PERSONAL PROPERTY

5.1 Tangible personal property. Upon my death, I give all tangible personal property owned by the Trust to LEON ARNOLD DUNCAN, if he survives me. If he does not survive me, I give all tangible personal property owned by the Trust to my cousin, HARRIET F. FELLOWS, if she survives me.

5.2 Memorandum. I request that the recipients of my tangible personal property honor any memorandum I may leave as to distribution of specific items.

ARTICLE 6

THE CHARITABLE REMAINDER TRUST

Upon my death the Trustee shall divide the net assets of the Trust Estate into separate accounts or trusts, one for each of MARIE R. MALONE, CARL A. RUTHSTROM, and WILLIAM Y. AUSTIN, who are living at the time of my death. If one of these has predeceased me, the entire Trust Estate shall be allocated to the survivors.

If two of those have predeceased me, one-third shall be allocated to the survivor, and the balance shall be held and distributed pursuant to Paragraph 6.13. My Trustee shall manage each such Trust as a Charitable Remainder Trust, each referred to separately in this Article as "the Trust." For convenience, each Trust may be called, for example, the Marie R. Malone Charitable Trust. For convenience, references in this Trust to the "Income Beneficiary" shall refer to each of MARIE R. MALONE, CARL A. RUTHSTROM, and WILLIAM Y. AUSTIN, as to their Trust. Each Trust shall be managed separately, and each shall be administered and distributed as follows:

6.1 The Trustee shall hold, manage, invest and reinvest the assets, collect the rents, income, interest and dividends therefrom, and pay over to the Income Beneficiary or apply for his use and benefit, for and during the term of his life an amount (the "unitrust amount") equal to FIVE (5%) percent of the net fair market value of the Trust assets determined annually by the Trustee as of the first business day of each taxable year of the Trust. The unitrust amount shall be paid in equal quarterly installments from income and, to the extent that income is not sufficient, from principal. Any income of the Trust for a taxable year in excess of the unitrust amount shall be added to the principal.

6.2 Upon the death of the Income Beneficiary, the Trust shall terminate and my Trustee shall distribute all of the then principal and income of the Trust, other than any amount due the Income Beneficiary, to the charities listed in paragraph 6.13. If any charity is not an organization described in Sections 170(c), 2055(a), 2522(a) or (b) and 170(b)(1)(A) of the Internal Revenue Code of 1986 (the "Code") at the time when any

principal and income to such organization or organizations then described in Sections 170(c), 2055(a), 2522(a) or (b) and 170(b)(1)(A) of the Code, contributions to which are deductible for income, gift and estate tax purposes at such time, as my Trustee in its sole and absolute discretion, shall select, which are most similar in purpose to the disqualified charity I have specifically named.

6.3 No amount other than the unitrust amount shall be paid to the Income Beneficiary.

6.4 If the net fair market value of the Trust assets is incorrectly determined by my Trustee for any taxable year, then within a reasonable period after the final determination of the correct value, my Trustee shall pay to the Income Beneficiary in the case of undervaluation or shall receive from the Income Beneficiary in the case of an overvaluation an amount equal to the difference between the unitrust amount properly payable and the unitrust amount actually paid.

6.5 In determining the unitrust amount, my Trustee shall prorate the same, on a daily basis, for a short taxable year and for the period the Income Beneficiary lives in the taxable year of his death, in accordance with the applicable provisions of the Regulations issued under the Code.

6.6 Nothing in this instrument shall be construed to restrict my Trustee from investing the Trust assets in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of Trust assets.

6.7 The obligation to pay the unitrust amount shall commence with the date of my death, but payment of the unitrust amount may be deferred from the date of my death to the end of the taxable year of the Trust in which occurs the complete funding of the Trust. Within a reasonable time after the occurrence of such event, my Trustees shall pay the amount determined under the method describe in Section 1.664-1(a)(5)(ii) of the United States Treasury Regulations less the sum of any amounts previously distributed and interest thereon computed at six (6%) percent a year, compounded annually, from the date of distribution to the occurrence of such event.

6.8 If any additional contributions are made to the Trust after the initial contribution in Trust, the unitrust amount for the taxable year in which the assets are added to the Trust shall be FIVE (5%) percent of the sum of (a) the net fair market value of Trust assets (excluding the assets so added and any income from, or appreciation on, such assets) and (b) that proportion of the value of the assets so added that was excluded under (a) which the number of days in the period which begins with the date of contribution and ends with the earlier of the last day of the taxable year or the Income Beneficiary's death bears to the number of days in the period which begins on the first day of such taxable year and ends with the earlier of the last day in such taxable year or the Income Beneficiary's death. In the case where there is no valuation date after the time of contribution, the assets so added shall be valued at the time of contribution.

6.9 Except for the payment of the unitrust amount to the Income Beneficiary, my Trustee is prohibited from engaging in any act of self-dealing as defined in Section

4941(d) of the Code, from retaining any excess business holdings as defined in Section 4943(c) of the Code which would subject the Trust to tax under Section 4943 of the Code, from making any investments which would subject the Trust to tax under Section 4944 of the Code, and from making any taxable expenditures as defined in Section 4945(d) of the Code. My Trustee shall make distributions at such times in such manner as not to subject the Trust to tax under Section 4942 of the Code.

6.10 Any other provisions of this Trust to the contrary notwithstanding, the unitrust amount, shall not be reduced by any expenses of the Trust including, but not limited to, Trustee's commissions.

6.11 As used in this Article, the term "the net fair market value" of the Trust shall mean its net fair market value as that term is used in Section 664(d)(2) of the Code. All sections of the Code referred to in this Article shall be deemed to include future amendments to such sections as well as corresponding provisions of future Internal Revenue laws.

6.12 It is my intention that the Trusts created by this Article shall qualify for a charitable remainder deduction for Federal estate tax purposes. Accordingly, I direct that the provisions of this Trust be construed in accordance with this intention and I further direct that none of the powers granted to my Trustee shall be exercised in such a manner as to disqualify the Trust from such deduction.

6.13 The Charities. All references in this Declaration of Trust to the "charities," and the sole recipient of the remainder of The Charitable Remainder Trust(s), shall be

THE JAMES M. DUNCAN, JR., LIBRARY FOUNDATION (the "Foundation"), which shall be created, managed, and distributed as follows. The Trustee of my Trust shall manage the assets thereof and shall distribute such sums from the income and the principal, in amounts to be determined from time to time in the discretion of my Trustee, for the purpose of providing to the James M. Duncan, Jr., Library, in Alexandria, Virginia, funding for any of a broad selection of EDUCATIONAL benefits as determined by my Trustee, including but not limited to the development and presentation of courses and educational programs not available in the public school system, and the purchase of equipment for these courses and for textbooks not included in the general purchasing program. My Trustee is directed to distribute funds only for uses which are over and above what the City of Alexandria provides for its other libraries. My Trustee shall distribute each year enough funds, and shall take such other actions, so as to comply with the requirements of the Code and the Regulations thereunder for tax-exempt organizations. A further condition of distribution of funds is that the library be continuously named the James M. Duncan, Jr., Library, and that the name be prominently displayed.

ARTICLE 7

POWER OF TRUSTEE TO RESIGN

Any Trustee may resign this trusteeship during my lifetime by giving me thirty (30) days' notice in writing delivered to me in person or mailed to my last known address, the resignation to become effective as hereinafter provided. Upon receipt of such notice I shall appoint a successor Trustee. Upon the failure of the successor Trustee to accept the

trust within thirty (30) days from the time notice was delivered in person or mailed to me, the Trustee may resign to the court having jurisdiction over this Trust, which court may, if it deems advisable, accept the resignation and appoint a successor Trustee. Upon the appointment of and acceptance by a successor Trustee, the original Trustee shall pay over, deliver, assign, transfer, or convey to such successor Trustee the trust property and make a full and proper accounting to me, whereupon his resignation shall become effective. The substitute or successor Trustee upon acceptance of this Trust and the Trust property shall succeed to and possess all the rights, powers, and duties, authority, and responsibility conferred upon the Trustee originally named herein.

ARTICLE 8

SUBSTITUTE OR SUCCESSOR TRUSTEES

8.1 Successor Trustee. Upon the death or resignation of myself as the original Trustee, unless other provisions shall be made by me, the first successor Trustee shall be BURKE & HERBERT BANK & TRUST COMPANY of Alexandria, Virginia.

Upon or after my death or disability, a replacement successor Trustee, limited to a bank or trust company or an attorney at law, may be appointed by a majority of MARIE R. MALONE, CARL A. RUTHSTROM, and WILLIAM Y. AUSTIN or the survivors of them or, if another successor Trustee is needed and if they fail to act, by the court having jurisdiction over this Trust. The appointment of a successor Trustee or Co-Trustee shall be effective upon acceptance of fiduciary duties by the successor Trustee, at which time all references herein to "my Trustee" shall refer to the successor Trustee.

8.2 Appointing a Co-Trustee. Any sole Trustee may in his or her discretion appoint a Co-Trustee. Any successor Trustee shall be deemed to be in office and entitled to act upon delivery of its written acceptance of this Trust to an acting Trustee, or if none, to at least one beneficiary. Any Co-Trustee may delegate his or her powers in writing to the other Trustee for a period not to exceed one year, may revoke that designation, and may successively renew it. Any successor Trustee shall have all the powers, immunities and discretions given to the original Trustee.

8.3 Actions of Predecessor. No Trustee serving under this Agreement, who has been appointed by me, shall be responsible for or required to inquire into any fiduciary actions occurring before such Trustee's appointment.

8.4 Accountings. My Trustee shall make an annual accounting during my lifetime to me or to the one who, in the opinion of my Trustee, is primarily in charge of my affairs, and after my death, to the beneficiaries of this trust.

ARTICLE 9

DEFINITION OF TRUSTEE

Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine, and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall possess all the rights,

powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE 10

FEE SCHEDULE FOR TRUSTEE

For its services as Trustee, a corporate Trustee shall receive an amount which shall be determined by its Standard Fee Schedule in effect and applicable at the time of the performance of such services. If no such schedule shall be in effect at that time, or if the Trustee is an individual, the Trustee shall be entitled to reasonable compensation for the services rendered.

ARTICLE 11

TRUSTEE'S POWER TO SIGN AND EXECUTE

Notwithstanding anything in my trust to the contrary, when I am serving as Trustee under my Trust, I may act for and conduct business on behalf of my Trust as Trustee without the consent of any other Trustee.

No person or corporation dealing with the Trustee shall be required to investigate the Trustee's authority for entering into any transaction or to see to the application of the proceeds of any transaction.

ARTICLE 12

POWERS OF TRUSTEE

The Trustee shall have all the powers granted under Section 64.1-57 of the Code of Virginia, 1950, as amended. In addition, the Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust or by statute or general rules of law:

12.1 To retain in the form received any property or undivided interest in property donated to, or otherwise acquired as part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or non productivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although said property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

12.2 To invest and reinvest all or any part of the Trust Estate in any property and undivided interest in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

12.3 To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or upon credit, to exchange any property of the Trust Estate for other property,

at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

12.4 To hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

12.5 To keep, at any time and from time to time, all or any portion of the Trust Estate in cash uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

12.6 To sell or exercise stock subscription or conversion rights.

12.7 To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholder's meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

12.8 To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

12.9 To borrow money and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

12.10 To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

12.11 To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

12.12 To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

12.13 To continue and operate any business owned by the Grantor at the Grantor's death and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

12.14 To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

12.15 To insure the assets of the Trust Estate against damage or loss and the Trustee against liability with respect to third persons.

12.16 In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

12.17 To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best.

12.18 To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for

the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

12.19 To determine what shall be fairly and equitably charged or credited to income and what to principal.

12.20 To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

12.21 To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interest in other property to another beneficiary or beneficiaries.

12.22 In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own rights, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

12.23 To purchase property, real or personal, from the Grantor's general estate upon such terms and conditions as to price and terms of payment as the Grantor's executor or administrator and the Trustee shall agree, to hold the property so purchased as part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Grantor's executor or administrator and the Trustee are the same shall in no way affect the validity of this provision.

12.24 To lend funds to the Grantor's general estate upon such terms and conditions as to interest rates, maturities, and security as the Grantor's executor or administrator and the Trustee shall agree, the fact that they may be the same in no way affecting the validity of this provision.

12.25 To receive property bequeathed, devised or donated to the Trustee by the Grantor or any other person; to receive the proceeds of any insurance policy which names the Trustee as beneficiary; to execute all necessary receipts and releases to executors, donors, insurance companies and other parties adding property to the Trust Estate.

12.26 To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably determines that the administration as a single trust is consistent with my intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

12.27 To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Grantor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

12.28 If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

12.28.1 Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

12.28.2 Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

12.28.3 If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee

may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust. Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts. The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

ARTICLE 13

RIGHTS OF MYSELF AND TRUSTEE IN INSURANCE POLICIES

During my life, I shall have all rights under any life insurance policies payable to the Trustee, including the right to change the beneficiary, to receive any dividends or other earnings of such policies without accountability therefor to the Trustee or any beneficiary hereunder, and may assign any policies to any lender, including the Trustee, as security for any loan to me or any other person; and the Trustee shall have no responsibility with respect to any policies, for the payment of premiums or otherwise, except to hold any policies received by the Trustee in safekeeping and to deliver them upon my written request and upon the payment to the Trustee of reasonable compensation for services. The rights of any assignee of any policy shall be superior to the rights of the Trustee. If any policy is surrendered or if the beneficiary of any policy is changed, this Trust shall be revoked with respect to such policy. However, no revocation of the Trust with respect to any policy, whether pursuant to the provisions of the preceding sentence or otherwise, shall be effective unless the surrender or change in beneficiary of the policy is accepted

by the insurance company. Upon the death of the insured under any policy held by or known to, and payable to, the Trustee, or upon the occurrence of some event prior to the death of myself that matures any such policy, the Trustee, in its discretion, may either collect the net proceeds and hold them as part of the principal of the Trust Estate, or may exercise any optional method of settlement available to it, and the Trustee shall deliver any policies on my life held by it and payable to any other beneficiaries as those beneficiaries may direct. Payment to, and the receipt of, the Trustee shall be a full discharge of the liability of any insurance company, which need not take notice of this agreement or see to the application of any payment. The Trustee need not engage in litigation to enforce payment of any policy without indemnification satisfactory to it for any resulting expenses.

ARTICLE 14

DISCRETION TO TERMINATE SMALL TRUST

If at any time any trust created hereunder has a fair market value as determined by the Trustee of Fifty Thousand Dollars (\$50,000.00) or less, the Trustee, in its absolute discretion if it determines that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one income beneficiary, the Trustee shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE 15

COMMON DISASTER PROVISION

If any beneficiary and I should die under such circumstances as would render it uncertain whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Trust that said beneficiary predeceased me.

ARTICLE 16

PROTECTION FROM CREDITORS

Except as otherwise provided herein, all payments payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

ARTICLE 17

PERPETUITIES SAVINGS CLAUSE

Notwithstanding anything herein to the contrary, the trusts created hereunder shall vest in ownership not later than Twenty-one (21) years after the death of the last survivor of my issue living at the time of the signing of this Trust or amendments, if any. If necessary in order to avoid the application of the Rule Against Perpetuities, at the latest date described above the Trustee shall distribute each remaining trust hereunder to the

beneficiary or beneficiaries of the current income thereof, and if there is more than one beneficiary, in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE 18

GOVERNING LAW

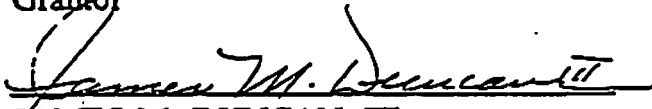
This Trust Agreement and the trusts created hereby shall be construed, regulated, and governed by and in accordance with the laws of the State of Virginia.

IN WITNESS WHEREOF, I have signed this Trust, as Grantor and as Trustee, effective the date written at the beginning.



JAMES M. DUNCAN, III

Grantor



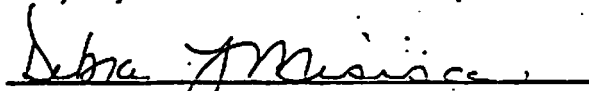
JAMES M. DUNCAN, III

Trustee

STATE OF VIRGINIA

COUNTY OF FAIRFAX

The foregoing instrument was personally acknowledged before me this 7th day of September, 1993, by JAMES M. DUNCAN, III, Grantor and Trustee.



Notary Public

My commission expires April 30, 1997.

SCHEDULE A

(to THE JAMES M. DUNCAN, III LIVING TRUST)

This Schedule A is included only for the convenience of the Trustee and beneficiaries, and any failure to list assets on Schedule A will in no way alter the Trust's ownership of those assets. The undersigned acknowledges the following property to be a part of the Trust Estate:

1. The personal property listed or described in the attached Deed of Gift No. 1.
2. Life Insurance policy No. _____, issued by _____ Insurance Company, in the face amount of \$_____.
3. All my present and future interest in the following real estate, together with all present and future improvements thereon:
 - a. 200 N. Henry Street (alternately called 1101 Cameron Street), City of Alexandria, Virginia.
 - b. 1112 (or 1115) Cameron Street ("Hopkins warehouse"), City of Alexandria, Virginia.
 - c. My 3/4 interest in 1552 East Twin Palms Drive, Palm Springs, California.
 - d. 859 Comino Condor, Palm Springs, California.
4. My interest in the following accounts in the following institutions, together with all future additions, interest, or accumulations therein and also including all new accounts and the accumulations and the future additions, interest or accumulation in any and all other financial institutions in which new accounts are opened in the future:


Account at: Ferris, Baker Watts, Inc.
1720 I Street, N.W.
Washington, DC 20006
Acct. No. 02222230-02-32
Loren Danielson, 202-429-3500

Account at: Bank of Palm Springs
601 E Tahquitz Way
Palm Springs, CA 92262
Acct. #022-092365
(A branch of the Bank of California)

5. My interest in the following securities in the following companies together with all future accumulations and purchases in said companies, together with all future securities and accumulations purchased in any and all other companies:

Burke & Herbert Bank & Trust Co.
#01140752

6. All my rights, title and interest in the following:


JAMES M. DUNCAN, III
Trustee

DEED OF GIFT No. 1

I, JAMES M. DUNCAN, III, hereby transfer unto THE JAMES M. DUNCAN, III LIVING TRUST, created by document of this date by and between myself as Grantor and Trustee, all of my tangible personal property of every kind and description including, without limitation, household goods, furniture and jewelry, presently owned or hereafter acquired by me.


JAMES M. DUNCAN, III

Date: September 7, 1993

Bill

FIRST AMENDMENT
TO
THE JAMES M. DUNCAN, III LIVING TRUST
DATED SEPTEMBER 7, 1993

This First Amendment to The James M. Duncan, III Living Trust is made this 30th day of June, 1994 by JAMES M. DUNCAN, III, Trustor and Trustee. The Trustor hereby amends as follows:

ARTICLE 6.

Paragraph One of Article 6 shall be amended to read as follows:

THE CHARITABLE REMAINDER TRUST

Upon my death, the Trustee shall continue the Trust for the benefit of WILLIAM Y. AUSTIN. For convenience, references in this Trust to the "Income Beneficiary" shall refer to WILLIAM Y. AUSTIN. If WILLIAM Y. AUSTIN shall not survive, Trust balance shall be held and distributed pursuant to Article 6 and Paragraph 6.13. The Trust shall be distributed as follows:

Continuing paragraphs 6.1 through paragraphs 6.13 shall remain unchanged.

ARTICLE 8

Article 8 shall be amended as follows:

SUBSTITUTE OR SUCCESSOR TRUSTEES

8.1 Successor Trustee. Upon the death or resignation of myself as the original Trustee, unless other provisions shall be made by me, the first successors shall be Co-Trustees. BURKE & HERBERT BANK & TRUST COMPANY of Alexandria, Virginia and WILLIAM Y. AUSTIN shall serve as Co-Trustees.



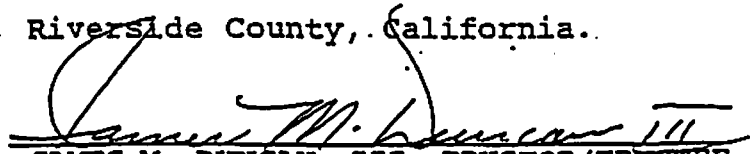
The appointment of a successor Trustee or Co-Trustee shall be effective upon acceptance of fiduciary duties by the successor Trustee, at which time all references herein to "my Trustee" shall refer to the successor Trustee. On resignation or death of WILLIAM Y. AUSTIN, BURKE & HERBERT BANK & TRUST COMPANY shall serve as sole Trustee. If BURKE & HERBERT BANK & TRUST COMPANY shall not serve, another professional Bank & Trust Company shall serve.

8.2 Appointing a Co-Trustee. Any Trustee may in his or her discretion appoint a Co-Trustee to succeed that Trustee. Any successor Trustee shall be deemed to be in office and entitled to act upon delivery of its written acceptance of this Trust to an acting Trustee, or if none, to beneficiary or beneficiaries. Any Co-Trustee may delegate his or her powers in writing to the other Trustee for a period not to exceed one year, may revoke that designation, and may successively renew it. Any successor Trustee shall have all the powers, immunities and discretions given to the original Trustee.

Continuing paragraphs 8.3 and 8.4 shall remain unchanged.

Except as herein amended, the Trustor hereby ratifies approves and confirms The James M. Duncan, III Living Trust, dated September 7, 1993.

The Trustor and Trustee has executed this First Amendment to The James M. Duncan, III Living Trust this 30th day of June, 1994 at the City of Palm Springs, Riverside County, California.


JAMES M. DUNCAN, III, TRUSTOR/TRUSTEE

First Amendment to
Living Trust

JAMES M. DUNCAN, III

ALL PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA

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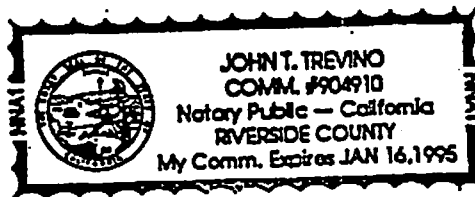
COUNTY OF RIVERSIDE

)

On June 30, 1994 before me, JOHN T. TREVINO, Notary Public, personally appeared JAMES M. DUNCAN, III, Trustor/Trustee of the JAMES M. DUNCAN, III LIVING TRUST dated September 7, 1993, personally known to me, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his 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.


Notary Public



CAPACITY CLAIMED BY SIGNER

INDIVIDUAL
XXX TRUSTOR/TRUSTEE

SIGNER IS REPRESENTING:

Name of Person(s) or Entit(ies)
JAMES M. DUNCAN, III, Trustor/
Trustee

TITLE OR TYPE OF DOCUMENT: FIRST AMENDMENT TO JAMES M. DUNCAN, III
NUMBER OF PAGES: 3 LIVING TRUST
DATE OF DOCUMENT: June 30, 1994
SIGNER(S) OTHER THAN NAMED ABOVE: _____

First Amendment to
Living Trust

3

JAMES M. DUNCAN, III

**THE J. M. DUNCAN III
CHARITABLE REMAINDER UNITRUST**

This TRUST AGREEMENT ("Agreement") is made and is effective on ^{August 4th} ~~July~~ 4, 1999, by and between JAMES M. DUNCAN, III, residing at 1552 East Twin Palms Drive, Palm Springs, CA 92264 (the "Donor") and, JAMES M. DUNCAN, III, and his successor(s) (the "Trustee" and sometimes as "it" or "its").

I.

AGREEMENT OF TRUST

The Donor is irrevocably assigning, transferring and delivering to the Trustee all right, title and interest in and to the property described in Exhibit A, a copy of which is attached hereto and specifically made a part hereof by this reference. The Trustee hereby accepts such irrevocable gift and agrees to hold, administer and distribute such property, together with any other property which is or shall become an asset of this trust, in accordance with the provisions of this Agreement. The trust created hereunder shall be known as "THE J. M. DUNCAN III CHARITABLE REMAINDER UNITRUST" (the "Trust").

II.

DISTRIBUTIONS

A. Income and Principal. During the lifetime of the Donor, the Trustee shall distribute the income and principal of this Trust as follows:

1. In each taxable year of this Trust, the Trustee shall pay the Unitrust Amount (as defined in Paragraph A.2 of this Article II) to the Donor during the Donor's lifetime.

2. The "Unitrust Amount" shall include the amount described in Paragraph A.2(a) during the Initial Period and the amount described in Paragraph A.2(b) during the Remaining Period. The "Initial Period" shall commence on the effective date of this Trust and shall terminate on the last day of the taxable year in which the Triggering Event occurs. The "Remaining Period" shall commence on the first day of the taxable year that immediately follows the taxable year in which the Triggering Event occurs and shall terminate on the date of death of the Donor. The "Triggering Event" shall occur in the year in which the property that is

any time be incompetent, the Trustee may pay the Unitrust Amount to the trustee of any trust established exclusively for the benefit of the Donor, if such a trust has been established, and if not, then to the conservator, custodian or legally appointed guardian of the person or estate of the Donor. Any such payment for the benefit of the Donor shall release the Trustee from its obligation to pay the Unitrust Amount, and the Trustee shall have no duty to supervise or inquire into the application of any funds so paid.

5. Upon the death of the Donor, the Trustee shall distribute the then principal and income of this Trust in accordance with Article III herein.

B. Valuation Date. The net fair market value of the Trust assets shall be determined annually on the first day of each taxable year of this Trust (including any short taxable year), in accordance with the provisions of Paragraph F of this Article II.

C. Short Years. The first taxable year of this Trust shall commence on the date hereof and shall end on December 31 of that year. Subsequent taxable years shall be on a calendar year basis, except that the last taxable year of this Trust shall end on the date that this Trust terminates pursuant to Article III herein. In the case of a taxable year which is for a period of less than twelve (12) months (other than the taxable year in which the survivor of the Donors dies), the amount described in Paragraph A.2(a)(ii) of this Article II or Paragraph A.2(b) of this Article II, as the case may be, shall be such amount multiplied by a fraction the numerator of which is the number of days in the taxable year of this Trust and the denominator of which is 365 (366 if February 29 is a day included in the numerator). In the case of the taxable year in which the survivor of the Donors dies, the amount described in Paragraph A.2(a)(ii) of this Article II or Paragraph A.2(b) of this Article II, as the case may be, shall be such amount multiplied by a fraction the numerator of which is the number of days in the period beginning on the first day of such taxable year and ending on the date of death of the survivor of the Donors and the denominator of which is 365 (366 if February 29 is a day included in the numerator). Notwithstanding the foregoing, the obligation of the Trustee to pay the Unitrust Amount shall terminate with the regular periodic payment next preceding the date of death of the survivor of the Donors

D. Additional Contributions. Any person may contribute property to this Trust, with the consent of the Trustee, either during life or at death. For the taxable year of this Trust in which any additional contribution is made, the additional property shall be valued at the time of contribution, and the amount described in Paragraph A.2(a)(ii) of this Article II or Paragraph A.2(b) of this Article II, as the case may be, shall be NINE percent (9%) of the sum of the following components:

1. The net fair market value of the Trust assets determined on the first day of the taxable year (and thus excluding the value of the additional property, and earned income from, and any appreciation on, such property after its contribution); and

2. That proportion of the value of the additional property (that was excluded under subparagraph 1 immediately above) which the number of days in the period that begins with the date of contribution and ends with the earlier of the last day of such taxable year or the date of death of the Donor bears to the number of days in the period that begins on the first day of such taxable year and ends with the earlier of the last day of such taxable year or the date of death of the Donor.

If an additional contribution is made by Will, the obligation to pay the Unitrust Amount payable with respect to the additional contribution shall commence with the date of death of the person under whose Will the additional contribution is made. Payment of that portion of the Unitrust Amount may be deferred, however, from such date of death to the end of the taxable year in which occurs the complete funding of the additional contribution. Within a reasonable time following such complete funding of the additional contribution, the Trustee shall pay to the Donor, in the case of an underpayment, or receive from the Donor, in the case of an overpayment, the difference between: (a) any Unitrust Amount actually paid to the Donor, plus interest on such amounts, compounded annually, computed for any period at the rate of interest that the Federal Income Tax Regulations (the "Regulations") under Section 664 of the Code prescribe for this Trust for such computation for such period; and (b) the Unitrust Amount payable, plus interest compounded annually, computed for any period at the rate of interest that the Regulations under Section 664 of the Code prescribe for this Trust for such computation for such period. Any payments required to be made because of an underpayment shall be paid to the Donor (or the

Donor's estate) who received the underpayment. Any repayments required to be made because of an overpayment shall be repaid by the Donor (or the Donor's estate) who received the overpayment.

E. Net Income. The net income of this Trust shall be determined by the Trustee pursuant to the terms of this Agreement, Section 643(b) of the Code and the Regulations thereunder.

F. Fair Market Value. The Trustee shall compute the net fair market value of the Trust assets considering all assets and liabilities without regard to whether particular items are taken into account in determining the net income of this Trust; provided, however, in the event an unmarketable asset as described in Regulation Section 1.664-1(a)(7)(ii) is transferred to or held by this Trust, and whenever this Trust is required to value such assets, the valuation shall be either performed exclusively by an Independent Special Trustee (as defined below) or determined by a current qualified appraisal, as defined in Regulation Section 1.170A-13(c)(3), from a qualified appraiser, as defined in Regulation Section 1.170A-13(c)(5). All determinations of the net fair market value of the Trust assets shall be in accordance with generally accepted fiduciary accounting principles and any United States Treasury requirements governing charitable remainder unitrusts. In any conflict, Treasury requirements shall prevail over generally accepted fiduciary accounting principles and any inconsistent provisions of this Agreement. In the event that the net fair market value of the Trust assets is determined incorrectly for any taxable year, the Trustee shall pay to the Donor, or the Donor's estate (in the case of an undervaluation), or be repaid by the Donor, or the Donor's estate (in the case of an overvaluation), an amount equal to the difference between the Unitrust Amount which the Trustee should have paid to the Donor if the correct values were used, and the Unitrust Amount which the Trustee actually paid to the Donor. Such payments or repayments shall be made within a reasonable period after the final determination of the correct value.

III.

TERMINATION

This Trust shall terminate within a reasonable time after the date of death of the Donor; provided, however, that such reasonable time shall not extend beyond the last day of the month in

which occurs the ninetieth (90th) day following the date of death of the Donor. Upon termination, the Trustee shall distribute all of the then principal and income of this Trust, free of trust, other than any amount due to the Donor or the Donor's estate as follows: (1) forty-nine percent (49%) to the JAMES M. DUNCAN, JR., LIBRARY, in Alexandria, Virginia; (2) fifty percent (50%) to the ST. PAUL OF THE DESERT EPISCOPAL CHURCH of Palm Springs, California; and one percent (1%) to Gamma Mu Foundation, 8350 Greensboro Road, McLean, Virginia 22102.

Notwithstanding any contrary provision of this Agreement, during the Donor's lifetime, the Donor shall retain the right, by acknowledged written instrument, to change the charitable remainderman or remaindermen by adding or substituting new organizations and/or omitting certain organizations or by altering the share each is to receive. If more than one written instrument is so delivered to the Trustee, the written instrument bearing the latest date shall control and shall be deemed to revoke all prior written instruments unless the most recent one shall provide otherwise.

The originally designated charitable remainderman and any such additional and/or substitute charitable remainderman shall herein be referred to as "Donee" in the singular, and "Donees" in the plural. If any Donee is not an organization described in each of Sections 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Code at the time when any principal or income of this Trust is to be distributed to it, the Trustee shall distribute such principal or income in proportion to the relative shares of the Donees which are so described and, if none of the Donees is so described, to one or more organizations then so described as the Trustee shall select and in such shares as it shall determine. The terms "Donee" and "Donees" as used herein shall include an alternate charitable remainderman (or remaindermen) selected by the Trustee in accordance with the immediately preceding sentence.

IV.

THE TRUSTEE

A. Appointment. JAMES M. DUNCAN, III, shall serve as Trustee of this Trust. If he shall for any reason fail to qualify or cease to act as Trustee, then the Northern Trust Bank of

California N.A., shall be appointed as successor Trustee to act in his place and stead. No bond or other security shall be required of any person acting as Trustee, whether serving jointly or alone.

B. Special Trustee.

1. If the Donee shall at any time act as Trustee, the Donee shall have the right and option to appoint an "Independent Special Trustee" (as defined below) whenever:

(a) An unmarketable asset as described in Regulation Section 1.664-1(a)(7)(ii) is transferred to or held by this Trust, to exclusively determine the fair market value of such asset at the time of contribution or acquisition and for purposes of the annual determination of the net fair market value of the Trust assets; or

(b) The Trustee determines that the acquisition or ownership of an "Annuity Contract" (as defined below) or any other investment would cause this Trust to be treated as a grantor trust under Sections 671-679 of the Code, to exercise solely any and all of the powers delineated in Article V herein with respect to any such investment; or

(c) The Trustee determines that such appointment is appropriate, to take such action as the Trustee shall clearly define.

2. An "Independent Special Trustee" (and any successor) must be appointed pursuant to this Paragraph B and must be an "Independent Trustee" as defined in Regulation Section 1.664-1(a)(7)(iii).

3. If any Donee is not a Trustee hereunder, or if one of the Trustees is not an Independent Special Trustee, the Trustee(s) must appoint an Independent Special Trustee for the situation described in Paragraph B.1(b) of this Article IV and shall have the right and option to appoint an Independent Special Trustee for the situations described in Paragraphs B.1(a) and (c) of this Article IV.

4. The Independent Special Trustee shall have no powers, duties, or liabilities hereunder, except with respect to matters specifically described in this Paragraph B, and solely with respect to such matters, the Independent Special Trustee may exercise the powers, authority and discretion accorded to a Trustee pursuant to Article V herein. However, the Independent Special Trustee may not function in a manner which would jeopardize the status of this Trust as a

charitable remainder trust as defined in Section 664 of the Code, the Regulations thereunder and Internal Revenue Service rulings governing the operation thereof. No Trustee (other than an Independent Special Trustee) shall have any power, duty or liability hereunder with respect to matters described in this Paragraph B.

5. If an Independent Special Trustee is appointed hereunder, the Trustee shall make such appointment in a separate written instrument that expressly refers to this Paragraph B. Any Independent Special Trustee so appointed may resign by giving written notice to the Trustee by certified mail to the last known address of the Trustee at least ninety (90) days before such resignation shall become effective.

C. Resignation. Any Trustee may resign at any time by giving written notice to the Donor and to all beneficiaries of this Trust, individual and charitable, by certified mail to the last known address of such beneficiaries at least ninety (90) days before such resignation shall become effective.

D. Replacement. The Donor, while living and legally competent, shall have the right, upon ninety (90) days written notice to the Trustee or Independent Special Trustee (herein referred to in the singular as "Fiduciary" and in the plural as "Fiduciaries") to replace or discharge an acting Fiduciary, and to designate a successor Fiduciary or successor Co-Fiduciaries. Upon the legal disability of the Donor, this right may be exercised by any person entitled to receive the Unitrust Amount on behalf of the Donor pursuant to Paragraph A.5 of Article II hereof.

E. Liability of Successor. A successor Fiduciary shall not be responsible to any beneficiary of this Trust or to this Trust for any act or omission of a former Fiduciary, and shall not be required to audit or investigate the acts or administration of any former Fiduciary. In addition, unless requested in writing by a beneficiary of this Trust and indemnified adequately (in such Fiduciary's discretion therefor), no successor Fiduciary shall have any duty to take action to seek redress for breach of trust by a former Fiduciary.

F. Compensation. A Fiduciary other than any Donee shall be entitled to reasonable compensation for any and all services rendered as Fiduciary.

G. Liability for Retaining Property. The Fiduciary shall not be liable for any loss or depreciation in value sustained by this Trust as a result of the Fiduciary accepting or retaining any

property upon which hazardous materials or substances are discovered, unless the Fiduciary contributed to the loss or depreciation in value through willful default, willful misconduct or gross negligence.

H. Indemnification. The Donor shall indemnify the Fiduciary against any claims (except for claims due to the Fiduciary's willful default, willful misconduct or gross negligence) filed against the Fiduciary (i) as an "owner" or "operator" under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (as from time to time amended) or any regulation thereunder and (ii) under any other federal, state or local environmental law, rule, regulation or order relating to the property contributed to this Trust by the Donor.

I. Jurisdiction. This Trust shall not be administered under the jurisdiction of any court. Should a question or issue be submitted to a court of competent jurisdiction at any time or from time to time, such court shall acquire jurisdiction of only the question or issue submitted to it, and the jurisdiction of such court shall terminate upon the conclusion or settlement of such question or issue.

V.

POWERS OF THE TRUSTEE

All powers, authority and discretion exercisable by the Trustee under this Trust or by law shall be binding and conclusive on all interested parties; shall be exercisable by the Trustee in its sole and absolute discretion; shall be construed in the broadest possible manner; and shall be exercisable without prior or subsequent application to any court under the jurisdiction of which this Trust may be administered. Not in derogation of or in limitation upon the powers, authority and discretion conferred by law upon a trustee, the Trustee is vested with the following powers, authority and discretion:

A. To alter, repair, improve, erect buildings upon, demolish, manage, partition, mortgage, lease for any period, including a period in excess of any fixed by statute or extending beyond the duration of this Trust, exchange, grant options to lease or to buy, and sell or dispose of, at public or private sale, and upon such conditions and such terms as to cash and credit as it deems advisable, any of the Trust assets;

B. To compromise, settle, subordinate, arbitrate, extend, renew, modify, or release, in whole or in part, any claim held by it or held against any of the Trust assets hereunder;

C. To continue to hold the property transferred to it hereunder in the form in which it shall be when transferred or as the form thereof may be changed pursuant to the other provisions of this Agreement, without regard to the limitations imposed by law upon the investment of trust funds;

D. To borrow money and to encumber or hypothecate Trust assets whether by mortgage, deed of trust, pledge or otherwise;

E. To commence or defend litigation with respect to the Trust assets, at the expense of the Trust assets;

F. To employ any person, firm, corporation, bank, or trust company for advice with respect to investment policy or any other matter, but the Trustee may follow or refrain from following any recommendation so obtained and such recommendations shall not in any way limit the discretionary power and authority conferred upon the Trustee hereunder with respect to investments or other matters;

G. To retain accountants, attorneys, brokers, investment advisers, investment counselors and other agents, and may pay reasonable compensation for their services;

H. To enter into any and all agreements with the Internal Revenue Service or any other governmental body and to execute, from time to time, any declarations of policy or disclaimers restricting the powers, authority and discretion granted to the Trustee;

I. To invest and to reinvest the Trust assets in every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not limited to, corporate and government obligations of every kind, stocks (preferred or common), partnerships (general or limited), limited liability companies, options, shares or interests in common trust funds, life insurance contracts and annuity contracts, regardless of any laws or rules of law governing the investment of trust funds; to lawfully disregard any laws or rule of law that, in the absence of contrary trust provisions, would limit the amount any trustee can invest in or pay for any life insurance contract and annuity contract; with respect to unproductive property (i.e., property

which is not producing fiduciary income currently for distribution to the income beneficiary or beneficiaries), the Fiduciary is hereby authorized to continue to hold or to acquire such property, especially when such unproductive property is appreciating or may appreciate in value; and carrying charges for such property shall be paid first out of income and then out of principal; and upon the sale of such property, the Fiduciary shall allocate fiduciary income and principal as set forth in Paragraph L of this Article V; and nothing in this Agreement shall be construed to restrict the Fiduciary from investing the Trust assets in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of Trust assets;

J. With respect to any investment held by the Trustee, to participate in and consent to any corporate or financial reorganization, dissolution, liquidation, merger, consolidation, sale or lease, or in and to any other change in its financial structure; and to become a depositor with any protective, reorganization, or similar committee, and to make any necessary payments incident to the foregoing; to organize or participate in the organization of corporations or other business entities, and to transfer to them any part or all of the Trust assets in exchange for an investment therein; to exercise or to sell any conversion, subscription, or similar rights; and in general to exercise in respect to any investment the unrestricted rights of a personal owner, including voting in person and granting proxies, discretionary, general, or otherwise;

K. In any case in which the Trustee makes any payments or other distribution of Trust assets, to make such payment or distribution in money or in kind, including undivided interests in any property, or partly in money and partly in kind; and in the case of any distribution in kind to any Donee, the adjusted basis of the Trust property distributed shall be fairly representative of the adjusted bases of all Trust properties available for distribution on the date of distribution;

L. To apportion and allocate Trust receipts and expenses between income and principal accounts (provided that no pre-gift appreciation shall be allocable to fiduciary income); and to treat as fiduciary income the increase in value of an obligation for the payment of money, payable at a future time in accordance with a fixed, variable or discretionary schedule of appreciation in excess of the fair market value on the date of contribution or the price at which it was issued, or the increase in value of an interest in a partnership or other investment in excess of the fair market value on the date of contribution or the price paid, as the case may be, including but

not limited to a bond, a zero coupon bond, an annuity contract before annuitization, a life insurance contract before the death of the insured and/or an interest in a common trust fund as defined under Section 584 of the Code; and such increase in value of an obligation for the payment of money or the increase in value of an interest in a partnership or other investment shall be available for distribution only when the Trustee receives cash on account of the obligation, partnership interest or other investment;

M. To retain the services of an independent appraiser to assist in valuing assets of this Trust and to reasonably compensate such appraiser for such services;

N. If required by the Code, the Regulations or any Internal Revenue Service rulings thereunder to maintain the status of the Trust as a charitable remainder unitrust, to set aside a reserve or allowance from Trust income for the depreciation or depletion of any property transferred to or invested in by the Trust; otherwise, the Trustee shall have discretion whether or not to set aside such a reserve;

O. With respect to any environmental hazards on Trust property,

1. To take all appropriate actions to prevent, identify or respond to actual or threatened violations of any environmental law, rule or regulation, including compliance with any federal, state or local agency or court order directing an assessment, abatement or cleanup of any environmental hazard;

2. To disclaim, in whole or in part, any interests in property for any reason, including but not limited to, a concern that such property could cause potential liability under any federal, state, or local environmental law, rule or regulation; and/or

3. To set aside any interests in property, which could cause potential liability under any federal, state, or local environmental law, rule or regulation as a separate trust to be held and administered upon the same terms as those governing the remaining Trust assets;

P. To designate as custodian of any Trust property any business entity authorized and engaged in the business of brokers or dealers in securities;

Q. To the extent permitted by law, to register any of such property in its name as Trustee or in the names of nominees, or to take and keep the same unregistered or in bearer form, or in such condition as to pass by delivery; and/or

R. Except as otherwise provided in Paragraph B of Article IV, whenever the Trust acquires by gift or purchase an annuity contract of any type ("Annuity Contract"), to exercise with respect to such Annuity Contract any rights, duties and discretion as owner thereof, including but not limited to the right, duty or discretion to:

1. Partially or totally surrendering the Annuity Contract at any time(s) or from time to time;
2. Making partial withdrawals from the Annuity Contract giving due regard to any withdrawal or partial surrender penalties that may be imposed and to the best interest of all Trust beneficiaries;
3. Electing any annuity option(s) therein granted; provided, however, that the option so elected guarantees the payment to the Trust by or upon the death of the annuitant of an amount at least equal to the surrender value of the Annuity Contract(s) as of the day before the day the annuity payments commence;
4. Designating the day the annuity payments commence; and/or;
5. Seeing to the allocation of any payments of any type received from the Annuity Contract between principal and income as is required by this Trust and the Principal and Income Laws under the State or Commonwealth which governs this Trust pursuant to Article VI hereof.

S. To pay premiums on a Trust-owned policy of life insurance; provided, however, any such premium payment shall be charged solely to the Trust's principal account and, notwithstanding any statute, rule or convention to the contrary, no part of any such premiums shall be paid with Trust income (as income is defined for purposes of Section 677(a)(3) of the Code only).

Anything in this Agreement to the contrary notwithstanding, it is the intention of the Donor to create a qualifying charitable remainder unitrust under Section 664 of the Code; therefore, no powers, authority or discretion either otherwise granted by this Agreement or by applicable state law that exceed or are inconsistent with those allowed under Section 664 of the Code and the Regulations thereunder are to be possessed or exercised by the Trustee.

VI.

APPLICABLE LAW

The validity of this Trust shall be controlled by the laws of the State of California. The construction and administration of this Trust shall be controlled by the laws of the State of California, or if the Trustee designates in writing to the contrary, by the laws of the Commonwealth or State in which this Trust is administered. However, in any conflict with Section 664 of the Code, the Regulations thereunder or any other existing or hereafter promulgated legislative or Treasury requirements for the qualification of this Trust and for the Donor's obtaining the full benefit of any income, gift and estate tax charitable deductions to which the Donor (and the Donor's estate) may be entitled, Section 664 of the Code, the Regulations thereunder and the legislative and Treasury requirements shall govern.

VII.

IRREVOCABILITY AND AMENDMENT

This Trust shall be irrevocable. However, the Trustee shall have the power, acting alone, to amend this Agreement in any manner required for the sole purpose of ensuring that this Trust qualifies and continues to qualify as a charitable remainder unitrust within the meaning of Section 664 of the Code and the Regulations thereunder.

VIII.

PROHIBITED ACTS

Notwithstanding any other provision of this Agreement, no Fiduciary shall (except for the payment of the Unitrust Amount) engage in any act of self-dealing (as defined in Section 4941(d) of the Code), retain any excess business holdings (as defined in Section 4943(c) of the Code) which would subject this Trust to tax under Section 4943 of the Code, make any investments which would subject this Trust to tax under Section 4944 of the Code, or make any taxable expenditure (as defined in Section 4945(d) of the Code). If Section 4942 of the Code is deemed applicable to this Trust by reason of Section 508(e) of the Code or otherwise, then the Trustee shall make distributions at such times and in such manner as not to subject this Trust to tax under Section 4942 of the Code.

IX.

INTENTION TO CREATE UNITRUST

It is the Donors' intention to obtain the full benefit of any income, gift and estate tax charitable contribution deductions to which they (and their estates) may be entitled to under the Code and for this Trust to qualify as a charitable remainder unitrust within the meaning of Regulation Section 1.664-3(a)(1)(i)(c), and Code Section 664(d)(2) and (3) and Code Section 664(d)(2), as the case may be.

X.

DEATH TAXES

No federal estate taxes, state death taxes or any other estate, death, inheritance or welfare transfer taxes ("death taxes") with respect to this Trust shall be allocated to or be recoverable from this Trust. The Donor agrees to provide in his/her Will, or any other appropriate estate planning documents, that any death taxes arising from the creation of this Trust, or the interest of the Donor therein, shall be payable from the estate of the Donor, excluding the assets of this Trust. The Donor hereby imposes an affirmative obligation on his/her estate to pay all of such death taxes (if any) from sources other than this Trust and agrees that this obligation may be enforced by the Trustee or any Donee, acting alone or together.

XI.

MISCELLANEOUS

A. Spendthrift. The Donor shall not have any power to sell, transfer, assign, pledge, mortgage, or alienate all or any part of the Donor's beneficial interest in the principal or income of this Trust in any manner whatsoever. The interest of the Donor shall not be subject to the claims of the Donor's creditors or to attachment, execution, bankruptcy proceedings or any other legal process.

B. Internal Revenue Code. Throughout this Agreement, the word "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and references to a Section of the Code shall include any successor provisions to the Section referred to and to any corresponding provisions of any subsequent federal tax laws.

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on ~~July~~ *August* *1999*
4, 1999, at Palm Springs, California. 92264

DONOR:

James M. Duncan III
JAMES M. DUNCAN, III

TRUSTEE:

James M. Duncan III
JAMES M. DUNCAN, III

State of California)
County of ~~San Diego~~ ^{SS.} Riverside

On ~~July~~ ^{Aug} 4, 1999, before me, Donna Kassler, a notary public,
personally appeared JAMES M. DUNCAN, III, personally known to me (or proved to me on the
basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon
behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Donna Kassler

(Seal)

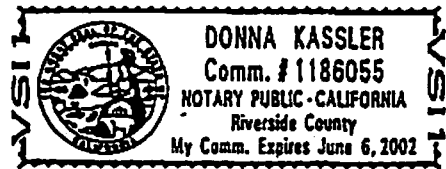


EXHIBIT A

THE DUNCAN
CHARITABLE REMAINDER UNITRUST

1. All that certain parcel of land situate in the City of Alexandria, State of Virginia, generally described as follows:

BEGINNING at the northwest corner of Henry and Cameron Street; thence in a westerly direction along the northerly line of Cameron Street 246 feet 10 inches to the northeast corner of Cameron and Fayette Streets; thence from said front back between parallel lines 176 feet 7 inches, the easterly line of said lot being the westerly line of Henry Street and the westerly line of said lot being the easterly line of Fayette Street containing 43,587 square feet, LESS AND EXCEPT a portion of said parcel of land at the corner of North Henry Street and Cameron Street leased to the American Oil Company with a frontage of 110 feet on Cameron Street and 125 feet on North Henry Street; it being understood that there is a plat prepared by Holland Surveyors, Alexandria, Virginia, dated February 12, 1959, more particularly describing this property.

Receipt of the above described asset is hereby acknowledged this 4 day of ~~July~~^{August}, 1999.

TRUSTEE:


JAMES M. DUNCAN, III

NORTHERN TRUST BANK OF CALIFORNIA N.A. by and through the undersigned authorized officer, hereby declines to accept its appointment as successor Trustee of THE J.M. DUNCAN III CHARITABLE REMAINDER UNITRUST created under that certain Trust Agreement dated August 4, 1999, wherein James M. Duncan, III, was the Donor and initial Trustee.

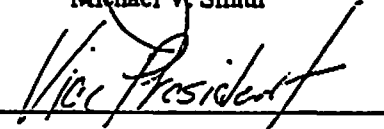
Signed this 21st day of April, 2000, in Indian Wells, California.

NORTHERN TRUST BANK OF CALIFORNIA N.A.

By: _____


Michael V. Smith

Its: _____


Vice President

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST
(Declaration dated September 7, 1993)

Complainant,

v.

In Chancery No. CH010249

THE CITY OF ALEXANDRIA, VIRGINIA, *et al.*,

ANSWER OF DEFENDANTS
THE CITY OF ALEXANDRIA, VIRGINIA;
ALEXANDRIA LIBRARY COMPANY;
AND LOUISE FORSTALL, DORTHY KOOPMAN,
LELIA SAUNDERS-BAILEY, ELIZABETH PORTER SIBOLD,
WILLIAM FRANCIS SMITH, HOWARD W. SMITH
AND JOYCE WOODSON
(COMPRISING THE ALEXANDRIA LIBRARY BOARD)

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA
FEB 13 3 20 PM '01

This Answer to the Bill of Complaint is filed by counsel on behalf of Defendants The City of Alexandria, Virginia; Alexandria Library Company; and Louise Forstall, Dorothy Koopman, Lelia Saunders-Bailey, Elizabeth Porter Sibold, William Francis Smith, and Joyce Woodson (comprising the Alexandria Library Board). The Defendants are hereafter referred to collectively as "Defendant Library."

In response to the Bill, Defendant Library respectfully represents as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.

6. Admitted.

7. Admitted.

8. Defendant Library admits that Complainant claims to have accepted and succeeded to the office of Successor Trustee of the Living Trust. With respect to the remaining allegations of Paragraph 8, Defendant Library denies that Complainant is acting validly as sole successor trustee or that the California Court had authority to confirm him alone in the office of Successor Trustee.

9. The allegations of Paragraph 9 of the Complaint are legal conclusions to which no response is required. To the extent they are deemed allegations of fact, the allegations are denied.

10. Denied that Decedent James M. Duncan, III, acted solely in his individual capacity. The remaining allegations of Paragraph 10 are admitted.

11. Denied that Decedent James M. Duncan, III, acted solely in his individual capacity. The remaining allegations of Paragraph 11 are admitted.

12. Denied that Decedent James M. Duncan, III, acted solely in his capacity as Trustee of the Unitrust. The remaining allegations of Paragraph 12 are admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted.

18. Admitted.

19. Denied.

20. Denied.

21. Denied.

22. All allegations not expressly admitted are denied.

WHEREFORE, having fully answered, the Defendant Library prays that the Bill of Complaint be dismissed, and that the Defendant Library recover its costs.

Respectfully submitted,

THE CITY OF ALEXANDRIA, VIRGINIA;
ALEXANDRIA LIBRARY COMPANY;
LOUISE FORSTALL,
DOROTHY KOOPMAN,
LELIA SANDERS-BAILEY
ELIZABETH PORTER SIBOLD,
WILLIAM FRANCIS SMITH,
HOWARD W. SMITH
JOYCE WOODSON
(Comprising the Alexandria Library Board)

By Counsel

D. BRIAN COSTELLO, P.C.

By:

D. Brian Costello, VSB #15123
8136 Old Keene Mill Road, Suite A-210
Springfield, Virginia 22152-1843
(703) 644-9200 Telephone
(703) 644-9400 Facsimile

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed to Peter A. Dingman and Elizabeth G. Engle, Dingman Labowitz, P.C., Counsel for Complainant, 526 King Street, Suite 209, St. Paul of the Desert Episcopal Church, 125 West El Almeda, Palm Springs, California 92262-5662, Gamma Mu Foundation, 8350 Greensboro Drive, McLean, Virginia 22102, Nationwide CH LLC c/o Ira Bloom 2801 New Mexico Avenue, N.W., Suite 1221, Washington, D.C. 20007 and c/o Demetrius P. Voudouris, Esq., Registered Agent, 3106 Trenhom Drive, Vienna, Virginia 22124, Defendants, this 13th day of March, 2001.

D. Brian Costello

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE :
JAMES M. DUNCAN, III, LIVING TRUST :

Complainant, :

v. :

CHANCERY NO. CH010249

THE CITY OF ALEXANDRIA, VIRGINIA, :
et al. :

Defendants. :

ANSWER OF NATIONWIDE CH LLC
TO THE BILL OF COMPLAINT

Defendant Nationwide CH LLC ("Defendant Nationwide") by and
through its undersigned counsel, hereby answers the Bill of
Complaint filed herein and as and for its cause states as follows:

In response to the numbered paragraphs of the Bill of
Complaint, Defendant Nationwide responds seriatim as follows:

1. Admitted.
2. Defendant Nationwide is without sufficient information to
admit or deny the allegations of this paragraph and therefore
denies same and demands strict proof thereof.
3. Defendant Nationwide is without sufficient information to
admit or deny the allegations of this paragraph and therefore
denies same and demands strict proof thereof.

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA
MAR 16 4 50 PM '01
BY EDWARD S. HONAN, CLERK
DEPUTY CLERK

4. Defendant Nationwide is without sufficient information to admit or deny the allegations of this paragraph and therefore denies same and demands strict proof thereof. Answering further, Defendant Nationwide avers that the document speaks for itself.

5. Defendant Nationwide is without sufficient information to admit or deny the allegations of this paragraph and therefore denies same and demands strict proof thereof.

6. Admitted.

7. Defendant Nationwide is without sufficient information to admit or deny the allegations of this paragraph and therefore denies same and demands strict proof thereof.

8. Defendant Nationwide is without sufficient information to admit or deny the allegations of this paragraph and therefore denies same and demands strict proof thereof. Answering further, Defendant Nationwide avers that the document speaks for itself.

9. Defendant Nationwide is without sufficient information to admit or deny the allegations of this paragraph and therefore denies same and demands strict proof thereof.

10. Defendant Nationwide is without sufficient information to admit or deny the allegations of this paragraph and therefore denies same and demands strict proof thereof.

11. Defendant Nationwide is without sufficient information to admit or deny the allegations of this paragraph and therefore denies same and demands strict proof thereof.

12. Defendant Nationwide admits that Duncan executed the Sales Contract on or about October 20, 1999, but Defendant Nationwide denies that Duncan was acting solely in his capacity as Trustee of the Unitrust.

13. Admitted.

14. Defendant Nationwide is without sufficient information to admit or deny the allegations of this paragraph and therefore denies same and demands strict proof thereof.

15. Defendant Nationwide is without sufficient information to admit or deny the allegations of this paragraph and therefore denies same and demands strict proof thereof.

16. Defendant Nationwide is without sufficient information to admit or deny the allegations of this paragraph and therefore denies same and demands strict proof thereof.

17. Defendant Nationwide is without sufficient information to admit or deny the allegations of this paragraph and therefore denies same and demands strict proof thereof.

18. Admitted.

19. Denied.

20. Admitted.

21. Denied.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Plaintiff's Bill of Complaint fails to state a cause of action upon which relief can be granted.

SECOND DEFENSE

Plaintiff's claims are barred by the doctrines of waiver, unclean hands, laches and/or mistake.

THIRD DEFENSE

Plaintiff's claims are barred by the doctrine of unclean hands.

FOURTH DEFENSE

Plaintiff's claims are barred by the doctrine of laches.

FIFTH DEFENSE

Plaintiff's claims are barred by the doctrine of mistake.

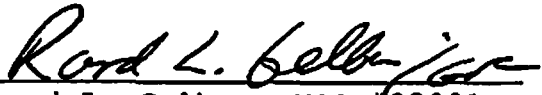
SIXTH DEFENSE


Plaintiff's claims are barred by the doctrine of fraud.

WHEREFORE, Defendant Nationwide demands that judgment be entered in its favor, that Plaintiff's claims against Defendant Nationwide be dismissed with prejudice, that all relief requested by Plaintiff be denied, with costs and expenses assessed against Plaintiff, and this Court award such other and further relief as it deems appropriate and just.

NATIONWIDE CH LLC

BY COUNSEL


Rand L. Gelber, VSB #23991
8150 Leesburg Pike, Suite 600
Vienna, VA 22030
(703) 356-0519


Gerald F. Chapman¹
6917 Arlington Road, Suite 350
Bethesda, MD 20814
301-652-3900, ext 3014
FAX: 301-652-3023

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of March, 2000, a true and correct copy of the above and foregoing was sent by first class mail, postage prepaid, to:

Peter A. Dingman, Esq.
Elizabeth G. Engle, Esq.
Dingman & Labowitz, P.C.
526 King Street, Suite 209
Alexandria, VA 22314

The City of Alexandria, VA
c/o Ignacio Pessoa, Esq.
301 King Street, Suite 1300
Alexandria, VA 22314

Alexandria Library Co.
c/o Howard W. Smith, Esq.
200 South Fairfax Street
Alexandria, VA 22314

St. Paul of the Desert
Episcopal Church
125 West El Alameda
Palm Springs, CA 92262-5662

Gamma Mu Foundation
8350 Greensboro Drive
McLean, VA 22102


RAND L. GELBER

¹A Motion to Admit Gerald F. Chapman pro hac vice is being filed concurrently with the filing of this Answer.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST

Complainant,

v.

THE CITY OF ALEXANDRIA, VIRGINIA,
et al.

Defendants.

NATIONWIDE CH LLC

Defendant and Counterclaimant,

v.

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST,

Plaintiff and Counter-Defendant.

CHANCERY NO. CM010249

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA
MAR 30 2 19 PM '01
EDWARD S. HENNING, CLERK
BY DEPUTY CLERK

TO THE HONORABLE JUDGES OF SAID COURT:

COUNTERCLAIM

COMES NOW Nationwide CH LLC ("Nationwide"), by and through its undersigned counsel, and for its Counterclaim against William Y. Austin, Trustee, respectfully represents as follows:

1. William Y. Austin, Trustee (the "Austin"), represents that he is the Trustee of the James W. Duncan, III, Living Trust created by Declaration dated September 7, 1993 and amended by First

Amendment dated June 30, 1994 to the James M. Duncan, III, Living Trust.

2. Nationwide is a limited liability company organized and existing under the laws of the Commonwealth of Virginia. Nationwide claims an interest in certain real property which is adverse to the interest of Austin.

3. The property at issue is located in the City of Alexandria, Virginia, and is described in a certain deed recorded in Deed Book 1498 at Page 1240, among the land records of the City of Alexandria, Virginia commonly known as 200 North Henry Street and 1115 North Cameron Street (the "Property").

4. On or about September 7, 1993, James M. Duncan, III ("Duncan") executed a certain Declaration of Trust creating and establishing the James M. Duncan, III, Living Trust (the "Living Trust"), naming himself as Trustee and Beneficiary of the Living Trust. A copy of the Living Trust is attached hereto as Exhibit A and incorporated herein by this reference.

5. On or about September 7, 1993, Duncan also made, executed and delivered a certain Deed in Trust (the "First Trust Deed") conveying the Property to himself as Trustee of the Living Trust.

6. The First Trust Deed was recorded on June 15, 1994, in Deed Book 1498 at Page 1240 among the land records of the City of Alexandria, Virginia.

7. On June 30, 1994, Duncan executed a First Amendment to the James M. Duncan, III, Living Trust (the "Living Trust Amendment"). The Living Trust Amendment, among other things, provided that, upon the death of Duncan or his resignation as the original Trustee of the Living Trust, Burke & Herbert Bank & Trust Company of Alexandria, Virginia, and William Y. Austin should succeed him, serving as Co-Trustees. The Living Trust Amendment further provided that if Burke & Herbert failed or refused to serve as Co-Trustee, that another Bank & Trust Company would serve in its stead. There was no provision for William Y. Austin to serve or to act alone.

8. On March 2, 2001, Duncan departed this life.

9. On July 19, 2000, Burke & Herbert Bank & Trust Company declined the appointment as successor Co-Trustee of the Living Trust.

10. The Counter-Defendant claims to have succeeded as Successor Trustee of the Living Trust. However, no professional Bank & Trust Company has been appointed to serve with him as Co-Trustee.

11. On August 4, 1999, Duncan executed the J. M. Duncan III Charitable Remainder Unitrust (the "Unitrust") in which Duncan named himself as Trustee and a beneficiary of the Unitrust. A copy of the Unitrust Agreement is attached hereto as Exhibit B and incorporated herein by this reference.

12. As of the date of the execution of the Unitrust Agreement, Duncan was the Settlor, Trustee and Beneficiary of the Living Trust.

13. On August 3, 1999, Duncan executed a deed (the "Second Trust Deed") conveying the Property to James M. Duncan, III as Trustee of the Unitrust.

14. As of the date of the execution of the Second Trust Deed, Duncan was the Settlor, Trustee and Beneficiary of the Living Trust.

15. On October 20, 1999, Duncan entered into a Purchase Contract (the "Sales Contract") for the sale of the Property to Nationwide. A copy of the Sales Contract is attached hereto as Exhibit C.

16. As of the date of the execution of Sales Contract, Duncan was the Donor, Trustee and Beneficiary of the Unitrust as well as the Settlor, Trustee and Beneficiary of the Living Trust to the extent that the Living Trust was still operative.

17. Nationwide asserts that the Unitrust and the Second Trust Deed are the controlling documents with respect to the Property, the Sales Contract is a valid and enforceable agreement, and that Nationwide has an interest in the Property by virtue of the Sales Contract.

18. The Property constitutes the only known asset of the Unitrust.

COUNT I

DECLARATORY JUDGMENT

19. Paragraph Nos. 1-18 are hereby incorporated by this reference.

20. The existence of the Sales Contract, the document creating the Unitrust and the Second Trust Deed and the assertion of the rights of Nationwide in the Property create an actual controversy between Nationwide and Austin.

21. The Living Trust by its own terms was revocable in whole or in part, and Duncan could withdraw property from the Living Trust in any amount and at any time under the terms of the Living Trust.

22. At all relevant times, the Living Trust was merely an alter ego of Duncan.

23. At all relevant times, Duncan united within himself all capacities necessary to complete fee simple ownership and transfer of the Property.

24. By his execution of the Unitrust Agreement and Second Trust Deed, Duncan effectively exercised his power under the Living Trust to amend or revoke the Living Trust and to withdraw the Property from the Living Trust and transfer it to the Unitrust.

25. There is no provision in the Living Trust as amended which gives William Y. Austin the power to act alone as Trustee

without an institutional co-trustee being appointed to serve with him.

26. The trustee named in the Unitrust as the successor trustee of the Unitrust, Northern Trust Bank of California, N.A., has declined to serve as the successor trustee, and there is presently no trustee serving the Unitrust.

WHEREFORE, Nationwide prays that this Honorable Court enter an order, judgment or decree declaring that: (1) William Y. Austin cannot validly represent the interests of the Living Trust as its sole trustee and that an institutional co-trustee must be appointed to serve with him; (2) the execution of the Unitrust Agreement and the Second Trust Deed operated to remove the Property from the Living Trust and to transfer it to the Unitrust and effectively amended or revoked the Living Trust as to the Property; (3) the Sales Contract is valid and enforceable; (4) the Court appoint a trustee to act on behalf of the Unitrust to complete the terms of the Sales Contract as such trustee shall deem appropriate; (5) the Unitrust Agreement and the Second Trust Agreement be declared valid, enforceable, and the controlling documents concerning the ownership of the Property and the right to transfer and convey the same; (6) Nationwide be awarded its costs and expenses herein, including reasonable attorneys' fees; and (7) for such other and further relief as the cause of justice may require.

COUNT II

ACTUAL OR CONSTRUCTIVE FRAUD

27. Paragraph Nos. 1-26 are hereby incorporated by this reference.

28. Duncan executed the Sales Contract as the Trustee of the Unitrust.

29. As part of the Sales Contract, Duncan represented and warranted, *inter alia*, that the Unitrust had all requisite powers, authorizations, consents and approval to enter into the Sales Contract and to perform its obligations thereunder. Under the terms of the Sales Contract, Duncan also agreed that the foregoing representations and warranties were true at the time of the execution of the Sales Contract and that the same would be true and would be reaffirmed at settlement.

30. As part of the Sales Contract, Duncan represented and warranted, *inter alia*, that the Unitrust owned the Property in fee simple free and clear of any liens, mortgages, encumbrances, obligations, reservations, lawsuits, judgments or any other encumbrances, claims or liens of any sort except as disclosed in the Sales Contract. Under the terms of the Sales Contract, Duncan also agreed that the foregoing representations and warranties were true at the time of the execution of the Sales Contract and that the same would be true and would be reaffirmed at settlement.

31. At the time that Duncan executed the Sales Contract and made the foregoing representations and warranties to Nationwide, Duncan was the sole trustee of the Living Trust.

32. Nationwide reasonably relied on the foregoing representations and warranties in entering into the Sales Contract and incurring substantial costs and expenses in its evaluation and efforts to comply with the terms of the Sales Contract.


33. In the event that this Court should determine that the Sales Contract is not a valid and enforceable agreement for the sale of the Property because of the existence of the First Trust Deed, then Nationwide asserts and alleges that Duncan, in his capacity as the sole trustee of the Living Trust, committed actual or constructive fraud against Nationwide, and such acts of actual or constructive fraud are deemed to be the fraudulent acts of the Living Trust.

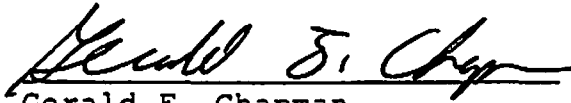
34. Nationwide has been damaged by the fraudulent acts of the Living Trust.

WHEREFORE, Nationwide prays that this Court enter judgment in its favor against the Living Trust in an amount to be determined at trial which amount is estimated to be in excess of \$1 million to include expenses reasonably incurred and lost profits, prejudgment interest thereon, its costs and expenses herein, and for such other and further relief as the cause of justice may require.

NATIONWIDE CH LLC

BY COUNSEL


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Vienna, VA 22030
(703) 356-0519


Gerald F. Chapman
6917 Arlington Road, Suite 350
Bethesda, MD 20814
301-652-3900, ext 3014
FAX: 301-652-3023

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of March, 2000, a true and correct copy of the above and foregoing was sent by first class mail, postage prepaid, to:

Peter A. Dingman, Esq.
Elizabeth G. Engle, Esq.
Dingman & Labowitz, P.C.
526 King Street, Suite 209
Alexandria, VA 22314

The City of Alexandria, VA
c/o Ignacio Pessoa, Esq.
301 King Street, Suite 1300
Alexandria, VA 22314

Alexandria Library Co.
c/o Howard W. Smith, Esq.
200 South Fairfax Street
Alexandria, VA 22314

St. Paul of the Desert
Episcopal Church
125 West El Alameda
Palm Springs, CA 92262-5662

Gamma Mu Foundation
8350 Greensboro Drive
McLean, VA 22102

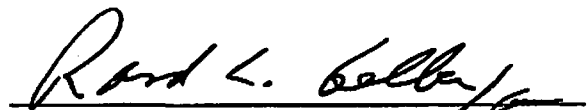

RAND L. GELBER

EXHIBIT A

THE JAMES M. DUNCAN, III LIVING TRUST

I, JAMES M. DUNCAN, III, of Riverside County, California, make this Declaration of Trust dated September 7, 1993, with myself as the initial Trustee ("my Trustee"). References in this document to "my Trustee" shall refer to myself, as the initial Trustee or to the successor Trustee(s), as the context requires. All references to "my Trust" or "trust," unless otherwise stated, shall refer to this Living Trust and the trusts created in it. Notwithstanding anything in my Trust to the contrary, when I am serving as a Trustee under my Trust, I may act for and conduct business on behalf of my Trust as Trustee without the consent of any other Trustee.

ARTICLE 1

CREATION AND DISPOSITION OF TRUST

1.1 Creation of Trust. I have initially funded my trust with the sum of Ten Dollars. I may transfer additional assets to my Trustee, either during my lifetime or by my will or by other means. Such additional assets shall be listed, for convenience, on the attached schedule. My Trustee shall hold, invest and distribute all assets received in trust under the terms of this Agreement. For reference, all assets transferred to this trust shall be referred to as the "Trust Estate."

1.2 The Name of My Trust. For convenience, my trust shall be known as: THE JAMES M. DUNCAN, III LIVING TRUST, dated September 7, 1993. For purposes of beneficiary designations and transfers directly to my trust, my trust shall be referred to as: JAMES M. DUNCAN, III, original Trustee, or his successors in trust, under THE JAMES

M. DUNCAN, III LIVING TRUST, dated September 7, 1993, including any amendments thereto.

ARTICLE 2

PROVISIONS FOR ME DURING MY LIFETIME

2.1 General Management. The Trustee shall hold, manage, invest, and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

2.1.1 During my lifetime, the Trustee shall pay to me or apply for my benefit all the net income from this trust.

2.1.2 During my lifetime the Trustee may pay to me or apply for my benefit such sums from the principal of this trust as in its sole discretion shall be necessary or advisable from time to time for my medical care, comfortable maintenance, and welfare, taking into consideration to the extent the Trustee deems advisable, any other income or resources of mine known to the Trustee.

2.1.3 I shall have no power to direct the Trustee to make gifts of principal or income from the Trust to a third party. Any gift made directly by the Trustee to a third party in violation of this provision shall be construed as a distribution made directly to me, and then a gift from me to such third party.

2.2 During my Disability. During any period of time when I am disabled, my Trustee shall apply the trust property, including its income, exclusively for my benefit and for my valid obligations by observing the following procedural guidelines:

2.2.1 My Trustee shall provide as much of the principal and net income of my trust as is necessary or advisable, in its sole and absolute discretion, for my health, support, maintenance, and general welfare, and for the payment of any of my valid obligations as confirmed by my Trustee.

2.2.2 My Trustee shall provide as much of the principal and net income of my trust as my Trustee deems advisable for the payment of insurance premiums on policies owned by me, either directly or beneficially, or my trust.

2.2.3 I shall be deemed disabled during any period when, in the opinion of two licensed physicians, I am incapacitated or disabled because of illness, age, or any other cause which results in my inability to effectively manage my property or financial affairs.

2.2.4 Any net income which is not distributed annually under this Article shall be accumulated and added to principal.

ARTICLE 3

MY RIGHTS TO AMEND OR REVOKE TRUST

3.1 By signed instruments delivered to the Trustee during my lifetime, I may: (1) withdraw property from this trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Declaration of Trust in any other respect; (5) revoke this trust in its entirety or any provisions therein; provided, however, the duties or responsibilities of the Trustee shall

not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE 4

ADMINISTRATION OF MY TRUST UPON MY DEATH

4.1 Payment of Expenses, Claims, and Taxes. Upon my death, my Trustee is authorized, but not directed, to pay the following: expenses of my last illness, funeral, and burial, including memorials of all types and memorial services of such kind as my Trustee in its sole discretion shall approve; legally enforceable claims against me or my estate; expenses with regard to the administration of my estate; and Federal estate tax, applicable state inheritance or estate taxes, or any other taxes occasioned by my death.

4.1.1 The payments authorized under this Article are discretionary, and no claims or right to payment by third parties may be enforced against my trust by virtue of such discretionary authority.

4.1.2 My Trustee shall be indemnified from the trust property for any damages sustained by my Trustee as a result of its exercising, in good faith, the authority granted it under this Article.

4.2 Coordination with My Personal Representative. This Article shall be utilized to help facilitate the coordination between the personal representative of my probate estate and my Trustee with respect to any of my property owned outside of my trust at my death.

4.2.1 Authorized Payments. My Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Article either directly to the appropriate persons or institutions or to my personal representative of my probate estate. My Trustee may rely upon the written statements of my personal representative as to all material facts relating to these payments; my Trustee shall not have any duty to see to the application of such payments.

4.2.2 Purchase of Assets and Loans. My Trustee is authorized to purchase and retain in the form received, as an addition to my trust, any property which is apart of my probate estate. In addition, my Trustee may make loans, with or without security, to my probate estate. My Trustee shall not be liable for any loss suffered by my trust as a result of the exercise of the powers granted in this paragraph.

4.2.3 Distributions from My Personal Representative. My Trustee is authorized to accept distributions from my personal representative of my probate estate without audit and my Trustee shall be under no obligation to examine the records or accounts of my personal representative.

4.3 Apportionment. All expenses and claims and all estate, inheritance, and death taxes, excluding any generation-skipping transfer tax, resulting from my death shall be paid without apportionment and without reimbursement from any person, except as otherwise specifically provided in this trust.

4.3.1 Property Passing Outside My Trust. Notwithstanding anything to the contrary in my trust, estate, inheritance, and death taxes assessed with regard to property

passing outside of my trust or outside of my probate estate, but included in my gross estate for federal estate tax purposes, shall be chargeable against the persons receiving such property.

4.4 My Trustee's Authority to Make Tax Elections. My Trustee may exercise any available elections with regard to state or federal income, inheritance, estate succession, or gift tax law.

ARTICLE 5

TANGIBLE PERSONAL PROPERTY

5.1 Tangible personal property. Upon my death, I give all tangible personal property owned by the Trust to LEON ARNOLD DUNCAN, if he survives me. If he does not survive me, I give all tangible personal property owned by the Trust to my cousin, HARRIET F. FELLOWS, if she survives me.

5.2 Memorandum. I request that the recipients of my tangible personal property honor any memorandum I may leave as to distribution of specific items.

ARTICLE 6

THE CHARITABLE REMAINDER TRUST

Upon my death the Trustee shall divide the net assets of the Trust Estate into separate accounts or trusts, one for each of MARIE R. MALONE, CARL A. RUTHSTROM, and WILLIAM Y. AUSTIN, who are living at the time of my death. If one of these has predeceased me, the entire Trust Estate shall be allocated to the survivors.

If two of those have predeceased me, one-third shall be allocated to the survivor, and the balance shall be held and distributed pursuant to Paragraph 6.13. My Trustee shall manage each such Trust as a Charitable Remainder Trust, each referred to separately in this Article as "the Trust." For convenience, each Trust may be called, for example, the Marie R. Malone Charitable Trust. For convenience, references in this Trust to the "Income Beneficiary" shall refer to each of MARIE R. MALONE, CARL A. RUTHSTROM, and WILLIAM Y. AUSTIN, as to their Trust. Each Trust shall be managed separately, and each shall be administered and distributed as follows:

6.1 The Trustee shall hold, manage, invest and reinvest the assets, collect the rents, income, interest and dividends therefrom, and pay over to the Income Beneficiary or apply for his use and benefit, for and during the term of his life an amount (the "unitrust amount") equal to FIVE (5%) percent of the net fair market value of the Trust assets determined annually by the Trustee as of the first business day of each taxable year of the Trust. The unitrust amount shall be paid in equal quarterly installments from income and, to the extent that income is not sufficient, from principal. Any income of the Trust for a taxable year in excess of the unitrust amount shall be added to the principal.

6.2 Upon the death of the Income Beneficiary, the Trust shall terminate and my Trustee shall distribute all of the then principal and income of the Trust, other than any amount due the Income Beneficiary, to the charities listed in paragraph 6.13. If any charity is not an organization described in Sections 170(c), 2055(a), 2522(a) or (b) and 170(b)(1)(A) of the Internal Revenue Code of 1986 (the "Code") at the time when any

principal and income to such organization or organizations then described in Sections 170(c), 2055(a), 2522(a) or (b) and 170(b)(1)(A) of the Code, contributions to which are deductible for income, gift and estate tax purposes at such time, as my Trustee in its sole and absolute discretion, shall select, which are most similar in purpose to the disqualified charity I have specifically named.

6.3 No amount other than the unitrust amount shall be paid to the Income Beneficiary.

6.4 If the net fair market value of the Trust assets is incorrectly determined by my Trustee for any taxable year, then within a reasonable period after the final determination of the correct value, my Trustee shall pay to the Income Beneficiary in the case of undervaluation or shall receive from the Income Beneficiary in the case of an overvaluation an amount equal to the difference between the unitrust amount properly payable and the unitrust amount actually paid.

6.5 In determining the unitrust amount, my Trustee shall prorate the same, on a daily basis, for a short taxable year and for the period the Income Beneficiary lives in the taxable year of his death, in accordance with the applicable provisions of the Regulations issued under the Code.

6.6 Nothing in this instrument shall be construed to restrict my Trustee from investing the Trust assets in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of Trust assets.

6.7 The obligation to pay the unitrust amount shall commence with the date of my death, but payment of the unitrust amount may be deferred from the date of my death to the end of the taxable year of the Trust in which occurs the complete funding of the Trust. Within a reasonable time after the occurrence of such event, my Trustees shall pay the amount determined under the method describe in Section 1.664-1(a)(5)(ii) of the United States Treasury Regulations less the sum of any amounts previously distributed and interest thereon computed at six (6%) percent a year, compounded annually, from the date of distribution to the occurrence of such event.

6.8 If any additional contributions are made to the Trust after the initial contribution in Trust, the unitrust amount for the taxable year in which the assets are added to the Trust shall be FIVE (5%) percent of the sum of (a) the net fair market value of Trust assets (excluding the assets so added and any income from, or appreciation on, such assets) and (b) that proportion of the value of the assets so added that was excluded under (a) which the number of days in the period which begins with the date of contribution and ends with the earlier of the last day of the taxable year or the Income Beneficiary's death bears to the number of days in the period which begins on the first day of such taxable year and ends with the earlier of the last day in such taxable year or the Income Beneficiary's death. In the case where there is no valuation date after the time of contribution, the assets so added shall be valued at the time of contribution.

6.9 Except for the payment of the unitrust amount to the Income Beneficiary, my Trustee is prohibited from engaging in any act of self-dealing as defined in Section

4941(d) of the Code, from retaining any excess business holdings as defined in Section 4943(c) of the Code which would subject the Trust to tax under Section 4943 of the Code, from making any investments which would subject the Trust to tax under Section 4944 of the Code, and from making any taxable expenditures as defined in Section 4945(d) of the Code. My Trustee shall make distributions at such times in such manner as not to subject the Trust to tax under Section 4942 of the Code.

6.10 Any other provisions of this Trust to the contrary notwithstanding, the unitrust amount, shall not be reduced by any expenses of the Trust including, but not limited to, Trustee's commissions.

6.11 As used in this Article, the term "the net fair market value" of the Trust shall mean its net fair market value as that term is used in Section 664(d)(2) of the Code. All sections of the Code referred to in this Article shall be deemed to include future amendments to such sections as well as corresponding provisions of future Internal Revenue laws.

6.12 It is my intention that the Trusts created by this Article shall qualify for a charitable remainder deduction for Federal estate tax purposes. Accordingly, I direct that the provisions of this Trust be construed in accordance with this intention and I further direct that none of the powers granted to my Trustee shall be exercised in such a manner as to disqualify the Trust from such deduction.

6.13 The Charities. All references in this Declaration of Trust to the "charities," and the sole recipient of the remainder of The Charitable Remainder Trust(s), shall be

THE JAMES M. DUNCAN, JR., LIBRARY FOUNDATION (the "Foundation"), which shall be created, managed, and distributed as follows. The Trustee of my Trust shall manage the assets thereof and shall distribute such sums from the income and the principal, in amounts to be determined from time to time in the discretion of my Trustee, for the purpose of providing to the James M. Duncan, Jr., Library, in Alexandria, Virginia, funding for any of a broad selection of EDUCATIONAL benefits as determined by my Trustee, including but not limited to the development and presentation of courses and educational programs not available in the public school system, and the purchase of equipment for these courses and for textbooks not included in the general purchasing program. My Trustee is directed to distribute funds only for uses which are over and above what the City of Alexandria provides for its other libraries. My Trustee shall distribute each year enough funds, and shall take such other actions, so as to comply with the requirements of the Code and the Regulations thereunder for tax-exempt organizations. A further condition of distribution of funds is that the library be continuously named the James M. Duncan, Jr., Library, and that the name be prominently displayed.

ARTICLE 7

POWER OF TRUSTEE TO RESIGN

Any Trustee may resign this trusteeship during my lifetime by giving me thirty (30) days' notice in writing delivered to me in person or mailed to my last known address, the resignation to become effective as hereinafter provided. Upon receipt of such notice I shall appoint a successor Trustee. Upon the failure of the successor Trustee to accept the

trust within thirty (30) days from the time notice was delivered in person or mailed to me, the Trustee may resign to the court having jurisdiction over this Trust, which court may, if it deems advisable, accept the resignation and appoint a successor Trustee. Upon the appointment of and acceptance by a successor Trustee, the original Trustee shall pay over, deliver, assign, transfer, or convey to such successor Trustee the trust property and make a full and proper accounting to me, whereupon his resignation shall become effective. The substitute or successor Trustee upon acceptance of this Trust and the Trust property shall succeed to and possess all the rights, powers, and duties, authority, and responsibility conferred upon the Trustee originally named herein.

ARTICLE 8

SUBSTITUTE OR SUCCESSOR TRUSTEES

8.1 Successor Trustee. Upon the death or resignation of myself as the original Trustee, unless other provisions shall be made by me, the first successor Trustee shall be BURKE & HERBERT BANK & TRUST COMPANY of Alexandria, Virginia.

Upon or after my death or disability, a replacement successor Trustee, limited to a bank or trust company or an attorney at law, may be appointed by a majority of MARIE R. MALONE, CARL A. RUTHSTROM, and WILLIAM Y. AUSTIN or the survivors of them or, if another successor Trustee is needed and if they fail to act, by the court having jurisdiction over this Trust. The appointment of a successor Trustee or Co-Trustee shall be effective upon acceptance of fiduciary duties by the successor Trustee, at which time all references herein to "my Trustee" shall refer to the successor Trustee.

8.2 Appointing a Co-Trustee. Any sole Trustee may in his or her discretion appoint a Co-Trustee. Any successor Trustee shall be deemed to be in office and entitled to act upon delivery of its written acceptance of this Trust to an acting Trustee, or if none, to at least one beneficiary. Any Co-Trustee may delegate his or her powers in writing to the other Trustee for a period not to exceed one year, may revoke that designation, and may successively renew it. Any successor Trustee shall have all the powers, immunities and discretions given to the original Trustee.

8.3 Actions of Predecessor. No Trustee serving under this Agreement, who has been appointed by me, shall be responsible for or required to inquire into any fiduciary actions occurring before such Trustee's appointment.

8.4 Accountings. My Trustee shall make an annual accounting during my lifetime to me or to the one who, in the opinion of my Trustee, is primarily in charge of my affairs, and after my death, to the beneficiaries of this trust.

ARTICLE 9

DEFINITION OF TRUSTEE

Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine, and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall possess all the rights,

powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE 10

FEE SCHEDULE FOR TRUSTEE

For its services as Trustee, a corporate Trustee shall receive an amount which shall be determined by its Standard Fee Schedule in effect and applicable at the time of the performance of such services. If no such schedule shall be in effect at that time, or if the Trustee is an individual, the Trustee shall be entitled to reasonable compensation for the services rendered.

ARTICLE 11

TRUSTEE'S POWER TO SIGN AND EXECUTE

Notwithstanding anything in my trust to the contrary, when I am serving as Trustee under my Trust, I may act for and conduct business on behalf of my Trust as Trustee without the consent of any other Trustee.

No person or corporation dealing with the Trustee shall be required to investigate the Trustee's authority for entering into any transaction or to see to the application of the proceeds of any transaction.

ARTICLE 12

POWERS OF TRUSTEE

The Trustee shall have all the powers granted under Section 64.1-57 of the Code of Virginia, 1950, as amended. In addition, the Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust or by statute or general rules of law:

12.1 To retain in the form received any property or undivided interest in property donated to, or otherwise acquired as part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or non productivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although said property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

12.2 To invest and reinvest all or any part of the Trust Estate in any property and undivided interest in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

12.3 To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or upon credit, to exchange any property of the Trust Estate for other property,

at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

12.4 To hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

12.5 To keep, at any time and from time to time, all or any portion of the Trust Estate in cash uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

12.6 To sell or exercise stock subscription or conversion rights.

12.7 To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholder's meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

12.8 To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

12.9 To borrow money and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

12.10 To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

12.11 To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

12.12 To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

12.13 To continue and operate any business owned by the Grantor at the Grantor's death and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

12.14 To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

12.15 To insure the assets of the Trust Estate against damage or loss and the Trustee against liability with respect to third persons.

12.16 In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

12.17 To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best.

12.18 To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for

the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

12.19 To determine what shall be fairly and equitably charged or credited to income and what to principal.

12.20 To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

12.21 To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interest in other property to another beneficiary or beneficiaries.

12.22 In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own rights, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

12.23 To purchase property, real or personal, from the Grantor's general estate upon such terms and conditions as to price and terms of payment as the Grantor's executor or administrator and the Trustee shall agree, to hold the property so purchased as part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Grantor's executor or administrator and the Trustee are the same shall in no way affect the validity of this provision.

12.24 To lend funds to the Grantor's general estate upon such terms and conditions as to interest rates, maturities, and security as the Grantor's executor or administrator and the Trustee shall agree, the fact that they may be the same in no way affecting the validity of this provision.

12.25 To receive property bequeathed, devised or donated to the Trustee by the Grantor or any other person; to receive the proceeds of any insurance policy which names the Trustee as beneficiary; to execute all necessary receipts and releases to executors, donors, insurance companies and other parties adding property to the Trust Estate.

12.26 To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably determines that the administration as a single trust is consistent with my intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

12.27 To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Grantor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

12.28 If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

12.28.1 Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

12.28.2 Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

12.28.3 If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee

may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust. Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts. The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

ARTICLE 13

RIGHTS OF MYSELF AND TRUSTEE IN INSURANCE POLICIES

During my life, I shall have all rights under any life insurance policies payable to the Trustee, including the right to change the beneficiary, to receive any dividends or other earnings of such policies without accountability therefor to the Trustee or any beneficiary hereunder, and may assign any policies to any lender, including the Trustee, as security for any loan to me or any other person; and the Trustee shall have no responsibility with respect to any policies, for the payment of premiums or otherwise, except to hold any policies received by the Trustee in safekeeping and to deliver them upon my written request and upon the payment to the Trustee of reasonable compensation for services. The rights of any assignee of any policy shall be superior to the rights of the Trustee. If any policy is surrendered or if the beneficiary of any policy is changed, this Trust shall be revoked with respect to such policy. However, no revocation of the Trust with respect to any policy, whether pursuant to the provisions of the preceding sentence or otherwise, shall be effective unless the surrender or change in beneficiary of the policy is accepted

by the insurance company. Upon the death of the insured under any policy held by or known to, and payable to, the Trustee, or upon the occurrence of some event prior to the death of myself that matures any such policy, the Trustee, in its discretion, may either collect the net proceeds and hold them as part of the principal of the Trust Estate, or may exercise any optional method of settlement available to it, and the Trustee shall deliver any policies on my life held by it and payable to any other beneficiaries as those beneficiaries may direct. Payment to, and the receipt of, the Trustee shall be a full discharge of the liability of any insurance company, which need not take notice of this agreement or see to the application of any payment. The Trustee need not engage in litigation to enforce payment of any policy without indemnification satisfactory to it for any resulting expenses.

ARTICLE 14

DISCRETION TO TERMINATE SMALL TRUST

If at any time any trust created hereunder has a fair market value as determined by the Trustee of Fifty Thousand Dollars (\$50,000.00) or less, the Trustee, in its absolute discretion if it determines that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one income beneficiary, the Trustee shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE 15

COMMON DISASTER PROVISION

If any beneficiary and I should die under such circumstances as would render it uncertain whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Trust that said beneficiary predeceased me.

ARTICLE 16

PROTECTION FROM CREDITORS

Except as otherwise provided herein, all payments payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

ARTICLE 17

PERPETUITIES SAVINGS CLAUSE

Notwithstanding anything herein to the contrary, the trusts created hereunder shall vest in ownership not later than Twenty-one (21) years after the death of the last survivor of my issue living at the time of the signing of this Trust or amendments, if any. If necessary in order to avoid the application of the Rule Against Perpetuities, at the latest date described above the Trustee shall distribute each remaining trust hereunder to the

beneficiary or beneficiaries of the current income thereof, and if there is more than one beneficiary, in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE 18

GOVERNING LAW

This Trust Agreement and the trusts created hereby shall be construed, regulated, and governed by and in accordance with the laws of the State of Virginia.

IN WITNESS WHEREOF, I have signed this Trust, as Grantor and as Trustee, effective the date written at the beginning.



JAMES M. DUNCAN, III

Grantor



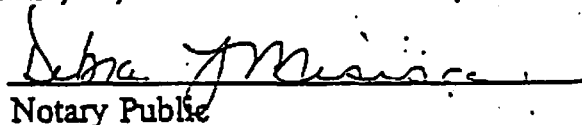
JAMES M. DUNCAN, III

Trustee

STATE OF VIRGINIA

COUNTY OF FAIRFAX

The foregoing instrument was personally acknowledged before me this 7th day of September, 1993, by JAMES M. DUNCAN, III, Grantor and Trustee.


Notary Public

My commission expires April 30, 1997.

SCHEDULE A

(to THE JAMES M. DUNCAN, III LIVING TRUST)

This Schedule A is included only for the convenience of the Trustee and beneficiaries, and any failure to list assets on Schedule A will in no way alter the Trust's ownership of those assets. The undersigned acknowledges the following property to be a part of the Trust Estate:

1. The personal property listed or described in the attached Deed of Gift No. 1.
2. Life Insurance policy No. _____, issued by _____ Insurance Company, in the face amount of \$_____.
3. All my present and future interest in the following real estate, together with all present and future improvements thereon:
 - a. 200 N. Henry Street (alternately called 1101 Cameron Street), City of Alexandria, Virginia.
 - b. 1112 (or 1115) Cameron Street ("Hopkins warehouse"), City of Alexandria, Virginia.
 - c. My 3/4 interest in 1552 East Twin Palms Drive, Palm Springs, California.
 - d. 859 Comino Condor, Palm Springs, California.
4. My interest in the following accounts in the following institutions, together with all future additions, interest, or accumulations therein and also including all new accounts and the accumulations and the future additions, interest or accumulation in any and all other financial institutions in which new accounts are opened in the future:


Account at: Ferris, Baker Watts, Inc.
1720 I Street, N.W.
Washington, DC 20006
Acct. No. 02222230-02-32
Loren Danielson, 202-429-3500

Account at: Bank of Palm Springs
601 E Tahquitz Way
Palm Springs, CA 92262
Acct. #022-092365
(A branch of the Bank of California)

5. My interest in the following securities in the following companies together with all future accumulations and purchases in said companies, together with all future securities and accumulations purchased in any and all other companies:

Burke & Herbert Bank & Trust Co.
#01140752

6. All my rights, title and interest in the following:


JAMES M. DUNCAN, III
Trustee

DEED OF GIFT No. 1

I, JAMES M. DUNCAN, III, hereby transfer unto THE JAMES M. DUNCAN, III LIVING TRUST, created by document of this date by and between myself as Grantor and Trustee, all of my tangible personal property of every kind and description including, without limitation, household goods, furniture and jewelry, presently owned or hereafter acquired by me.


JAMES M. DUNCAN, III

Date: September 7, 1993

Bill

FIRST AMENDMENT
TO
THE JAMES M. DUNCAN, III LIVING TRUST
DATED SEPTEMBER 7, 1993

This First Amendment to The James M. Duncan, III Living Trust is made this 30th day of June, 1994 by JAMES M. DUNCAN, III, Trustor and Trustee. The Trustor hereby amends as follows:

ARTICLE 6.

Paragraph. One of Article 6 shall be amended to read as follows:

THE CHARITABLE REMAINDER TRUST

Upon my death, the Trustee shall continue the Trust for the benefit of WILLIAM Y. AUSTIN. For convenience, references in this Trust to the "Income Beneficiary" shall refer to WILLIAM Y. AUSTIN. If WILLIAM Y. AUSTIN shall not survive, Trust balance shall be held and distributed pursuant to Article 6 and Paragraph 6.13. The Trust shall be distributed as follows:

Continuing paragraphs 6.1 through paragraphs 6.13 shall remain unchanged.

ARTICLE 8

Article 8 shall be amended as follows:

SUBSTITUTE OR SUCCESSOR TRUSTEES

8.1 Successor Trustee. Upon the death or resignation of myself as the original Trustee, unless other provisions shall be made by me, the first successors shall be Co-Trustees. BURKE & HERBERT BANK & TRUST COMPANY of Alexandria, Virginia and WILLIAM Y. AUSTIN shall serve as Co-Trustees.

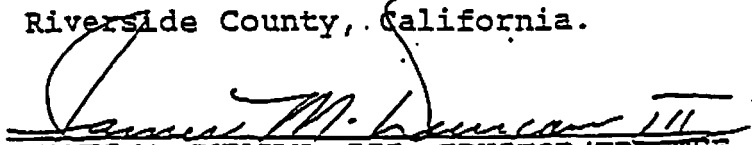
The appointment of a successor Trustee or Co-Trustee shall be effective upon acceptance of fiduciary duties by the successor Trustee, at which time all references herein to "my Trustee" shall refer to the successor Trustee. On resignation or death of WILLIAM Y. AUSTIN, BURKE & HERBERT BANK & TRUST COMPANY shall serve as sole Trustee. If BURKE & HERBERT BANK & TRUST COMPANY shall not serve, another professional Bank & Trust Company shall serve.

8.2 Appointing a Co-Trustee. Any Trustee may in his or her discretion appoint a Co-Trustee to succeed that Trustee. Any successor Trustee shall be deemed to be in office and entitled to act upon delivery of its written acceptance of this Trust to an acting Trustee, or if none, to beneficiary or beneficiaries. Any Co-Trustee may delegate his or her powers in writing to the other Trustee for a period not to exceed one year, may revoke that designation, and may successively renew it. Any successor Trustee shall have all the powers, immunities and discretions given to the original Trustee.

Continuing paragraphs 8.3 and 8.4 shall remain unchanged.

Except as herein amended, the Trustor hereby ratifies approves and confirms The James M. Duncan, III Living Trust, dated September 7, 1993.

The Trustor and Trustee has executed this First Amendment to The James M. Duncan, III Living Trust this 30th day of June, 1994 at the City of Palm Springs, Riverside County, California.


JAMES M. DUNCAN, III, TRUSTOR/TRUSTEE

First Amendment to
Living Trust


JAMES M. DUNCAN, III

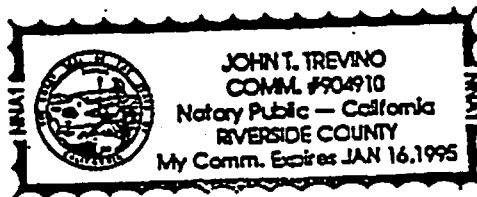
ALL PURPOSE ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
) ss
COUNTY OF RIVERSIDE)

On June 30, 1994 before me, JOHN T. TREVINO, Notary Public, personally appeared JAMES M. DUNCAN, III, Trustor/Trustee of the JAMES M. DUNCAN, III LIVING TRUST dated September 7, 1993, personally known to me, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his 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.


Notary Public



CAPACITY CLAIMED BY SIGNER

INDIVIDUAL
XXX TRUSTOR/TRUSTEE

SIGNER IS REPRESENTING:

Name of Person(s) or Entit(ies)
JAMES M. DUNCAN, III, Trustor/
Trustee

TITLE OR TYPE OF DOCUMENT: FIRST AMENDMENT TO JAMES M. DUNCAN, III
NUMBER OF PAGES: 3 LIVING TRUST
DATE OF DOCUMENT: June 30, 1994
SIGNER(S) OTHER THAN NAMED ABOVE: _____

First Amendment to
Living Trust

JAMES M. DUNCAN, III

EXHIBIT B

**THE J. M. DUNCAN III
CHARITABLE REMAINDER UNITRUST**

This TRUST AGREEMENT ("Agreement") is made and is effective on ^{August} ~~July~~ 4, 1999, by and between JAMES M. DUNCAN, III, residing at 1552 East Twin Palms Drive, Palm Springs, CA 92264 (the "Donor") and, JAMES M. DUNCAN, III, and his successor(s) (the "Trustee" and sometimes as "it" or "its").

I.

AGREEMENT OF TRUST

The Donor is irrevocably assigning, transferring and delivering to the Trustee all right, title and interest in and to the property described in Exhibit A, a copy of which is attached hereto and specifically made a part hereof by this reference. The Trustee hereby accepts such irrevocable gift and agrees to hold, administer and distribute such property, together with any other property which is or shall become an asset of this trust, in accordance with the provisions of this Agreement. The trust created hereunder shall be known as "THE J. M. DUNCAN III CHARITABLE REMAINDER UNITRUST" (the "Trust").

II.

DISTRIBUTIONS

A. Income and Principal. During the lifetime of the Donor, the Trustee shall distribute the income and principal of this Trust as follows:

1. In each taxable year of this Trust, the Trustee shall pay the Unitrust Amount (as defined in Paragraph A.2 of this Article II) to the Donor during the Donor's lifetime.

2. The "Unitrust Amount" shall include the amount described in Paragraph A.2(a) during the Initial Period and the amount described in Paragraph A.2(b) during the Remaining Period. The "Initial Period" shall commence on the effective date of this Trust and shall terminate on the last day of the taxable year in which the Triggering Event occurs. The "Remaining Period" shall commence on the first day of the taxable year that immediately follows the taxable year in which the Triggering Event occurs and shall terminate on the date of death of the Donor. The "Triggering Event" shall occur in the year in which the property that is

any time be incompetent, the Trustee may pay the Unitrust Amount to the trustee of any trust established exclusively for the benefit of the Donor, if such a trust has been established, and if not, then to the conservator, custodian or legally appointed guardian of the person or estate of the Donor. Any such payment for the benefit of the Donor shall release the Trustee from its obligation to pay the Unitrust Amount, and the Trustee shall have no duty to supervise or inquire into the application of any funds so paid.

5. Upon the death of the Donor, the Trustee shall distribute the then principal and income of this Trust in accordance with Article III herein.

B. Valuation Date. The net fair market value of the Trust assets shall be determined annually on the first day of each taxable year of this Trust (including any short taxable year), in accordance with the provisions of Paragraph F of this Article II.

C. Short Years. The first taxable year of this Trust shall commence on the date hereof and shall end on December 31 of that year. Subsequent taxable years shall be on a calendar year basis, except that the last taxable year of this Trust shall end on the date that this Trust terminates pursuant to Article III herein. In the case of a taxable year which is for a period of less than twelve (12) months (other than the taxable year in which the survivor of the Donors dies), the amount described in Paragraph A.2(a)(ii) of this Article II or Paragraph A.2(b) of this Article II, as the case may be, shall be such amount multiplied by a fraction the numerator of which is the number of days in the taxable year of this Trust and the denominator of which is 365 (366 if February 29 is a day included in the numerator). In the case of the taxable year in which the survivor of the Donors dies, the amount described in Paragraph A.2(a)(ii) of this Article II or Paragraph A.2(b) of this Article II, as the case may be, shall be such amount multiplied by a fraction the numerator of which is the number of days in the period beginning on the first day of such taxable year and ending on the date of death of the survivor of the Donors and the denominator of which is 365 (366 if February 29 is a day included in the numerator). Notwithstanding the foregoing, the obligation of the Trustee to pay the Unitrust Amount shall terminate with the regular periodic payment next preceding the date of death of the survivor of the Donors

D. Additional Contributions. Any person may contribute property to this Trust, with the consent of the Trustee, either during life or at death. For the taxable year of this Trust in which any additional contribution is made, the additional property shall be valued at the time of contribution, and the amount described in Paragraph A.2(a)(ii) of this Article II or Paragraph A.2(b) of this Article II, as the case may be, shall be NINE percent (9%) of the sum of the following components:

1. The net fair market value of the Trust assets determined on the first day of the taxable year (and thus excluding the value of the additional property, and earned income from, and any appreciation on, such property after its contribution); and

2. That proportion of the value of the additional property (that was excluded under subparagraph 1 immediately above) which the number of days in the period that begins with the date of contribution and ends with the earlier of the last day of such taxable year or the date of death of the Donor bears to the number of days in the period that begins on the first day of such taxable year and ends with the earlier of the last day of such taxable year or the date of death of the Donor.

If an additional contribution is made by Will, the obligation to pay the Unitrust Amount payable with respect to the additional contribution shall commence with the date of death of the person under whose Will the additional contribution is made. Payment of that portion of the Unitrust Amount may be deferred, however, from such date of death to the end of the taxable year in which occurs the complete funding of the additional contribution. Within a reasonable time following such complete funding of the additional contribution, the Trustee shall pay to the Donor, in the case of an underpayment, or receive from the Donor, in the case of an overpayment, the difference between: (a) any Unitrust Amount actually paid to the Donor, plus interest on such amounts, compounded annually, computed for any period at the rate of interest that the Federal Income Tax Regulations (the "Regulations") under Section 664 of the Code prescribe for this Trust for such computation for such period; and (b) the Unitrust Amount payable, plus interest compounded annually, computed for any period at the rate of interest that the Regulations under Section 664 of the Code prescribe for this Trust for such computation for such period. Any payments required to be made because of an underpayment shall be paid to the Donor (or the

Donor's estate) who received the underpayment. Any repayments required to be made because of an overpayment shall be repaid by the Donor (or the Donor's estate) who received the overpayment.

E. Net Income. The net income of this Trust shall be determined by the Trustee pursuant to the terms of this Agreement, Section 643(b) of the Code and the Regulations thereunder.

F. Fair Market Value. The Trustee shall compute the net fair market value of the Trust assets considering all assets and liabilities without regard to whether particular items are taken into account in determining the net income of this Trust; provided, however, in the event an unmarketable asset as described in Regulation Section 1.664-1(a)(7)(ii) is transferred to or held by this Trust, and whenever this Trust is required to value such assets, the valuation shall be either performed exclusively by an Independent Special Trustee (as defined below) or determined by a current qualified appraisal, as defined in Regulation Section 1.170A-13(c)(3), from a qualified appraiser, as defined in Regulation Section 1.170A-13(c)(5). All determinations of the net fair market value of the Trust assets shall be in accordance with generally accepted fiduciary accounting principles and any United States Treasury requirements governing charitable remainder unitrusts. In any conflict, Treasury requirements shall prevail over generally accepted fiduciary accounting principles and any inconsistent provisions of this Agreement. In the event that the net fair market value of the Trust assets is determined incorrectly for any taxable year, the Trustee shall pay to the Donor, or the Donor's estate (in the case of an undervaluation), or be repaid by the Donor, or the Donor's estate (in the case of an overvaluation), an amount equal to the difference between the Unitrust Amount which the Trustee should have paid to the Donor if the correct values were used, and the Unitrust Amount which the Trustee actually paid to the Donor. Such payments or repayments shall be made within a reasonable period after the final determination of the correct value.

III.

TERMINATION

This Trust shall terminate within a reasonable time after the date of death of the Donor, provided, however, that such reasonable time shall not extend beyond the last day of the month in

which occurs the ninetieth (90th) day following the date of death of the Donor. Upon termination, the Trustee shall distribute all of the then principal and income of this Trust, free of trust, other than any amount due to the Donor or the Donor's estate as follows: (1) forty-nine percent (49%) to the JAMES M. DUNCAN, JR., LIBRARY, in Alexandria, Virginia; (2) fifty percent (50%) to the ST. PAUL OF THE DESERT EPISCOPAL CHURCH of Palm Springs, California; and one percent (1%) to Gamma Mu Foundation, 8350 Greensboro Road, McLean, Virginia 22102.

Notwithstanding any contrary provision of this Agreement, during the Donor's lifetime, the Donor shall retain the right, by acknowledged written instrument, to change the charitable remainderman or remaindermen by adding or substituting new organizations and/or omitting certain organizations or by altering the share each is to receive. If more than one written instrument is so delivered to the Trustee, the written instrument bearing the latest date shall control and shall be deemed to revoke all prior written instruments unless the most recent one shall provide otherwise.

The originally designated charitable remainderman and any such additional and/or substitute charitable remainderman shall herein be referred to as "Donee" in the singular, and "Donees" in the plural. If any Donee is not an organization described in each of Sections 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Code at the time when any principal or income of this Trust is to be distributed to it, the Trustee shall distribute such principal or income in proportion to the relative shares of the Donees which are so described and, if none of the Donees is so described, to one or more organizations then so described as the Trustee shall select and in such shares as it shall determine. The terms "Donee" and "Donees" as used herein shall include an alternate charitable remainderman (or remaindermen) selected by the Trustee in accordance with the immediately preceding sentence.

IV.

THE TRUSTEE

A. Appointment. JAMES M. DUNCAN, III, shall serve as Trustee of this Trust. If he shall for any reason fail to qualify or cease to act as Trustee, then the Northern Trust Bank of

California N.A., shall be appointed as successor Trustee to act in his place and stead. No bond or other security shall be required of any person acting as Trustee, whether serving jointly or alone.

B. Special Trustee.

1. If the Donee shall at any time act as Trustee, the Donee shall have the right and option to appoint an "Independent Special Trustee" (as defined below) whenever:

(a) An unmarketable asset as described in Regulation Section 1.664-1(a)(7)(ii) is transferred to or held by this Trust, to exclusively determine the fair market value of such asset at the time of contribution or acquisition and for purposes of the annual determination of the net fair market value of the Trust assets; or

(b) The Trustee determines that the acquisition or ownership of an "Annuity Contract" (as defined below) or any other investment would cause this Trust to be treated as a grantor trust under Sections 671-679 of the Code, to exercise solely any and all of the powers delineated in Article V herein with respect to any such investment; or

(c) The Trustee determines that such appointment is appropriate, to take such action as the Trustee shall clearly define.

2. An "Independent Special Trustee" (and any successor) must be appointed pursuant to this Paragraph B and must be an "Independent Trustee" as defined in Regulation Section 1.664-1(a)(7)(iii).

3. If any Donee is not a Trustee hereunder, or if one of the Trustees is not an Independent Special Trustee, the Trustee(s) must appoint an Independent Special Trustee for the situation described in Paragraph B.1(b) of this Article IV and shall have the right and option to appoint an Independent Special Trustee for the situations described in Paragraphs B.1(a) and (c) of this Article IV.

4. The Independent Special Trustee shall have no powers, duties, or liabilities hereunder, except with respect to matters specifically described in this Paragraph B, and solely with respect to such matters, the Independent Special Trustee may exercise the powers, authority and discretion accorded to a Trustee pursuant to Article V herein. However, the Independent Special Trustee may not function in a manner which would jeopardize the status of this Trust as a

charitable remainder trust as defined in Section 664 of the Code, the Regulations thereunder and Internal Revenue Service rulings governing the operation thereof. No Trustee (other than an Independent Special Trustee) shall have any power, duty or liability hereunder with respect to matters described in this Paragraph B.

5. If an Independent Special Trustee is appointed hereunder, the Trustee shall make such appointment in a separate written instrument that expressly refers to this Paragraph B. Any Independent Special Trustee so appointed may resign by giving written notice to the Trustee by certified mail to the last known address of the Trustee at least ninety (90) days before such resignation shall become effective.

C. Resignation. Any Trustee may resign at any time by giving written notice to the Donor and to all beneficiaries of this Trust, individual and charitable, by certified mail to the last known address of such beneficiaries at least ninety (90) days before such resignation shall become effective.

D. Replacement. The Donor, while living and legally competent, shall have the right, upon ninety (90) days written notice to the Trustee or Independent Special Trustee (herein referred to in the singular as "Fiduciary" and in the plural as "Fiduciaries") to replace or discharge an acting Fiduciary, and to designate a successor Fiduciary or successor Co-Fiduciaries. Upon the legal disability of the Donor, this right may be exercised by any person entitled to receive the Unitrust Amount on behalf of the Donor pursuant to Paragraph A.5 of Article II hereof.

E. Liability of Successor. A successor Fiduciary shall not be responsible to any beneficiary of this Trust or to this Trust for any act or omission of a former Fiduciary, and shall not be required to audit or investigate the acts or administration of any former Fiduciary. In addition, unless requested in writing by a beneficiary of this Trust and indemnified adequately (in such Fiduciary's discretion therefor), no successor Fiduciary shall have any duty to take action to seek redress for breach of trust by a former Fiduciary.

F. Compensation. A Fiduciary other than any Donee shall be entitled to reasonable compensation for any and all services rendered as Fiduciary.

G. Liability for Retaining Property. The Fiduciary shall not be liable for any loss or depreciation in value sustained by this Trust as a result of the Fiduciary accepting or retaining any

property upon which hazardous materials or substances are discovered, unless the Fiduciary contributed to the loss or depreciation in value through willful default, willful misconduct or gross negligence.

H. Indemnification. The Donor shall indemnify the Fiduciary against any claims (except for claims due to the Fiduciary's willful default, willful misconduct or gross negligence) filed against the Fiduciary (i) as an "owner" or "operator" under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (as from time to time amended) or any regulation thereunder and (ii) under any other federal, state or local environmental law, rule, regulation or order relating to the property contributed to this Trust by the Donor.

I. Jurisdiction. This Trust shall not be administered under the jurisdiction of any court. Should a question or issue be submitted to a court of competent jurisdiction at any time or from time to time, such court shall acquire jurisdiction of only the question or issue submitted to it, and the jurisdiction of such court shall terminate upon the conclusion or settlement of such question or issue.

V.

POWERS OF THE TRUSTEE

All powers, authority and discretion exercisable by the Trustee under this Trust or by law shall be binding and conclusive on all interested parties; shall be exercisable by the Trustee in its sole and absolute discretion; shall be construed in the broadest possible manner, and shall be exercisable without prior or subsequent application to any court under the jurisdiction of which this Trust may be administered. Not in derogation of or in limitation upon the powers, authority and discretion conferred by law upon a trustee, the Trustee is vested with the following powers, authority and discretion:

A. To alter, repair, improve, erect buildings upon, demolish, manage, partition, mortgage, lease for any period, including a period in excess of any fixed by statute or extending beyond the duration of this Trust, exchange, grant options to lease or to buy, and sell or dispose of, at public or private sale, and upon such conditions and such terms as to cash and credit as it deems advisable, any of the Trust assets;

B. To compromise, settle, subordinate, arbitrate, extend, renew, modify, or release, in whole or in part, any claim held by it or held against any of the Trust assets hereunder;

C. To continue to hold the property transferred to it hereunder in the form in which it shall be when transferred or as the form thereof may be changed pursuant to the other provisions of this Agreement, without regard to the limitations imposed by law upon the investment of trust funds;

D. To borrow money and to encumber or hypothecate Trust assets whether by mortgage, deed of trust, pledge or otherwise;

E. To commence or defend litigation with respect to the Trust assets, at the expense of the Trust assets;

F. To employ any person, firm, corporation, bank, or trust company for advice with respect to investment policy or any other matter, but the Trustee may follow or refrain from following any recommendation so obtained and such recommendations shall not in any way limit the discretionary power and authority conferred upon the Trustee hereunder with respect to investments or other matters;

G. To retain accountants, attorneys, brokers, investment advisers, investment counselors and other agents, and may pay reasonable compensation for their services;

H. To enter into any and all agreements with the Internal Revenue Service or any other governmental body and to execute, from time to time, any declarations of policy or disclaimers restricting the powers, authority and discretion granted to the Trustee;

I. To invest and to reinvest the Trust assets in every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not limited to, corporate and government obligations of every kind, stocks (preferred or common), partnerships (general or limited), limited liability companies, options, shares or interests in common trust funds, life insurance contracts and annuity contracts, regardless of any laws or rules of law governing the investment of trust funds; to lawfully disregard any laws or rule of law that, in the absence of contrary trust provisions, would limit the amount any trustee can invest in or pay for any life insurance contract and annuity contract; with respect to unproductive property (i.e., property

which is not producing fiduciary income currently for distribution to the income beneficiary or beneficiaries), the Fiduciary is hereby authorized to continue to hold or to acquire such property, especially when such unproductive property is appreciating or may appreciate in value; and carrying charges for such property shall be paid first out of income and then out of principal; and upon the sale of such property, the Fiduciary shall allocate fiduciary income and principal as set forth in Paragraph L of this Article V; and nothing in this Agreement shall be construed to restrict the Fiduciary from investing the Trust assets in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of Trust assets;

J. With respect to any investment held by the Trustee, to participate in and consent to any corporate or financial reorganization, dissolution, liquidation, merger, consolidation, sale or lease, or in and to any other change in its financial structure; and to become a depositor with any protective, reorganization, or similar committee, and to make any necessary payments incident to the foregoing; to organize or participate in the organization of corporations or other business entities, and to transfer to them any part or all of the Trust assets in exchange for an investment therein; to exercise or to sell any conversion, subscription, or similar rights; and in general to exercise in respect to any investment the unrestricted rights of a personal owner, including voting in person and granting proxies, discretionary, general, or otherwise;

K. In any case in which the Trustee makes any payments or other distribution of Trust assets, to make such payment or distribution in money or in kind, including undivided interests in any property, or partly in money and partly in kind; and in the case of any distribution in kind to any Donee, the adjusted basis of the Trust property distributed shall be fairly representative of the adjusted bases of all Trust properties available for distribution on the date of distribution;

L. To apportion and allocate Trust receipts and expenses between income and principal accounts (provided that no pre-gift appreciation shall be allocable to fiduciary income); and to treat as fiduciary income the increase in value of an obligation for the payment of money, payable at a future time in accordance with a fixed, variable or discretionary schedule of appreciation in excess of the fair market value on the date of contribution or the price at which it was issued, or the increase in value of an interest in a partnership or other investment in excess of the fair market value on the date of contribution or the price paid, as the case may be, including but

not limited to a bond, a zero coupon bond, an annuity contract before annuitization, a life insurance contract before the death of the insured and/or an interest in a common trust fund as defined under Section 584 of the Code; and such increase in value of an obligation for the payment of money or the increase in value of an interest in a partnership or other investment shall be available for distribution only when the Trustee receives cash on account of the obligation, partnership interest or other investment;

M. To retain the services of an independent appraiser to assist in valuing assets of this Trust and to reasonably compensate such appraiser for such services;

N. If required by the Code, the Regulations or any Internal Revenue Service rulings thereunder to maintain the status of the Trust as a charitable remainder unitrust, to set aside a reserve or allowance from Trust income for the depreciation or depletion of any property transferred to or invested in by the Trust; otherwise, the Trustee shall have discretion whether or not to set aside such a reserve;

O. With respect to any environmental hazards on Trust property,

1. To take all appropriate actions to prevent, identify or respond to actual or threatened violations of any environmental law, rule or regulation, including compliance with any federal, state or local agency or court order directing an assessment, abatement or cleanup of any environmental hazard;

2. To disclaim, in whole or in part, any interests in property for any reason, including but not limited to, a concern that such property could cause potential liability under any federal, state, or local environmental law, rule or regulation; and/or

3. To set aside any interests in property, which could cause potential liability under any federal, state, or local environmental law, rule or regulation as a separate trust to be held and administered upon the same terms as those governing the remaining Trust assets;

P. To designate as custodian of any Trust property any business entity authorized and engaged in the business of brokers or dealers in securities;

Q. To the extent permitted by law, to register any of such property in its name as Trustee or in the names of nominees, or to take and keep the same unregistered or in bearer form, or in such condition as to pass by delivery; and/or

R. Except as otherwise provided in Paragraph B of Article IV, whenever the Trust acquires by gift or purchase an annuity contract of any type ("Annuity Contract"), to exercise with respect to such Annuity Contract any rights, duties and discretion as owner thereof, including but not limited to the right, duty or discretion to:

1. Partially or totally surrendering the Annuity Contract at any time(s) or from time to time;
2. Making partial withdrawals from the Annuity Contract giving due regard to any withdrawal or partial surrender penalties that may be imposed and to the best interest of all Trust beneficiaries;
3. Electing any annuity option(s) therein granted; provided, however, that the option so elected guarantees the payment to the Trust by or upon the death of the annuitant of an amount at least equal to the surrender value of the Annuity Contract(s) as of the day before the day the annuity payments commence;
4. Designating the day the annuity payments commence; and/or;
5. Seeing to the allocation of any payments of any type received from the Annuity Contract between principal and income as is required by this Trust and the Principal and Income Laws under the State or Commonwealth which governs this Trust pursuant to Article VI hereof.

S. To pay premiums on a Trust-owned policy of life insurance; provided, however, any such premium payment shall be charged solely to the Trust's principal account and, notwithstanding any statute, rule or convention to the contrary, no part of any such premiums shall be paid with Trust income (as income is defined for purposes of Section 677(a)(3) of the Code only).

Anything in this Agreement to the contrary notwithstanding, it is the intention of the Donor to create a qualifying charitable remainder unitrust under Section 664 of the Code; therefore, no powers, authority or discretion either otherwise granted by this Agreement or by applicable state law that exceed or are inconsistent with those allowed under Section 664 of the Code and the Regulations thereunder are to be possessed or exercised by the Trustee.

VI.

APPLICABLE LAW

The validity of this Trust shall be controlled by the laws of the State of California. The construction and administration of this Trust shall be controlled by the laws of the State of California, or if the Trustee designates in writing to the contrary, by the laws of the Commonwealth or State in which this Trust is administered. However, in any conflict with Section 664 of the Code, the Regulations thereunder or any other existing or hereafter promulgated legislative or Treasury requirements for the qualification of this Trust and for the Donor's obtaining the full benefit of any income, gift and estate tax charitable deductions to which the Donor (and the Donor's estate) may be entitled, Section 664 of the Code, the Regulations thereunder and the legislative and Treasury requirements shall govern.

VII.

IRREVOCABILITY AND AMENDMENT

This Trust shall be irrevocable. However, the Trustee shall have the power, acting alone, to amend this Agreement in any manner required for the sole purpose of ensuring that this Trust qualifies and continues to qualify as a charitable remainder unitrust within the meaning of Section 664 of the Code and the Regulations thereunder.

VIII.

PROHIBITED ACTS

Notwithstanding any other provision of this Agreement, no Fiduciary shall (except for the payment of the Unitrust Amount) engage in any act of self-dealing (as defined in Section 4941(d) of the Code), retain any excess business holdings (as defined in Section 4943(c) of the Code) which would subject this Trust to tax under Section 4943 of the Code, make any investments which would subject this Trust to tax under Section 4944 of the Code, or make any taxable expenditure (as defined in Section 4945(d) of the Code). If Section 4942 of the Code is deemed applicable to this Trust by reason of Section 508(e) of the Code or otherwise, then the Trustee shall make distributions at such times and in such manner as not to subject this Trust to tax under Section 4942 of the Code.

IX.

INTENTION TO CREATE UNITRUST

It is the Donors' intention to obtain the full benefit of any income, gift and estate tax charitable contribution deductions to which they (and their estates) may be entitled to under the Code and for this Trust to qualify as a charitable remainder unitrust within the meaning of Regulation Section 1.664-3(a)(1)(i)(c), and Code Section 664(d)(2) and (3) and Code Section 664(d)(2), as the case may be.

X.

DEATH TAXES

No federal estate taxes, state death taxes or any other estate, death, inheritance or welfare transfer taxes ("death taxes") with respect to this Trust shall be allocated to or be recoverable from this Trust. The Donor agrees to provide in his/her Will, or any other appropriate estate planning documents, that any death taxes arising from the creation of this Trust, or the interest of the Donor therein, shall be payable from the estate of the Donor, excluding the assets of this Trust. The Donor hereby imposes an affirmative obligation on his/her estate to pay all of such death taxes (if any) from sources other than this Trust and agrees that this obligation may be enforced by the Trustee or any Donee, acting alone or together.

XI.

MISCELLANEOUS

A. Spendthrift. The Donor shall not have any power to sell, transfer, assign, pledge, mortgage, or alienate all or any part of the Donor's beneficial interest in the principal or income of this Trust in any manner whatsoever. The interest of the Donor shall not be subject to the claims of the Donor's creditors or to attachment, execution, bankruptcy proceedings or any other legal process.

B. Internal Revenue Code. Throughout this Agreement, the word "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and references to a Section of the Code shall include any successor provisions to the Section referred to and to any corresponding provisions of any subsequent federal tax laws.

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on ~~July~~ *August* *1999*
4, 1999, at Palm Springs, California 92264

DONOR:

James M. Duncan III
JAMES M. DUNCAN, III

TRUSTEE:

James M. Duncan III
JAMES M. DUNCAN, III

State of California)
County of ~~San Diego~~ ^{SS.} Riverside

On ~~July~~ ^{Aug} 4, 1999, before me, Donna Kassler, a notary public,
personally appeared JAMES M. DUNCAN, III, personally known to me (or proved to me on the
basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon
behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Donna Kassler

(Seal)

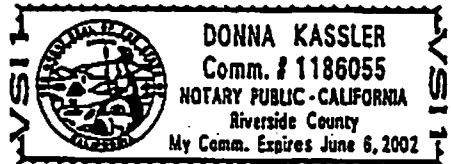


EXHIBIT A

THE DUNCAN
CHARITABLE REMAINDER UNITRUST

1. All that certain parcel of land situate in the City of Alexandria, State of Virginia, generally described as follows:

BEGINNING at the northwest corner of Henry and Cameron Street; thence in a westerly direction along the northerly line of Cameron Street 246 feet 10 inches to the northeast corner of Cameron and Fayette Streets; thence from said front back between parallel lines 176 feet 7 inches, the easterly line of said lot being the westerly line of Henry Street and the westerly line of said lot being the easterly line of Fayette Street containing 43,587 square feet, LESS AND EXCEPT a portion of said parcel of land at the corner of North Henry Street and Cameron Street leased to the American Oil Company with a frontage of 110 feet on Cameron Street and 125 feet on North Henry Street; it being understood that there is a plat prepared by Holland Surveyors, Alexandria, Virginia, dated February 12, 1959, more particularly describing this property.

Receipt of the above described asset is hereby acknowledged this 4 day of ~~July~~^{August}, 1999.

TRUSTEE:


JAMES M. DUNCAN, III

NORTHERN TRUST BANK OF CALIFORNIA N.A. by and through the undersigned authorized officer, hereby declines to accept its appointment as successor Trustee of THE J.M. DUNCAN III CHARITABLE REMAINDER UNITRUST created under that certain Trust Agreement dated August 4, 1999, wherein James M. Duncan, III, was the Donor and initial Trustee.

Signed this 21st day of April, 2000, in Indian Wells, California.

NORTHERN TRUST BANK OF CALIFORNIA N.A.

By: _____


Michael V. Smith

Its: _____

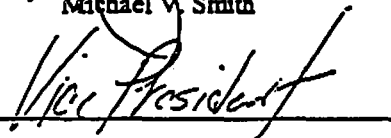

Vice President

EXHIBIT C

PURCHASE CONTRACT

THIS PURCHASE CONTRACT (the "Agreement"), dated as of the 20th day of October, 1999 (the "Effective Date"), between J. M. DUNCAN, III IRREVOCABLE CHARITABLE TRUST ("Seller") and NATIONWIDE CH LLC ("Purchaser") recites and provides as follows:

RECITALS

R-1. Seller is the fee simple owner of parcels of real estate containing approximately 1.0 acre of land (the "Land") and more particularly described in the attached Exhibit A, together with all improvements thereon and appurtenances thereto owned by Seller, and all tangible and intangible personal property owned by Seller and used in the rental, operation, and maintenance thereon, including but not limited to any assignable licenses or permits in Seller's possession, known as 1115 Cameron Street (the "Hopkins Furniture Property") and 200 N. Henry Street (the "Tune & Lube Property") in the City of Alexandria, Virginia and referred to as approximately 43,587 square feet of land identified on Tax Identification Maps as 064.03-04-21-2 and 064.03-04-21-0 excluding such of the foregoing which is in fact owned by the tenants therein (collectively all of the foregoing shall be referred to as the "Property").

R-2. Purchaser desires to purchase and Seller desires to sell the Property on the terms and conditions hereinafter set forth.

AGREEMENT

NOW THEREFORE, for and in consideration of the Recitals, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to convey the Property and Purchaser agrees to acquire the Property upon the following terms and conditions:

ARTICLE I

PURCHASE AND SALE; PURCHASE PRICE; DEPOSIT

1.1 Purchase and Sale; Purchase Price. Subject to the terms hereof, Seller agrees to sell and Purchaser agrees to acquire the Property for the sum of TWO MILLION TWO HUNDRED THOUSAND AND NO HUNDREDTHS DOLLARS (\$2,200,000.00) (the "Purchase Price"), which shall be payable in cash by wire transfer in immediately available funds at "Settlement" (as hereinafter defined). The purchase price for the Hopkins Furniture Property alone shall be \$1,100,000; provided however, that if the Hopkins Furniture Property is purchased without also purchasing the Tune & Lube Property, the purchase price for the Hopkins Furniture shall be \$1,500,000. The

Purchase Price for the Tune & Lube Property shall be \$1,100,000. If Purchaser elects to purchase only one of the two parcels, Purchaser shall pay all costs associated with subdivision of the Property except for such contributions as may be required from tenants.

1.2 Deposit. Within five (5) business days of the full execution of this Agreement, Purchaser shall deposit TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), as a good faith deposit (which shall be kept in an interest bearing escrow account) (the "Deposit") with Gerald F. Chapman LLC ("Escrow Agent") which shall either be applied by Purchaser toward the payment of the Purchase Price, or returned to Purchaser if Purchaser elects to terminate this Agreement pursuant to any right granted by this Agreement, or paid to Seller in the event of failure by Purchaser, beyond any applicable notice and cure periods set forth in this Agreement, to comply with any of the Purchaser's obligations pursuant to this Agreement. The Deposit shall be increased to \$100,000.00 upon the expiration of the Study Period defined below, provided however, that up to 50% of the Deposit may be used by Purchaser for expenses incurred in the pursuit of the Special Use Permit and/or rezoning of the Property contemplated herein and provided further that if only the Hopkins Furniture Property is purchased then the deposit shall only be increased to \$50,000 instead of \$100,000. Notwithstanding the foregoing sentence, in the event the Purchaser elects to purchase only one tax parcel of the Property, then Purchaser shall not be entitled to draw on the increased Deposit for expenses. Beginning six months from the Effective Date, \$1,500 per month of the Deposit shall be released to the Seller until such time as this Agreement is either terminated or settlement shall occur hereunder.

ARTICLE II DUE DILIGENCE PERIOD; PERMITS

2.1 Initial Option Period. For a period of one hundred twenty (120) days from the Effective Date (the "Initial Option Period"), Purchaser shall attempt to negotiate terminations of existing leases ("Lease Terminations") with the tenants of the Property, which terminations shall be subject to Settlement hereunder. If, during the Initial Option Period, Purchaser is unable to obtain Lease Terminations on terms and conditions acceptable to Purchaser in Purchaser's sole discretion, then Purchaser shall have the right to terminate this Agreement by giving Seller written notice of termination on or before the expiration of the Initial Option Period, in which event the Deposit shall promptly be returned to the Purchaser and neither party shall have any further liability to the other under this Agreement (other

than with respect to the indemnities contained in Sections 2.3 and 2.4 of this Agreement). Any lease termination agreements with the tenants shall expressly provide that they are contingent upon Purchaser's acquisition of the Property and copies of any such lease termination agreements shall be provided to Seller prior to their execution by Purchaser and fully executed copies of such lease termination agreements shall be provided to Seller immediately upon their execution.

2.2. Study Period. During the Initial Option Period, and for a period of ninety (90) days after the expiration of the Initial Option Period (the "Study Period"), Purchaser shall have complete access to the Property for the purpose of conducting such soil borings, soil analyses, engineering tests and studies, environmental tests and studies, economic and/or topographic tests, studies, investigations and analyses as Purchaser may deem necessary in order to determine whether the property is suitable for Purchaser's intended use thereof. In the event that Purchaser determines, in its sole discretion, that the Property is not suitable for Purchaser's intended use, then Purchaser may terminate this Agreement by delivering written notice thereof to Seller on or before the expiration of the Study Period, in which event the Deposit shall promptly be returned to the Purchaser and neither party shall have any further liability to the other under this Agreement both in law and in equity (other than with respect to the indemnities contained in Sections 2.3 and 2.4 of this Agreement). In the event that this Agreement is terminated for any reason prior to Settlement, Purchaser shall assign to Seller complete copies of any engineering, environmental, soils, surveys, site plans or other documents in Seller's possession or control with respect to the Property and the lease termination agreements.

2.3 Access and Inspection. Subject to the rights of tenants, Seller hereby grants to Purchaser and its agents a license to enter upon the Property for the purpose of inspecting and testing the conditions or status of the Property, undertaking such tests and inspections as Purchaser desires. All of Purchaser's agents entering the Property shall be licensed, bonded or insured. Purchaser hereby agrees to promptly repair any damage to the Property caused by such inspections and testing and to indemnify and hold Seller harmless against any injury, loss or damage to the Property or for any personal injury to any persons as a result of such inspections and testing. The foregoing indemnity shall not include, however, any cost, expense, claim or liability arising out of or in any way related to contaminated soil, asbestos or other environmental hazards or other pre-existing hazards or unsafe conditions discovered by Purchaser's inspections.

2.4 Seller Provided Information. Seller shall deliver to Purchaser within fourteen (14) days after the Effective Date a copy of Seller's survey and title documents, copies of all leases, deeds, easements, restrictions, service contracts, any environmental reports or engineering reports in Seller's possession, and any subordination, non-disturbance and attornment agreements.

2.5. Permits Purchaser intends to file and process for approval with the City of Alexandria a Special Use Permit (the "Special Use Permit") application to permit the development of the Property in a mix of commercial/office/retail and residential unit types, including residential condominium units for the Property. Purchaser also intends to file and process for issuance by the City of Alexandria appropriate building permits (the "Building Permits") necessary to construct the commercial/office/retail and residential improvements contemplated for the Property. Purchaser, at its sole cost and expense, agrees to prepare, submit and process for approval by all appropriate City of Alexandria governmental authorities the necessary applications to obtain the Special Use Permit and the Building Permits. Prior to the submission of the Special Use Permit application, Purchaser shall provide to Seller a copy of the same for its reasonable review and approval. If Seller does not object in writing to Purchaser's submission within ten days of such submission being provided to Seller, then Seller shall be conclusively deemed to have approved such submission. Purchaser agrees to diligently and continuously pursue obtaining approval of the Special Use Permit and shall provide Seller with monthly written reports with respect to the same. Seller agrees to reasonably cooperate with Purchaser in order for Purchaser to obtain expeditious final approval of the Special Use Permit and issuance of the Building Permits including promptly executing such documents and applications as Purchaser may reasonably request. Seller shall not be required to consent to any development conditions that would require that Seller dedicate any property, incur any out-of-pocket expenses or prohibit the use of the Property for its present uses if Purchaser does not acquire the Property. If Purchaser is unable to obtain the Special Use Permit and the Building Permits, then Purchaser may elect to terminate this Agreement and shall be entitled to prompt repayment of its Deposit and neither party shall have any further liability to the other under this Agreement (other than with respect to the indemnities contained in Sections 2.3 and 2.4 of this Agreement). Additionally, if Purchaser reasonably determines that further efforts to obtain the Special Use Permit and the Building Permits are not economically feasible, Purchaser may terminate this Agreement by delivering written notice thereof to Seller, in which event the Deposit shall promptly be returned to the Purchaser and

neither party shall have any further liability to the other under this Agreement (other than with respect to the indemnities contained in Sections 2.3 and 2.4 of this Agreement).

ARTICLE III SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Seller hereby makes the following representations, warranties and covenants with respect to Seller and the Property, which Seller shall reaffirm at Settlement and which shall survive Settlement:

3.1 Organization and Power. Seller has all requisite powers, authorizations, consents and approvals to enter into and to perform his obligations hereunder and under any document or instrument required to be executed and delivered on behalf of the Seller hereunder.

3.2 Authorization and Execution. This Agreement has been duly authorized by Seller, has been duly executed and delivered by Seller, constitutes the valid and binding agreement of Seller and is enforceable in accordance with its terms.

3.3 Noncontravention. The execution and delivery of and performance by Seller of his obligations hereunder, do not and will not contravene, or constitute a default under, any provisions of applicable law or regulation, or any agreement, judgment, injunction, order, decree or other instrument binding upon Seller, or result in the creation of any lien or other encumbrance on any asset of Seller. Seller has received no written notice of any default or breach by Seller under any of the covenants, conditions, restrictions, or easements affecting the Property.

3.4 Litigation. There is no action, suit or proceeding, pending or known to be threatened against or affecting Seller or the Property which in any manner raises any question affecting the validity or enforceability of this Agreement, including any condemnation proceedings except for that certain environmental issue regarding the Property being monitored by the Virginia Department of Environmental Quality PC#92-2268. Except as disclosed in the foregoing sentence, Seller has received no notice of any violations of any federal, state or local governmental regulation or law affecting the Property.

3.5 Brokerage Commission. Seller has not engaged the services of any real estate agent, broker, finder or any other person or entity for any brokerage or finder's fee, commission or other amount with respect to the transactions described herein or any lease transactions entered into by Seller at the Property prior

to Settlement. Seller shall indemnify and hold Purchaser harmless from and against any and all loss, liability, and expense, including reasonable attorneys' fees and costs, suffered by Purchaser due to a breach of the foregoing representation, covenant and warranty.

3.6 Service Agreements. Seller represents that Seller has no Service Contracts.

3.7 Contract Period. Prior to Settlement, Seller covenants and agrees:

(i) not to create any new liens, contracts or encumbrances against the Property which will not be released at or prior to Settlement;

(ii) to comply with all of the landlord's duties and obligations as set forth in the tenant leases in all material respects (the "Leases"), and to comply with Seller's obligations under the Service Contracts;

(iii) to operate, repair, and maintain the Property in the same manner as prior to the date of this Agreement, including without limitation to maintain the current insurance on the Property;

(iv) after the Effective Date, Seller shall not, without the Purchaser's prior written consent, amend, modify, renew or extend any Lease in any respect unless required by law, or enter into any new leases or approve any assignment of leases or subletting of leased space, or terminate any Lease. Prior to the expiration of the Study Period, Seller shall deliver to Purchaser copies of any amendment, modification, renewal, expansion, termination, assignment or sublease of any Lease, or of any new leases executed after the date hereof; and

(v) to knowingly not violate any law affecting the Property, and to promptly notify Purchaser of any notice, filing, litigation, arbitration, or administrative hearing affecting the Property, which is instituted after the Effective Date. In the event of any violation of any law affecting the Property prior to Settlement which decreases the value of the Property by an amount greater than Fifty Thousand Dollars (\$50,000.00), then Purchaser shall have the right to terminate this Agreement in accordance with Section 7.1 hereof. If the Property value is diminished by less than \$50,000.00, then Seller

shall have the option to remedy the violation. If Seller elects not to remedy the violation, Purchaser may either waive this provision or terminate this Agreement.

3.8 Structures and Improvements. Seller has no knowledge that the structures and improvements upon the Property have not been constructed and installed in full compliance with all applicable laws, statutes, ordinances, codes, covenants, conditions, regulations, and restrictions of any kind or nature affecting the land or improvements constituting the Property.

3.9 [intentionally omitted]

3.10 Ownership. Seller owns fee simple title to the Property, free and clear of all mechanic's liens, certified liens, mortgages, encumbrances, obligations, reservations, lawsuits, judgments, or any other encumbrances, claims or liens of any sort whatsoever except only for those items disclosed in this Agreement. Notwithstanding the foregoing, Seller hereby discloses that the tenant of the Tune & Lube Property has a right of first refusal to purchase the Property, the Seller's ownership is subject to matters of title and the environmental issue, and Seller does not own certain other tenant improvements on the Property.

3.11 Rent Roll. The Rent Roll attached hereto as Exhibit B accurately and correctly sets forth for each tenant with an interest in the Property their respective name, street or unit number, monthly rental, percentage rental, amount of deposit or security, tax escalation provisions, amount of common area maintenance, term of lease and options (if any) with respect to the tenant's lease, the present status of rental payments, and any and all rebates, concessions, free rent, inducement to rent or other benefits in connection with the lease.

3.12 [intentionally deleted]

3.13 Utilities. Seller has not entered into any special agreements with any utility companies, governmental agencies or bodies, or with any entity furnishing any utility services to the Property the cost of which is not disclosed in this Agreement.

3.14 Seller Interests. Neither the Seller nor any partner thereof, nor any affiliate or affiliated person or entity of any of same: (a) own any property adjoining or adjacent to the Property; or (b) have any ownership interest of any kind whatsoever in any tenant on the Property.

3.15 Security Deposits. All security or other deposits or

fees of tenants are fully and accurately disclosed on the Rent Roll attached as Exhibit B. The Seller will not apply any security or other deposits or fees of tenants toward any tenant default except in accordance with the terms of the respective leases.

3.16 Leasing Commissions. There are no leasing commissions or other brokerage commissions or finder's fees due and owing except as fully disclosed in this Agreement.

3.17 Hazardous Materials. Except as disclosed in written reports provided by the Seller to the Purchaser prior to the execution of this Agreement and the remediation plan approved by the Virginia Department of Environmental Quality ("VDEQ") (VDEQ PC#92-2268), the Property, and the improvements thereon, shall be conveyed as is - where is. Seller has no actual knowledge of any environmental matters affecting the Property except for those matters disclosed in the foregoing written reports. In the event that at closing hereunder, VDEQ has not issued a closure letter with respect to environmental contamination and remediation, Seller agrees to escrow from the Purchase Price a sum equal to 125% of the reasonably estimated costs to complete any remediation required by the approved remediation plan and to obtain a closure letter, the foregoing escrow not to exceed a maximum of 10% of the Purchase Price.

3.18 Seller's Indemnity. Except for Purchaser's negligence or intentional misconduct, Seller hereby indemnifies and holds Purchaser harmless from and against any and all claims, liabilities, losses, damages, causes of action and expenses, including legal costs and reasonable attorney's fees, in connection with or arising out of (a) the operation of the Property prior to Settlement, and (b) the obligations of the lessor/landlord under the Leases prior to Settlement.

ARTICLE IV PURCHASER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Purchaser hereby makes the following representations, warranties and covenants:

4.1 Organization and Power. Purchaser is a duly formed and validly existing corporation under the laws of the Commonwealth of Virginia, and has all requisite powers and all authorizations, consents and approvals to enter into and perform its obligations hereunder and under any document or instrument required to be executed and delivered on behalf of the Purchaser hereunder.

4.2 Authorization and Execution. This Agreement has been

duly authorized by all necessary action on the part of Purchaser, has been duly executed and delivered by Purchaser, constitutes the valid and binding agreement of Purchaser and is enforceable in accordance with its terms.

4.3 Noncontravention. The execution and delivery of and the performance by Purchaser of its obligations hereunder do not and will not contravene, or constitute a default under, any provisions of applicable law or regulation or any agreement, judgment, injunction, order, decree or other instrument binding upon Purchaser or result in the creation of any lien or other encumbrance on any asset of Purchaser.

4.4 Litigation. There is no action, suit or proceeding, pending or known to be threatened, against, or affecting Purchaser which in any manner raises any question affecting the validity or enforceability of this Agreement or any other agreement or instrument to which Purchaser is a party or by which it is bound and that is to be used in connection with, or is contemplated by, this Agreement.

4.5 Brokerage Commission. Purchaser has not engaged the services of any real estate agent, broker, finder or any other person or entity for any brokerage or finder's fee, commission or other amount with respect to the transaction described herein. Purchaser shall indemnify and hold Seller harmless against any loss, liability, and expense, including reasonable attorneys' fees and costs, suffered by Seller due to a breach of the foregoing representation, covenant and warranty.

ARTICLE V SETTLEMENT

5.1 Settlement. Settlement shall be held at a location designated by Purchaser at the earlier to occur of: (1) 18 months from the date of this Agreement; or (2) within forty-five days following approval and issuance of the Special Use Permit and building permits ("Settlement"). Possession of the Property shall be delivered to Purchaser at Settlement subject only to the Leases and to state and county ad valorem taxes and assessments not yet due and payable. At Settlement, Seller shall also deliver to Purchaser all security and other deposits held from any tenants on the Property consistent with the Rent Roll specified below. In the event that the Special Use Permit and building permits have not been approved within 18 months of the date of this Agreement, Purchaser shall be entitled to extend the date for Settlement for up to 180 days in 30 day increments until the Special Use Permit and building permits have been approved upon the payment of

additions to the Deposit of \$7,500 per 30-day extension. In the event that Purchaser is unable to obtain the Special Use Permit and building permits within the above specified periods of time, Purchaser may elect to terminate this Agreement and shall be entitled to the prompt repayment of its Deposit and both parties shall be relieved of any further liability to the other party both in law or in equity. However, if settlement is consummated, the fees paid for the extensions shall be applied against the Purchase Price.

5.2 Seller's Deliveries: At Settlement, Seller shall deliver or cause to be delivered to Purchaser all of the following instruments:

(a) A deed conveying fee simple title to the Property in the form of a special warranty deed subject to existing leases, easements, conditions and restrictions of record.

(b) [intentionally omitted]

(c) The originals of all Leases or true, correct and complete copies thereof with assignments thereof to Purchaser.

(d) [intentionally omitted]

(e) Appropriate resolutions and consents in accordance with Seller's organizational documents.

(f) All keys for the Property in possession of Seller.

(g) [intentionally omitted]

(h) An affidavit in form acceptable to the Purchaser's title company sufficient to remove any exception for mechanics' and materialmen's liens and parties in possession (other than tenants pursuant to the Leases).

(i) An affidavit certifying that the Seller is not a foreign entity under the Foreign Investment in Real Property Act, in the form attached hereto as Exhibit C.

(j) Such other agreements or documents as Purchaser, Purchaser's lender, or Purchaser's title company may reasonably request.

(k) A Rent Roll, updated to the date of Settlement, which shall be substantially in the form as Exhibit B, which Seller shall

certify and warrant as true, correct and complete.

(1) An executed Tenant Letter advising each tenant of the transfer of ownership in the Property.

5.3 Purchaser's Deliveries. At Settlement, Purchaser shall pay or deliver to Seller the following:

(a) The Bill of Sale, executed by Purchaser.

(b) The Purchase Price as adjusted pursuant to the terms of this Agreement.

5.4 Settlement Costs. Each party hereto shall pay its own legal fees and expenses. Seller shall pay the grantor's tax. Purchaser shall be responsible for the payment of the State and City recordation taxes associated with the deed. The cost of Purchaser's settlement agent and any title insurance premium, survey, and other settlement costs shall be paid by Purchaser.

5.5 Income and Expense Allocations. At Settlement, all income and expenses with respect to the Property, and applicable to the period of time before and after Settlement, determined in accordance with generally accepted accounting principles consistently applied, shall be allocated between Seller and Purchaser as of the date of Settlement. Seller shall be entitled to all income and responsible for all expenses for the period of time up to but not including the date of Settlement.

ARTICLE VI CONDEMNATION; RISK OF LOSS

6.1 Condemnation. In the event of any actual or threatened taking, pursuant to the power of eminent domain, of all or any portion of the Property, or any proposed sale in lieu thereof, Seller shall give written notice thereof to Purchaser promptly after Seller learns or receives notice thereof. If a part of the Property is, or is to be, so condemned or sold then Purchaser shall have the right to terminate this Agreement pursuant to Section 7.1. If this Agreement is not so terminated, all proceeds, awards and other payments arising out of such condemnation or sale (actual or threatened) shall be paid or assigned to Purchaser at Settlement.

6.2 Risk of Loss. The risk of loss or damage to the Property prior to the delivery of the Deed shall remain upon Seller.

ARTICLE VII TERMINATION

Termination. If Purchaser shall be entitled to terminate this Agreement, it shall be entitled to receive a refund of the Deposit. If Purchaser defaults in performing its obligations hereunder, Seller's remedy shall be to either: (a) retain, as liquidated damages for Purchaser's default, whatever Deposit has been paid by Purchaser to Escrow Agent; or (b) exercise its remedies at law and in equity. In the event Seller defaults in performing its obligations hereunder, Purchaser shall be entitled to pursue all available remedies at law or in equity, or both, including the right to specific performance.

ARTICLE VIII CONDITION OF PROPERTY AT SETTLEMENT

8.1 Maintenance of Property. Seller shall maintain the physical condition of the Property, including the grounds and all other elements thereof, in good condition through the date of Settlement, reasonable wear and tear excepted. Seller shall make all ordinary repairs and maintenance of the Property until Settlement as it would in the normal course of operating the Property. Notwithstanding the foregoing provisions of this paragraph 8.1, Seller shall only be required to comply with the applicable provisions of the tenant leases.

8.2 [intentionally omitted]

ARTICLE XI MISCELLANEOUS PROVISIONS

9.1 Completeness; Modification. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior discussions, understandings, agreements and negotiations between the parties hereto. This Agreement may be modified only by a written instrument duly executed by the parties hereto.

9.2 Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

9.3 Governing Law. This Agreement and all documents referred to herein are governed by and shall be construed and interpreted in accordance with the laws of the Commonwealth of Virginia.

9.4 Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of both parties hereto appear on each counterpart hereof. All counterparts hereof

shall collectively constitute a single agreement.

9.5 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, condition or provision to other persons or circumstances, shall not be affected thereby, and each term, covenant, condition or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.6 Notices. Whenever any notice may be given or is required to be given under the terms of this Agreement, the same shall be given in writing and either sent by certified mail, return receipt requested, postage pre-paid or by a national overnight delivery service, delivery pre-paid or delivered by hand with written receipt acknowledged, or by telecopy followed by another permitted means of delivery. For purposes of giving notice hereunder the addresses of the respective parties are:

For the Seller:

James M. Duncan, III
1552 E. Twin Palms Drive
Palm Springs, CA 92264

with a copy to:

Lawrence Schonberger, Esq.
Fagelson, Schonberger, Payne & Deichmeister, P.C.
11320 Random Hills Road, Suite 690
Fairfax, VA 22030

For the Purchaser:

Nationwide CH LLC
Attn: Ira Bloom
2801 New Mexico Avenue, N.W., #1221
Washington, DC 20007
FAX No. 202-33-7576

with a copy to:

GERALD F. CHAPMAN LLC
Gerald F. Chapman, Esq.
6917 Arlington Road, Suite 350

Bethesda, MD 20814
FAX No. 301-652-3023

Any notice required or given hereunder shall be deemed received if sent by telecopy, hand or overnight courier, or three (3) days after posting if sent by certified mail, return receipt requested. Any party hereto may change its address or designate different or other persons or entities to receive copies by notifying the other party in a manner described in this Section. Further, all notices given pursuant to this Agreement from Seller to Purchaser or from Purchaser to Seller will be effective if executed and sent by counsel to the respective party.

9.7 Further Assurances. Seller and Purchaser each covenant and agree to sign, execute and deliver, or cause to be signed, executed and delivered, and to do or make, or cause to be done or made, upon the written request of the other party, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, as may be reasonably required or requested by either party hereto for the purpose of or in connection with consummating the transactions described herein.

9.8 Automatic Termination. If this Agreement has not been fully executed on behalf of both parties hereto within five days of the execution by the first party to sign this Agreement, this Agreement shall be construed as an offer which has not been accepted and shall automatically terminate and be of no force and effect.

9.9 Construction. Each party hereto and its counsel have reviewed and revised (or requested revisions of) this Agreement, and therefore any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement or any exhibits hereto or amendments hereof.

9.10 Facsimile Signatures. Facsimile or photocopied signatures of or on behalf of either Seller or Purchaser on this contract or any subsequent modifications shall be effective for all purposes, including delivery, as an original.

9.11 Survival of Terms. All of the representations, warranties, covenants and agreements of Seller and Purchaser made in, or pursuant to, this Agreement shall survive Settlement and shall not merge into the Deed or any other document or instrument executed and delivered in connection herewith.

9.12 Headings. The headings and captions contained in this


Agreement are inserted only as a matter of convenience, and shall not be considered in interpreting or construing the provisions of this Agreement.

9.13 Waiver. Seller and Purchaser each hereby reserve the right to waive, in whole or in part, any provision hereof which is for their respective benefit. Neither party hereto shall be entitled to assert the failure of any condition precedent to the other party's obligations hereunder as grounds for such party's failure or refusal to perform its obligations hereunder.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed in their names by their respective duly authorized representatives.

SELLER:

J.M. DUNCAN III
IRREVOCABLE CHARITABLE TRUST

 (SEAL)
JAMES M. DUNCAN, III, Trustee

PURCHASER:

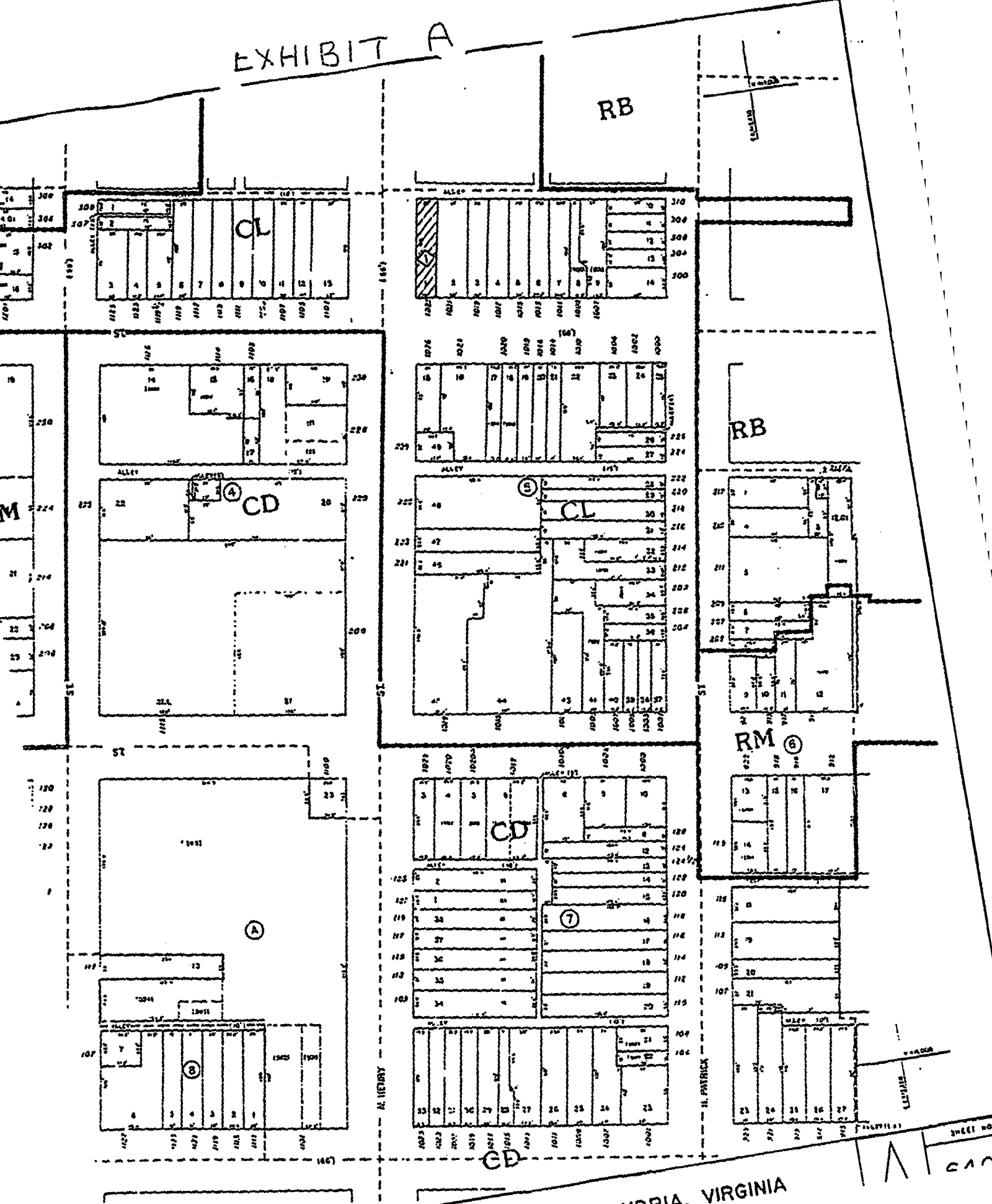
NATIONWIDE CH LLC, OR ASSIGNS

By:  (SEAL)
IRA M. BLOOM, President

EXHIBIT INDEX

DESCRIPTION OF LAND	EXHIBIT A
RENT ROLL.....	EXHIBIT B
FOREIGN INVESTMENT AFFIDAVIT	EXHIBIT C

EXHIBIT A



ALEXANDRIA, VIRGINIA

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST

Complainant,

v.

THE CITY OF ALEXANDRIA, VIRGINIA,
et al.

Defendants.

NATIONWIDE CH LLC

Defendant and Counterclaimant,

v.

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST,

Plaintiff and Counter-Defendant.

CHANCERY NO. CH010249

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA
JUN 5 3 24 PM '01
BY
EDWARD SEMOVIAN, CLERK
DEPUTY CLERK

TO THE HONORABLE JUDGES OF SAID COURT:

FIRST AMENDED COUNTERCLAIM

COMES NOW Nationwide CH LLC ("Nationwide"), by and through its undersigned counsel, and for its Counterclaim against William Y. Austin, Trustee, respectfully represents as follows:

1. William Y. Austin, Trustee (the "Austin"), represents that he is the Trustee of the James W. Duncan, III, Living Trust created by Declaration dated September 7, 1993 and amended by First Amendment dated June 30, 1994 to the James M. Duncan, III, Living Trust.

C:\WPDOCS\NATIONWIDE\counterclaim

2. Nationwide is a limited liability company organized and existing under the laws of the Commonwealth of Virginia. Nationwide claims an interest in certain real property which is adverse to the interest of Austin.

3. The property at issue is located in the City of Alexandria, Virginia, and is described in a certain deed recorded in Deed Book 1498 at Page 1240, among the land records of the City of Alexandria, Virginia commonly known as 200 North Henry Street and 1115 North Cameron Street (the "Property").

4. On or about September 7, 1993, James M. Duncan, III ("Duncan") executed a certain Declaration of Trust creating and establishing the James M. Duncan, III, Living Trust (the "Living Trust"), naming himself as Trustee and Beneficiary of the Living Trust. A copy of the Living Trust is attached hereto as Exhibit A and incorporated herein by this reference.

5. On or about September 7, 1993, Duncan also made, executed and delivered a certain Deed in Trust (the "First Trust Deed") conveying the Property to himself as Trustee of the Living Trust.

6. The First Trust Deed was recorded on June 15, 1994, in Deed Book 1498 at Page 1240 among the land records of the City of Alexandria, Virginia.

7. On June 30, 1994, Duncan executed a First Amendment to the James M. Duncan, III, Living Trust (the "Living Trust Amendment"). The Living Trust Amendment, among other things,

provided that, upon the death of Duncan or his resignation as the original Trustee of the Living Trust, Burke & Herbert Bank & Trust Company of Alexandria, Virginia, and William Y. Austin should succeed him, serving as Co-Trustees. The Living Trust Amendment further provided that if Burke & Herbert failed or refused to serve as Co-Trustee, that another Bank & Trust Company would serve in its stead. There was no provision for William Y. Austin to serve or to act alone.

8. On March 2, 2001, Duncan departed this life.

9. On July 19, 2000, Burke & Herbert Bank & Trust Company declined the appointment as successor Co-Trustee of the Living Trust.

10. The Counter-Defendant claims to have succeeded as Successor Trustee of the Living Trust. However, no professional Bank & Trust Company has been appointed to serve with him as Co-Trustee.

11. On August 4, 1999, Duncan executed the J. M. Duncan III Charitable Remainder Unitrust (the "Unitrust") in which Duncan named himself as Trustee and a beneficiary of the Unitrust. A copy of the Unitrust Agreement is attached hereto as Exhibit B and incorporated herein by this reference.

12. As of the date of the execution of the Unitrust Agreement, Duncan was the Settlor, Trustee and Beneficiary of the Living Trust.

13. On August 3, 1999, Duncan executed a deed (the "Second Trust Deed") conveying the Property to James M. Duncan, III as Trustee of the Unitrust.

14. As of the date of the execution of the Second Trust Deed, Duncan was the Settlor, Trustee and Beneficiary of the Living Trust.

15. On October 20, 1999, Duncan entered into a Purchase Contract (the "Sales Contract") for the sale of the Property to Nationwide. A copy of the Sales Contract is attached hereto as Exhibit C.

16. As of the date of the execution of Sales Contract, Duncan was the Donor, Trustee and Beneficiary of the Unitrust as well as the Settlor, Trustee and Beneficiary of the Living Trust to the extent that the Living Trust was still operative.

17. Nationwide asserts that the Unitrust and the Second Trust Deed are the controlling documents with respect to the Property, the Sales Contract is a valid and enforceable agreement, and that Nationwide has an interest in the Property by virtue of the Sales Contract.

18. The Property constitutes the only known asset of the Unitrust.

COUNT I

DECLARATORY JUDGMENT

19. Paragraph Nos. 1-18 are hereby incorporated by this reference.

20. The existence of the Sales Contract, the document creating the Unitrust and the Second Trust Deed and the assertion of the rights of Nationwide in the Property create an actual controversy between Nationwide and Austin.

21. The Living Trust by its own terms was revocable in whole or in part, and Duncan could withdraw property from the Living Trust in any amount and at any time under the terms of the Living Trust.

22. At all relevant times, the Living Trust was merely an alter ego of Duncan.

23. At all relevant times, Duncan united within himself all capacities necessary to complete fee simple ownership and transfer of the Property.

24. By his execution of the Unitrust Agreement and Second Trust Deed, Duncan effectively exercised his power under the Living Trust to amend or revoke the Living Trust and to withdraw the Property from the Living Trust and transfer it to the Unitrust.

25. There is no provision in the Living Trust as amended which gives William Y. Austin the power to act alone as Trustee without an institutional co-trustee being appointed to serve with him.

26. The trustee named in the Unitrust as the successor trustee of the Unitrust, Northern Trust Bank of California, N.A.,

has declined to serve as the successor trustee, and there is presently no trustee serving the Unitrust.

WHEREFORE, Nationwide prays that this Honorable Court enter an order, judgment or decree declaring that: (1) William Y. Austin cannot validly represent the interests of the Living Trust as its sole trustee and that an institutional co-trustee must be appointed to serve with him; (2) the execution of the Unitrust Agreement and the Second Trust Deed operated to remove the Property from the Living Trust and to transfer it to the Unitrust and effectively amended or revoked the Living Trust as to the Property; (3) the Sales Contract is valid and enforceable; (4) the Court appoint a trustee to act on behalf of the Unitrust to complete the terms of the Sales Contract as such trustee shall deem appropriate; (5) the Unitrust Agreement and the Second Trust Agreement be declared valid, enforceable, and the controlling documents concerning the ownership of the Property and the right to transfer and convey the same; (6) Nationwide be awarded its costs and expenses herein, including reasonable attorneys' fees; and (7) for such other and further relief as the cause of justice may require.

COUNT II

CONSTRUCTIVE FRAUD

27. Paragraph Nos. 1-26 are hereby incorporated by this reference.

28. Duncan executed the Sales Contract as the Trustee of the Unitrust.

29. As part of the Sales Contract, Duncan represented and warranted, *inter alia*, that the Unitrust had all requisite powers, authorizations, consents and approval to enter into the Sales Contract and to perform its obligations thereunder. Under the terms of the Sales Contract, Duncan also agreed that the foregoing representations and warranties were true at the time of the execution of the Sales Contract and that the same would be true and would be reaffirmed at settlement.

30. As part of the Sales Contract, Duncan represented and warranted, *inter alia*, that the Unitrust owned the Property in fee simple free and clear of any liens, mortgages, encumbrances, obligations, reservations, lawsuits, judgments or any other encumbrances, claims or liens of any sort except as disclosed in the Sales Contract. Under the terms of the Sales Contract, Duncan also agreed that the foregoing representations and warranties were true at the time of the execution of the Sales Contract and that the same would be true and would be reaffirmed at settlement.

31. At the time that Duncan executed the Sales Contract and made the foregoing representations and warranties set forth in paragraphs 30 and 31 (collectively, the "Representations and Warranties") to Nationwide, Duncan was the sole trustee of the Living Trust.

32. Nationwide reasonably relied on the foregoing representations and warranties in entering into the Sales Contract and incurring substantial costs and expenses in its evaluation and efforts to comply with the terms of the Sales Contract.

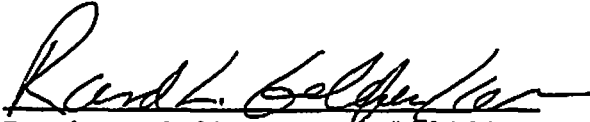
33. In the event that this Court should determine that the Sales Contract is not a valid and enforceable agreement for the sale of the Property because of the existence of the First Trust Deed, then Nationwide asserts and alleges that Duncan, in his capacity as the sole trustee of the Living Trust, committed constructive fraud against Nationwide because such a finding would necessarily be predicated upon a determination that the Representations and Warranties are false. Because of Duncan's position as the sole settlor, trustee and beneficiary of the Living Trust at the time the Representations and Warranties were made, Nationwide asserts that such constructive fraud is deemed to be the fraudulent act of the Living Trust.

34. Nationwide has been damaged by the fraudulent acts of the Living Trust.

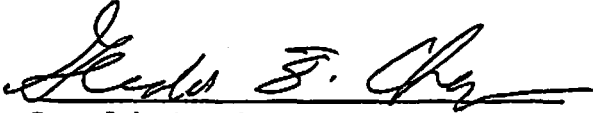
WHEREFORE, Nationwide prays that this Court enter judgment in its favor against the Living Trust in an amount to be determined at trial which amount is estimated to be in excess of \$1 million to include expenses reasonably incurred and lost profits, prejudgment interest thereon, its costs and expenses herein, and for such other and further relief as the cause of justice may require.

NATIONWIDE CH LLC

BY COUNSEL



Rand L. Gelber, VSB #23991
8150 Leesburg Pike, Suite 600
Vienna, VA 22030
(703) 356-0519



Gerald F. Chapman
6917 Arlington Road, Suite 350
Bethesda, MD 20814
301-652-3900, ext 3014
FAX: 301-652-3023

Attorneys for Counterclaimant Nationwide CH LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of June, 2000, a true and correct copy of the above and foregoing was sent by first class mail, postage prepaid, to:

Peter A. Dingman, Esq.
Elizabeth G. Engle, Esq.
Dingman & Labowitz, P.C.
526 King Street, Suite 209
Alexandria, VA 22314

D. Brian Costello, Esq.
8138 Old Keen Mill Road, Suite A-210
Springfield, VA 22152-1843

St. Paul of the Desert
Episcopal Church
125 West El Alameda
Palm Springs, CA 92262-5662

Gamma Mu Foundation
8350 Greensboro Drive
McLean, VA 22102


GERALD F. CHAPMAN

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST,
(Declaration dated September 7, 1993),

Complainant,

v.

THE CITY OF ALEXANDRIA, et al.,

Respondents.

Chancery No. CH010249

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA
JUN 13 11 36 AM '01

AMENDED ANSWER TO CROSS-BILL OF COMPLAINT OF THE CITY PARTIES AND
GROUNDS OF DEFENSE OF WILLIAM Y. AUSTIN, TRUSTEE

COMES NOW the Complainant and Cross-Respondent William Y. Austin, Trustee of the James M. Duncan III Living Trust, by counsel, and for his Answer and Grounds of Defense to the Cross-Bill of Complaint filed herein by City of Alexandria and the Alexandria Library Company (these Respondents together, "the City Parties") in this matter states as follows:

Answer

1. The allegations contained in paragraph 1 to the City Parties' Cross-Bill of Complaint are admitted.
2. The allegations contained in paragraph 2 to the City Parties' Cross-Bill of Complaint regarding the legal status of the City of Alexandria require no response. The allegations regarding the composition of the Alexandria Board are denied since the composition of the Board has changed since filing of the Cross-Bill. To the extent a response is required to the remaining allegations, those allegations are denied.
3. The allegations contained in paragraph 3 to the City Parties' Cross-Bill of Complaint are

admitted.

4. The allegations contained in paragraph 4 to the City Parties' Cross-Bill of Complaint are admitted.

5. The allegations contained in paragraph 5 to the City Parties' Cross-Bill of Complaint are admitted.

6. The allegations contained in paragraph 6 to the City Parties' Cross-Bill of Complaint are admitted.

7. The allegations contained in the first sentence of paragraph 7 to the City Parties' Cross-Bill of Complaint are admitted. The remaining allegations require no response as the documents speak for themselves. To the extent a response is required, the allegations are denied.

8. The allegations contained in Paragraph 8 to the City Parties' Cross-Bill of Complaint are admitted.

9. The allegations contained in paragraph 9 to the City Parties' Cross-Bill of Complaint are denied.

10. The allegations contained in paragraph 10 to the City Parties' Cross-Bill of Complaint are admitted.

11. The allegations contained in paragraph 11 to the City Parties' Cross-Bill of Complaint are admitted.

12. The allegations contained in paragraph 12 to the City Parties' Cross-Bill of Complaint are admitted. Execution of the Second Trust Deed is admitted. Conveyance of the Property is denied.

13. The allegations contained in paragraph 13 to the City Parties' Cross-Bill of Complaint are denied.

14. The allegations contained in paragraph 14 to the City Parties' Cross-Bill of Complaint are admitted.

15. The allegations contained in paragraph 15 to the City Parties' Cross-Bill of Complaint are admitted.

16. The allegations contained in paragraph 16 to the City Parties' Cross-Bill of Complaint, except for those contained in the concluding phrase, are admitted. Those allegations call for a legal conclusion regarding the status of the Living Trust and require no response. To the extent a response is required the allegations in that phrase are denied.

17. The allegations contained in paragraph 17 to the City Parties' Cross-Bill of Complaint require no response as the pleadings and underlying documents speak for themselves, and further, said allegations call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

18. The allegations contained in paragraph 18 to the City Parties' Cross-Bill of Complaint require no response as the pleadings and underlying documents speak for themselves, and further, said allegations call for a legal conclusion to which no response is required.

19. The allegations contained in paragraph 19 to the City Parties' Cross-Bill of Complaint require no response as the pleadings and underlying documents speak for themselves, and further, said allegations call for a legal conclusion to which no response is required.

20. The allegations contained in paragraph 20 to the City Parties' Cross-Bill of Complaint require no response as the pleadings and underlying documents speak for themselves, and further, said allegations call for a legal conclusion to which no response is required.

21. The allegations contained in paragraph 21 to the City Parties' Cross-Bill of Complaint are denied. The Property is not an asset of the Unitrust.

22. The allegations contained in paragraph 22 to the City Parties' Cross-Bill of Complaint are admitted.

23. The allegations contained in paragraph 23 to the City Parties' Cross-Bill of Complaint require no response as the pleadings and underlying documents speak for themselves, and further, said allegations call for a legal conclusion to which no response is required.

24. The allegations contained in paragraph 24 to the City Parties' Cross-Bill of Complaint require no response as the pleadings and underlying documents speak for themselves, and further, said allegations call for a legal conclusion to which no response is required. To the extent that a response is required, the allegations contained in paragraph 24 to the City Parties' Cross-Bill of Complaint are denied.

25. The allegations contained in paragraph 25 to the City Parties' Cross-Bill of Complaint require no response as the pleadings and underlying documents speak for themselves, and further, said allegations call for a legal conclusion to which no response is required. To the extent that a response is required, the allegations contained in paragraph 25 to the City Parties' Cross-Bill of Complaint are denied.

26. The allegations contained in paragraph 26 to the City Parties' Cross-Bill of Complaint require no response as the pleadings and underlying documents speak for themselves, and further, said allegations call for a legal conclusion to which no response is required. To the extent that a response is required, the allegations contained in paragraph 26 to the City Parties' Cross-Bill of Complaint are denied.

27. The allegations contained in paragraph 27 to the City Parties' Cross-Bill of Complaint require no response as the pleadings and underlying documents speak for themselves, and further, said allegations call for a legal conclusion to which no response is required. To the extent that a response

is required, the allegations contained in paragraph 27 to the City Parties' Cross-Bill of Complaint are denied.

28. The allegations contained in paragraph 28 to the City Parties' Cross-Bill of Complaint are admitted.


Any allegations of the City Parties' Cross-Bill of Complaint not specifically denied in this Answer are hereby generally denied. Complainant and Cross-Respondent Austin demands strict proof of all the allegations of the City Parties' Cross-Bill of Complaint.

Grounds of Defense

1. The City Parties' Cross-Bill of Complaint fails to state a claim against the Living Trust for which relief can be granted.

2. The City Parties' Cross-Bill of Complaint is insufficient as a matter of law as to the Living Trust.

WHEREFORE, the City Parties' Cross-Bill of Complaint having been fully answered, Complainant and Cross-Respondent William Y. Austin, Trustee, respectfully moves this honorable Court dismiss the City Parties' Cross-Bill of Complaint and for an award of his costs.



Peter A. Dingman, Va. Bar # 14378
Elizabeth G. Engle, Va. Bar # 40010
DINGMAN-LABOWITZ, P.C.
526 King Street, Suite 209
Alexandria, Virginia 22314
(703) 519-0999
Facsimile (703) 519-1511

Counsel for William Y. Austin, Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of June, 2001, a true copy of the foregoing was served via United States mail, first-class, postage prepaid, to:

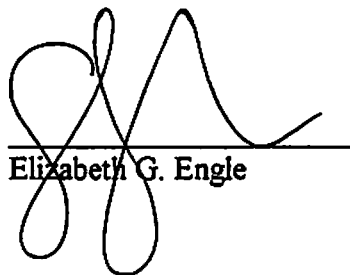
D. Brian Costello, Esquire
8138 Old Keene Mill Road, Suite A-210
Springfield, Virginia 22152-1843
Counsel for the City Parties

Rand L. Gelber, Esquire
8150 Leesburg Pike, Suite 600
Vienna, Virginia 22182
Counsel for Nationwide CH LLC

F. Gillar Boyd, Jr., Esquire
225 South Civic Drive, Suite 1-3
Palm Springs, California 92262
Counsel for St. Paul of the Desert Episcopal Church

Gamma Mu Foundation
c/o Terry Basolo
3634 7th Avenue, Unit 9A
San Diego, California 92103-4395

Gerald F. Chapman, Esquire
6917 Arlington Road, Suite 350
Bethesda, Maryland 20814



Elizabeth G. Engle

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST,
(Declaration dated September 7, 1993),

Complainant,

v.

THE CITY OF ALEXANDRIA, et al.,

Respondents.

Chancery No. CH010249

FILED
CLERK OF COURT
CITY OF ALEXANDRIA

JUN 13 11 36 AM '01

CLERK OF COURT
CITY OF ALEXANDRIA

AMENDED ANSWER TO FIRST AMENDED COUNTERCLAIM OF NATIONWIDE CH
LLC AND GROUNDS OF DEFENSE OF WILLIAM Y. AUSTIN, TRUSTEE

COMES NOW the Complainant and Cross-Respondent William Y. Austin, Trustee of the James M. Duncan III Living Trust, by counsel, and for his Answer and Grounds of Defense to the First Amended Counterclaim (the "Counterclaim") filed herein by Nationwide CH, LLC ("Nationwide") in this matter, states as follows:

Answer

1. The allegations contained in paragraph 1 to Nationwide's Counterclaim are admitted.
2. The allegations contained in paragraph 2 to Nationwide's Counterclaim regarding the legal status of Nationwide require no response. The remaining allegations in paragraph 2 are admitted.
3. The allegations contained in paragraph 3 to Nationwide's Counterclaim are admitted.
4. The allegations contained in paragraph 4 to Nationwide's Counterclaim are admitted.
5. The allegations contained in paragraph 5 to Nationwide's Counterclaim are admitted.
6. The allegations contained in paragraph 6 to Nationwide's Counterclaim are admitted.
7. The allegations contained in the first sentence of paragraph 7 to Nationwide's

Counterclaim are admitted. The remaining allegations require no response as the documents speak for themselves. To the extent a response is required, the allegations are denied.

8. The allegations contained in Paragraph 8 to Nationwide's Counterclaim are admitted.

9. The allegations contained in paragraph 9 to Nationwide's Counterclaim are admitted.

10. The allegations contained in paragraph 10 to Nationwide's Counterclaim are admitted.

11. The allegations contained in paragraph 11 to Nationwide's Counterclaim are admitted.

12. The allegations contained in paragraph 12 to Nationwide's Counterclaim are admitted.

13. The allegations contained in paragraph 13 to Nationwide's Counterclaim are denied. The fact of execution of the Second Trust Deed is admitted.

14. The allegations contained in paragraph 14 to Nationwide's Counterclaim are admitted.

15. The allegations contained in paragraph 15 to Nationwide's Counterclaim are admitted.

16. The allegations contained in paragraph 16 to Nationwide's Counterclaim, except for those contained in the concluding phrase, are admitted. Those allegations call for a legal conclusion regarding the status of the Living Trust and require no response. To the extent a response is required the allegations in that phrase are denied.

17. The allegations contained in paragraph 17 to Nationwide's Counterclaim require no response as the pleadings and underlying documents speak for themselves, and further, said allegations call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

18. The allegations contained in paragraph 18 to Nationwide's Counterclaim are denied. The Property is not an asset of the Unitrust.

19. The allegations contained in paragraph 19 to Nationwide's Counterclaim require no response other than reiteration of prior responses.

20. The allegations contained in paragraph 20 to Nationwide's Counterclaim require no response as the pleadings and underlying documents speak for themselves, and further, said allegations call for a legal conclusion to which no response is required.

21. The allegations contained in paragraph 21 to Nationwide's Counterclaim require no response as the pleadings and underlying documents speak for themselves, and further, said allegations call for a legal conclusion to which no response is required. To the extent those allegations require a response, they are denied.

22. The allegations contained in paragraph 22 to Nationwide's Counterclaim are denied.

23. The allegations contained in paragraph 23 to Nationwide's Counterclaim are denied. require no response as the pleadings and underlying documents speak for themselves, and further, said allegations call for a legal conclusion to which no response is required. To the extent a response is required, the allegations are denied.

24. The allegations contained in paragraph 24 to Nationwide's Counterclaim require no response as the pleadings and underlying documents speak for themselves, and further, said allegations call for a legal conclusion to which no response is required. To the extent that a response is required, the allegations contained in paragraph 24 to Nationwide's Counterclaim are denied.

25. The allegations contained in paragraph 25 to Nationwide's Counterclaim require no response as the pleadings and underlying documents speak for themselves, and further, said allegations call for a legal conclusion to which no response is required. To the extent that a response is required, the allegations contained in paragraph 25 to Nationwide's Counterclaim are denied.

26. The allegations contained in paragraph 26 to Nationwide's Counterclaim are admitted.

Any allegations of Nationwide's Counterclaim not specifically denied in this Answer are hereby generally denied. Complainant and Cross-Respondent Austin demands strict proof of all the

allegations of Nationwide's Counterclaim.

Grounds of Defense

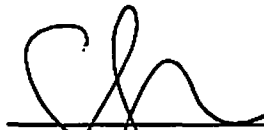
1. Nationwide's Counterclaim fails to state a claim against the Living Trust for which relief can be granted.

2. Nationwide's Counterclaim is insufficient as a matter of law as to the Living Trust.

3. Nationwide's claims are barred by the doctrines of waiver, estoppel, and laches.

4. Nationwide's claims are barred by the doctrine of unclean hands.

WHEREFORE, Nationwide's Amended Counterclaim having been fully answered, Complainant and Cross-Respondent William Y. Austin, Trustee, respectfully moves this honorable Court dismiss Nationwide's Amended Counterclaim and for an award of his costs.



Peter A. Dingman, Va. Bar # 14378
Elizabeth G. Engle, Va. Bar # 40010
DINGMAN LABOWITZ, P.C.
526 King Street, Suite 209
Alexandria, Virginia 22314
(703) 519-0999
Facsimile (703) 519-1511

Counsel for William Y. Austin, Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of June, 2001, a true copy of the foregoing was served via United States mail, first-class, postage prepaid, to:

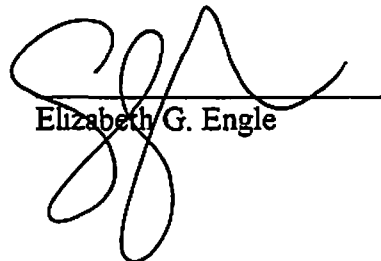
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8138 Old Keene Mill Road, Suite A-210
Springfield, Virginia 22152-1843
Counsel for the City Parties

Rand L. Gelber, Esquire
8150 Leesburg Pike, Suite 600
Vienna, Virginia 22182
Counsel for Nationwide CH LLC

F. Gillar Boyd, Jr., Esquire
225 South Civic Drive, Suite 1-3
Palm Springs, California 92262
Counsel for St. Paul of the Desert Episcopal Church

Gamma Mu Foundation
c/o Terry Basolo
3634 7th Avenue, Unit 9A
San Diego, California 92103-4395

Gerald F. Chapman, Esquire
6917 Arlington Road, Suite 350
Bethesda, Maryland 20814



Elizabeth G. Engle

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE)
JAMES M. DUNCAN, III, LIVING TRUST,)
(Declaration dated September 7, 1993),)
Complainant,)
v.)
THE CITY OF ALEXANDRIA, et al.,)
Respondents.)

Chancery No. CH010249

FILED
CLERK OF CIRCUIT COURT
CITY OF ALEXANDRIA
Aug 3 23 PM '01
CHANCERY CLERK

MOTION FOR SUMMARY JUDGMENT OF
WILLIAM Y. AUSTIN, TRUSTEE OF THE JAMES M. DUNCAN, III, LIVING TRUST

COMES NOW Complainant William Y. Austin, Trustee of the James M. Duncan, III, Living Trust, by counsel, respectfully moves this Honorable Court pursuant to Rule 3:18 of the Rules of Supreme Court, for summary judgment against the City of Alexandria, the Alexandria Library Board, and Nationwide CH, LLC, and for grounds therefor, states as follows:

Introduction

This case is quite simple; the only evidence necessary to determine the outcome are two deeds, the existence and authenticity of which are conceded by all parties. Those two deed demonstrate that James M. Duncan, III, ("Duncan") transferred improved real estate located in the City of Alexandria, Virginia (the "Property") into trust, and the second deed, since it was executed by Duncan in an individual and not trustee capacity, was ineffective to remove that Property from trust.

In 1993, Duncan executed the first of those deeds (the "First Trust Deed") to himself as

Trustee of the James M. Duncan, III, Living Trust (the "Living Trust"). The First Trust Deed specified a single mechanism by which the Property might be withdrawn from the Living Trust. Six years later, Duncan executed a second deed (the "Second Trust Deed") from himself individually to a second trust, the J. M. Duncan Charitable Remainder Unitrust (the "Unitrust"). The Second Trust Deed described the Property but made no reference to the Living Trust or Duncan's role as Trustee of the Living Trust. It in no way met the requirements for withdrawal specified in the First Trust Deed (and reiterated in the Living Trust Declaration).

In direct conflict with Virginia law regarding ownership of title to property and of the documents created by Duncan himself (these documents are admitted by both the City of Alexandria and the Alexandria Library Board (the "City Parties") and Nationwide CH, LLC ("Nationwide")), the Second Trust Deed purported to convey property the grantor (Duncan as an individual) did not own. Under both common sense and the law, because Duncan as an individual had no power to convey the Property, no title passed. The Property remains in the Living Trust because no one with power to execute a deed ever transferred that Property from the Living Trust. Moreover, the admitted documents set out a distinct means by which Duncan could have withdrawn the Property from the Living Trust, means he concededly did not employ.

The pleadings of Nationwide and the City Parties attempt to construe Virginia law as permitting the intent of a non-owner of property in which he or she has an interest to transfer property simply through the power of that intent. Their arguments are contrary to the settled law of property ownership and trust interpretation in this Commonwealth. Simply put, mere intent is not, and cannot, be enough to effect a significant act such as transfer of real property from one owner to another. Written deeds executed by the owner of property are required under Virginia law. Without

such requirement, the land records would be worthless and ownership and title determinations would be impossible. Further, the law does not permit impeachment of the land records based upon assumptions as to the intent of a deceased property owner, nor the defeat of a valid trust premised upon extraneous conduct of the settlor.

The incumbent trustee of the Living Trust still holds title to the Property, and, without more than the Second Trust Deed, the argument of Nationwide and the City Parties must fail and summary judgment should be entered in favor of Austin.

Material Facts Not in Dispute

The parties admit, either through their Bill of Complaint, Cross-Bill of Complaint, counterclaim, Answers, Responses to Request for Admission, or Joint Stipulations (to be submitted to this Court) all material facts in this action.

Those facts are as follows:

1. The Property is located in the City of Alexandria (Joint Stipulation 1).
2. On or about September 7, 1993, Duncan, executed a Declaration of Trust creating and establishing the James M. Duncan, III, Living Trust (the "Living Trust"), naming himself as Trustee of the Living Trust. (Joint Stipulations 2 and 3; Responses to Requests for Admission to City Parties and Nationwide¹)
3. The document attached as Exhibit A to the Requests for Admission to Nationwide and the City Parties is a copy of the First Trust Deed. (Responses to Requests for Admission to City Parties and Nationwide; Joint Stipulations 4 and 5)

¹

The Request for Admission to the City Parties and Response thereto and Request for Admission to Nationwide and the Responses thereto as attached hereto as Exhibits A and B, respectively.

4. On September 7, 1993, Duncan made and delivered the First Trust Deed conveying the Property from himself, individually, to himself as Trustee of the Living Trust, and that the First Trust Deed on June 15, 1994, was recorded among the land records of the City of Alexandria at Deed Book 1498 at page 1240. (Joint Stipulation 6)

5. On or about June 30, 1994, Duncan executed an amendment to the Living Trust (the "Living Trust Amendment"), that provided, *inter alia*, that, upon the death of Duncan or his resignation as original Trustee, Burke & Herbert Bank & Trust Company of Alexandria and William Y. Austin should succeed him as Co-Trustees. (Bill of Complaint, paragraph 5; Counterclaim, paragraph 7; Joint Stipulations 7 and 8).

6. On March 2, 2000, Duncan departed this life. (Responses to Requests for Admission to City Parties and Nationwide).

7. On July 19, 2000, Burke & Herbert declined the office of successor Co-Trustee of the Living Trust. (Bill of Complaint, paragraph 7; Counterclaim, paragraph 9).

8. On or about August 4, 1999, Duncan executed a certain trust agreement that created the Unitrust, naming himself as Trustee. (Joint Stipulations 9 and 10).

9. Duncan executed the Second Trust Deed purporting to convey the Property from himself individually to himself in his capacity as Trustee of the Unitrust. (Joint Stipulation 11; Responses to Requests for Admission to City Parties and Nationwide).

10. At the time of execution of the Second Trust Deed, Duncan was the Trustee and Beneficiary of the Living Trust. (Joint Stipulations 9, 10; Id.).

11. On October 20, 1999, Duncan, as Trustee of the Unitrust, entered into a sales contract for the Property with Nationwide. (Joint Stipulation 13).

Legal Argument

A. Legal standard

Rule 3:18 reads, in pertinent part: "If it appears from the pleadings, the orders, if any, made at a pretrial conference, the admissions, if any, in the proceedings, or, upon sustaining a motion to strike the evidence, that the moving party is entitled to judgment, the court shall enter judgment in his favor."

"A trial court may enter summary judgment if no material fact is genuinely in dispute." Buonocore v. C & P Telephone Company, 254 Va. 469, 472, 492 S.E.2d 439, ____ (1997). *See, also* J. E. Robert Company v. J. Robert Co., Inc. of Virginia, 231 Va. 338, 343 S. E.2d 350 (1986).

Finally, "[i]n considering a motion for summary judgment, a court must adopt those inferences from the facts that are most favorable to the nonmoving party, unless the inferences are forced, strained, or contrary to reason." Dickerson v. Fatehi, 253 Va. 324, 327, 484 S.E.2d 880, ____ (1997), citing Carson v. LeBlanc, 245 Va. 135, 139 -40, 427 S.E.2d 189, 192 (1993).

Here, all of the material and relevant facts, as noted below in this section A, have been stipulated to or admitted by the parties, and the only remaining issues to be determined by this Court are legal.

The admitted, material facts are simple. In 1993, Duncan conveyed property away from his individual estate and into a trust estate, the Living Trust. Nationwide and the City Parties admit that Duncan executed the First Trust Deed conveying the Property to himself as Trustee of the Living Trust. The conveyance was made pursuant to a deed fully complying with Code Section 55-17.1. Without more, the First Trust Deed created a Virginia Land Trust, placed legal and equitable title to the Property in Duncan, as Trustee, and left Duncan, as an individual, with only a personal property

interest in the Property. *See, Air Power, Inc. v. Thompson* 244 Va. 534, 422 S.E.2d 768 (1992). By themselves, then, the admissions by the parties regarding the execution and delivery of the First Trust Deed merit entry of judgment in favor of Austin.

Duncan, also in 1993, created the Living Trust via a trust agreement that further defined and limited his rights as an individual to exercise power regarding the Property. The Living Trust requires that prior to any such exercise of right, Duncan, as an individual, would need to first execute and deliver to the Trustee a formal, written directive to either withdraw the Property from the Living Trust or revoke the Living Trust. Even then, Duncan as Trustee, would have been required to execute a deed to Duncan as an individual. Neither of these events ever occurred. Nationwide and the City Parties allege that the Second Trust Deed somehow complied with the Trust requirement, but execution of an ineffectual deed does not comply with the explicit terms of the Trust document. The Virginia Supreme Court long ago established that revocation of a trust or withdrawal of property from a trust must be done strictly in accordance with the procedures established in the trust instrument and no extraneous action, however formal, asserted as evidencing an intent to revoke or withdraw will be accepted as a substitute for the specified acts. *Cohn v. Central National Bank of Richmond*, 191 Va. 12, 17, 60 S.E.2d 30, ____ (1950).

In 1999, Duncan, acting solely in his individual capacity, executed a deed purporting to convey the Property to himself as Trustee of the Unitrust. Duncan, in executing this deed, purported to transfer real estate to which he did not hold legal title. He had not revoked the Living Trust; he had not executed a written withdrawal of the Property from the Living Trust; and Duncan, as Trustee, executed no deed of conveyance. The Counterclaim and Cross-Bill of Complaint ask the Court to disregard the law of Virginia Land Trusts, the language of the First Trust Deed, and the declaration

creating the Living Trust. Instead, Nationwide and the City Parties would have this Court "deem" done that which was not done and is not alleged to have been done.

The documents and undisputed material facts necessary to determine the outcome of this case are before this Court and they evidence clearly that Austin is entitled to relief as a matter of law .

B. The Living Trust and the First Trust Deed

The Living Trust required a writing to be given from Duncan as beneficiary to the Trustee of the Trust before the Property would be withdrawn from the Living Trust. No exception is made in that document for a time when Duncan himself served in both capacities. A writing was required. Such a requirement is, of course, a salutary provision to avoid confusion or speculation as to the alleged intentions of a trust settlor raised after the settlor is unavailable to refute allegations. Without this requirement, the door would be open to attempts to divine the settlor's intent from any collateral act or document referencing the Property.

The Living Trust provides that the capacities of beneficiary and trustee are not "united". Paragraph 3.1 provides: "By signed instruments delivered to the Trustee during my lifetime, I may: (1) withdraw property from this trust in any amount and at any time upon giving reasonable notice in writing to the Trustee. . .". The Living Trust does not provide for an exception when the Trustee and beneficiary are the same individual. Nationwide and the City Parties, however, do not plead or assert that Duncan gave reasonable notice in writing to the Trustee of the Living Trust prior to executing the deed purporting to transfer the Property to the Unitrust. In fact, both Nationwide and the City Parties deny that Duncan gave advance notice in writing, claiming that the execution of the Second Trust Deed, which he had no power to make, was a withdrawal of the Property from the

Living Trust.

Contrary to the assertion that Duncan united two capacities in signing the Second Trust Deed, Duncan in various documents, honored and acknowledged the distinction between his individual capacity and capacity as Trustee. The First Trust Deed and the Living Trust are both signed by Duncan in his individual capacity and in his capacity as Trustee of the Living Trust. Schedule A to the Living Trust is an acknowledgment by the Trustee and is so executed. An attached Deed of Gift (of tangible personal property) is signed only by Duncan individually. The First Amendment to the Living Trust is clearly designated as signed as both Trustor and Trustee. In executing the Unitrust on August 4, 1999, Duncan again signed in two capacities, individually as "Donor" and separately as "Trustee" in his capacity as Trustee of the Unitrust.

The Second Trust Deed, however, executed August 3, 1999, is devoid of any reference to Duncan's capacity as Trustee of the Living Trust.

The First Trust Deed also states clearly that Duncan must first execute a deed transferring title from himself as Trustee to himself individually before he can withdraw that property from the Living Trust. No such deed was ever executed or recorded, and therefore the Property remained vested in the Living Trust.

In paragraph 23 of the Counterclaim, and paragraph 25 of the Cross-Bill of Complaint, Nationwide and the City Parties allege that Duncan "united within himself all capacities necessary to complete fee simple ownership and transfer of the subject property". This assertion ignores the provisions of Code Section 55-17.1, which provides that a conveyance of this type converts the interest of the individual as beneficiary from realty to personalty such that the real estate is beyond the reach of judgments or liens arising against the individual subsequent to recordation of the trust

deed.

Furthermore, the First Trust Deed provides, on page two, that “[a]ny revocation of the Trust Agreement by the Grantor [James M. Duncan, III] shall not be effective as to the property herein conveyed unless he execute a deed, duly recorded, evidencing such revocation and reversion of title.” Neither Nationwide nor the City Parties plead that a deed was executed and recorded reverting title to Duncan individually from Duncan as Trustee of the Living Trust. The Admissions and Stipulations establish that no such deed exists. Similarly, neither of the respondents pleads that the Living Trust was revoked by any recognized means for doing so, and the Admissions and Stipulations establish that no such revocation act occurred.

The documents at issue in this case directly contradict Nationwide’s and the City Parties’ assertions of a cause of action against Austin. Nationwide and the City Parties cannot, as a matter of law, choose which documents control in this case, as they both attempt to do in paragraph 17 of the Counterclaim and paragraph 17 of the Cross-Bill of Complaint.

Nationwide and the City Parties assert that the Unitrust and Second Trust Deed control the disposition of the Property, but Virginia law is clear that the transfer of the Property by the First Trust Deed effectively transferred that Property to Duncan as Trustee of the Living Trust. The Property remains in the Living Trust, and the Second Trust Deed was ineffective to transfer the Property into the Unitrust. Paragraph 24 of Nationwide’s Counterclaim alleges that “By the execution of the Unitrust Agreement and Second Trust Deed, Duncan effectively exercised his power under the Living Trust to revoke or amend the Living Trust and to withdraw the Property from the Living Trust and transfer it to the Unitrust.” As noted above, the provisions of the Living Trust and First Trust Deed make his allegation not only untrue, but impossible. The holding in Cohn applies to these facts.

Where the First Trust Deed and Living Trust set up a procedure by which Property could have been withdrawn, a different set of acts (the execution of the Second Trust Deed and Declaration fo the Unitrust) cannot be substituted for the specified procedure.

C. Virginia Statutory and Case Law

The First Trust Deed conveyed the Property to Duncan as the Trustee of the Trust. Duncan individually retained no title interest in that Property upon execution of the deed, and the Trustee thenceforth, retained the right to transfer, sell, or encumber the Property.

Virginia Code Section 55-17.1 governs this situation. This Code Section describes several situations where a land trust has been created. The Section reads, *inter alia*:

In any case under this section, where there is a recorded deed of conveyance to a trustee, the interest of the beneficiaries thereunder shall be deemed to be personal property. Judgments against a beneficiary and consensual liens against real property of a beneficiary do not attach to real property that is the subject of such a deed of conveyance unless the judgment is docketed or the lien recorded in the city or county where the property is located (i) before recordation of the deed creating the land trust and (ii) while the beneficiary has record title to the real property.

This Section makes plain that, after the conveyance to the Trustee, the individual beneficiary no longer holds record title to the property and cannot encumber or transfer that property. Duncan's execution of the Second Trust Deed in his individual capacity was therefore ineffectual.

The case law applying Code Section 55-17.1 supports this position. In Air Power, Inc. v. Thompson, 244 Va. 534, 422 S.E.2d 768 (1992), the Supreme Court considered the role of the beneficiary of a land trust. The Court found that because the beneficiary's interest is a personal property right, not an interest in the real estate, the beneficiary was not a necessary party to an action to enforce a mechanic's lien, reversing the trial court's decision.

The facts of the Air Power case are, briefly outlined, as follows: Kenneth Thompson and

Spencer Stouffer were named as trustees of a tract of land under a recorded land trust deed. The deed recited that the trustees held title to the property for Ken Thompson Properties Joint Venture (KTPJV), the beneficiary, pursuant to an unrecorded trust agreement. In their capacity as trustees, Stouffer and Thompson contracted with Land Works, Ltd., for the construction of streets, sewers, and related structures for the development of the tract. Land Works subcontracted with Air Power, Inc., to perform the drilling and blasting work required for the project.

Land Works defaulted on payments due Air Power for the work performed, and Air Power perfected a mechanic's lien against the tract of land. Air Power then filed suit to enforce its lien and named Stouffer and Thompson as defendants in their capacity as trustees for the land trust but did not name KTPJV.

The trial court dismissed the case, finding that Air Power failed to join KTPJV and that suit was barred by the statute of limitations. Air Power, supra, 244 Va. at 535-536, 422 S.E.2d at 769.

In reversing the trial court, the Court looked to Virginia Code Section 55-17.1 and its statement that beneficiaries do not have any interest in real property *qua* real property. The Court wrote:

The recitations in the deed of conveyance and the provisions of the statute support Air Power's position that there is a substantial difference between the interests of the trustees and the beneficiary of this land trust and the interests created under a creditor deed of trust. Unlike a creditor trust where legal title resides in the trustee while the beneficiary retains equitable title, the trustee in a land trust receives both legal and equitable title to the property. Curtis v. Lee Land Trust, 235 Va. 491, 494, 369 S.E.2d 853, 854 (1988). In a land trust, the beneficiary retains no interest, legal or equitable, in the property itself, but instead holds only a personal property interest in the rents, proceeds, and profits from the property. While due process considerations may attach, they pertain to an interest in the proper distribution of the rents, proceeds, and profits from the property, not in the property itself. *Cf. Lamar Corp. v. City of Richmond*, 241 Va. 346, 349 -50, 402 S.E.2d 31, 33 (1991). In this regard, the interest of the land trustee beneficiary is analogous to that of one who holds stock in

a corporation. A stockholder has various rights with respect to interests in the corporation, but does not have an ownership interest in land held by the corporation. *Grengo v. Nathaniel Greene*, 218 Va. 228, 237 S.E.2d 107 (1977).

Code § 55-17.1 reflects the unique nature of the land trust beneficiary's interest. The statute states that the interest is personal property, that the beneficiaries need not be named in the land trust deed for the trust to be valid, and that third parties need look only to the trustees when they deal with the property. These provisions effectively eliminate a third party's responsibility, and ability, to notify land trust beneficiaries of any action against the property which that party may contemplate. This facet of the land trust mechanism is possible precisely because the due process rights of the beneficiary of a land trust are limited to protection of the beneficiary's interest in the proceeds from the property, not in the property itself. As such, the beneficiary may be a *proper* party to an action to enforce a mechanic's lien, which would provide notice and the opportunity to preserve its interests in the proceeds from a potential judicial sale; nevertheless, the beneficiary is not a *necessary* party to the enforcement suit.

Id., at 537-538, 422 S.E.2d at 770, *emphasis supplied*. See also, *Curtis v. Lee Land Trust*, 235 Va. 491, 494, 369 S.E.2d 853, 854-55 (1988).

Air Power provides a clear explication of the rights of and title held by Duncan individually in the instant case. Duncan, simply put, did not own the Property individually, and therefore could not withdraw it from the First Trust without a deed executed by himself as Trustee. Duncan, however, never took this required step. There may be a desire by the respondents to speculate as to Duncan's intentions regarding the Property. Virginia law, however, does not permit the plain terms of a recorded deed and a viable trust agreement to be defeated by speculation. See, e.g., *Langman v. Alumni Association of the University of Virginia*, 247 Va. 491, 498-99, 442 S.E.2d 669, 674 (1994); *Irby v. Roberts*, 256 Va. 324, 329-30; 504 S.E.2d 841, 843 (1998). To give effect to the Second Trust Deed would violate clear Virginia law as well as the dictates of the First Trust and the First Trust Deed themselves.

D. The Beneficiary's Intent does not matter in this case

To try to overcome the fatal flaw in the Second Trust Deed (that it was executed by an improper grantor), Nationwide and the City Parties rely on the proposition that Duncan "united within himself" his roles as Trustee and as individual beneficiary of the First Trust. Unfortunately, Duncan's intention (even assuming a fact for which no evidence appears) to move the Property from one trust to another is irrelevant because he individually did not have the power to transfer that Property. Virginia law does not support equitable construction of deeds where such construction would do violence to recognized principles of law.

... A deed should be construed to give effect to the grantor's intent. *Auerbach v. County of Hanover*, 252 Va. 410, 414, 478 S.E.2d 100, 102 (1996); ... However, the grantor's intention cannot prevail if it is 'in conflict with some principle of law or rule of property.'

Shirlev v. Shirlev, 259 Va. 513, 517, 525 S.E.2d 274, 276 (2000), *citing*, Fitzgerald v. Fitzgerald, 194 Va. 925, 929, 76 S.E.2d 204, 207 (1953), other citations omitted.

Any other rule, of course, would invite attempts to impeach land records after the one witness able to definitely establish his ultimate intent has become unavailable through death.

Here, the asserted intention was in direct conflict with two well-established, and fairly obvious, principles of law and rules of property: (i) a person who does not own the land cannot transfer it; and (ii) where a trust instrument provides an express and limited mechanism for revocation and withdrawal, no alternative mechanism, premised on speculation as to the intentions of a deceased settlor, should be substituted for the means specified by the creator of the trust.

E. Burke & Herbert does not need to be replaced by a successor

An extraneous issue is raised in the Counterclaim apparently in an effort to impeach Austin's

authority as Trustee. It is not clear how Nationwide believes any infirmity in Austin's qualification would give rise to rights in Nationwide, but, as the point is not only irrelevant, but also in error, it may be easily eliminated as a factor in weighing the adequacy of the Counterclaim.

Nationwide alleges in paragraph 7 of their Counterclaim that the Living Trust provides that if Burke & Herbert declines to serve as Co-Trustee, "another professional Bank and Trust Company shall serve", alleging that Burke & Herbert's declination requires that another bank and trust company must now serve.


This is an erroneous reading of the trust instrument. The full Living Trust provision, which appears in paragraph 8.1 of the Living Trust Amendment, reads: "On the resignation or death of William Y. Austin, Burke & Herbert Bank & Trust Company shall serve as sole Trustee. If Burke & Herbert Bank & Trust Company shall not serve, another professional Bank & Trust company shall serve." [Emphasis supplied] This provision clearly states that another bank and trust company shall serve when Burke & Herbert resigns as the sole Trustee, not if Mr. Austin is still serving. This provision does not go into effect now, only after Mr. Austin resigns or dies.

Conclusion

The admitted, material facts in this case establish that James M. Duncan, III conveyed the Property into the Living Trust, where he held the Property as Trustee of that trust. Those admitted facts further establish that the next deed he executed with regard to the Property was executed by him in his individual capacity, not as Trustee. The documents admitted by the parties establish that both the First Trust Deed and the Living Trust established an explicit and exclusive mechanism for withdrawal of property from the Living Trust, a mechanism that, on the undisputed material facts, was not employed by Duncan during his lifetime. It is simple

and straightforward, therefore, to conclude that Duncan executed an ineffective deed. He may have intended to convey the Property into the Unitrust, but he failed to execute the proper and necessary legal instrument to do so. Upon the facts as admitted, Austin is entitled to summary judgment.

WHEREFORE, for the reasons set forth above, Complainant William Y. Austin, Trustee of the James M. Duncan, III, Living Trust, by counsel, respectfully requests that this honorable Court enter summary judgment in his favor and against the Counterclaim of Nationwide CH, LLC and the City Parties; that the Counterclaim of Nationwide and the Cross-Bill of Complaint of the City Parties be dismissed with prejudice; and grant such other and further relief as this Court finds just and equitable.



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Counsel for Complainant William Y. Austin,
Trustee

CERTIFICATE OF SERVICE

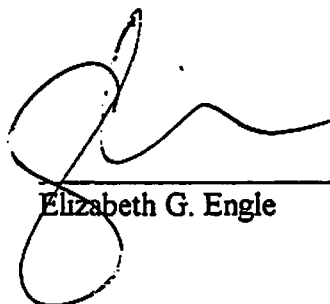
I HEREBY CERTIFY that on this 8th day of August, 2001, a true copy of the foregoing was served via United States mail, first-class, postage prepaid, to:

D. Brian Costello, Esquire
8138 Old Keene Mill Road, Suite A-210
Springfield, Virginia 22152-1843

Counsel for the City of Alexandria,
and Louise Forstall, Dorothy Koopman,
Lelia Saunders-Bailey, Elizabeth Porter Sibold,
William Francis Smith, Howard W. Smith, Joyce Woodson,
and Stefan Shrier (Comprising the Alexandria Library Board)

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Elizabeth G. Engle

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE)
JAMES M. DUNCAN, III, LIVING TRUST,)
(Declaration dated September 7, 1993),)

Complainant,)

v.)

Chancery No. CH010249

THE CITY OF ALEXANDRIA, et al.,)

Respondents.)

REQUESTS FOR ADMISSION TO RESPONDENT CITY OF ALEXANDRIA

TO: City of Alexandria
c/o D. Brian Costello, Esquire
8138 Old Keene Mill Road, Suite A-210
Springfield, Virginia 22152-1843

Complainant and Cross-Respondent William Y. Austin, Trustee of the James M. Duncan III Living Trust, by counsel, hereby propounds the following Requests for Admission upon the City of Alexandria, pursuant to Rule 4:11 of the Rules of the Supreme Court of Virginia. Answers, under oath, are to be served upon counsel for William Y. Austin, Trustee of the James M. Duncan III Living Trust, on or before July 16, 2001. In responding to these Requests for Admission, the following definitions and instructions apply:

Definitions and Instructions

a. Where knowledge or information in possession of a person or entity is requested, such request includes knowledge of that party's agents, representatives, and unless privileged, his or her attorneys.

b. The term "document" or "documents" or any other form of these words, unless the context clearly indicates otherwise, shall mean all written materials of any kind or character, including but not limited to, letters, correspondence, telegrams, facsimile transmittals, memoranda, publications,

records, minutes, agreements, records or notations of telephone or personal conversations or conversations, inter-office communications, microfilm, bulletins, circulars, pamphlets, studies, notices, summaries, reports, books, teletype messages, audio and/or video tape-recordings, and worksheets, and copies of any of the foregoing which are not identical to the original or to any other copy produced.

c. "Communication" refers to any written or oral expression, exchange, or transmission of facts, messages, information or the like, at any time or place, and under any circumstances whatsoever.

d. "Identify" with respect to a document means to set forth the following information, if known: (1) a general description thereof (e.g., letter, memorandum, report, etc); (2) a brief summary of its contents; (3) the name(s) and address(es) of the custodian of the original; (4) the name(s) and address(es) of the person(s) who drafted, prepared, compiled or signed the original; (5) any other descriptive information necessary in order to describe it adequately in a *subpoena duces tecum*.

e. "Identify" with respect to a person means set forth the following information, if known: (1) his or her name; (2) his or her residential address; (3) his or her relationship and/or affiliation with you or the James M. Duncan, III, Living Trust or the J. M. Duncan III Charitable Remainder Unitrust.

f. If your response refers to documents as defined in b., above or other tangible object, please describe the document or object in sufficient detail so as to permit its identification in a request for production, or, in the alternative, attach the document or other object to your responses.

g. "You" or "Your" refers to the City of Alexandria, including, without limitation the Alexandria Library Board.

h. The "Living Trust" refers to that certain trust, the James M. Duncan, III, Living Trust, created by Declaration of Trust dated September 7, 1993, a copy of which trust document is attached to your Cross Bill of Complaint as Exhibit 1.

i. The "Unitrust" refers to that certain trust, the J. M. Duncan III Charitable Remainder Unitrust, created in a document dated August 4, 1999, and attached to your Cross Bill of Complaint as Exhibit 2.

j. The "First Trust Deed" refers to that certain deed dated September 7, 1993, and recorded among the Land Records for the City of Alexandria in Deed Book 1498 at page 1240, and attached to these Requests for Admission as Exhibit A.

k. "Nationwide CH" refers to Respondent Nationwide CH, LLC.

l. The "Property" refers, collectively, to those certain parcels of land located in the City of Alexandria, Virginia, being Tax Map Nos. 107-11-000 and 107-10-500 on the Tax Parcel Map for

the City of Alexandria, and more commonly known as 200 North Henry Street and 1115 North Cameron Street, Alexandria, Virginia 22314.

m. The "Second Trust Deed" refers to that certain deed dated August 3, 1999, recorded among the Land Records of the City of Alexandria at Deed Book 1713 at Page 1822.

Requests for Admission

1. Admit or deny that the document attached to these Requests as Exhibit A is a true and accurate copy of the document recorded in the Land Records for the City of Alexandria.


2. Admit or deny that, at the time of execution of the First Trust Deed, James M. Duncan, II was seized with fee simple title to the Property.

3. Admit or deny that the document attached to your Cross Bill of Complaint as Exhibit 1 is a true copy of the Living Trust agreement.

4. Admit or deny that Duncan executed the Living Trust agreement.

5. Admit or deny that Duncan failed to deliver reasonable notice in writing and in advance of his intent to withdraw the Property from the Living Trust.

6. Admit or deny that, in the moment immediately prior to his affixing his signature to the Second Trust Deed, Duncan, as Trustee of the Living Trust, was seized with fee simple title to the Property.



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Counsel for William Y. Austin, Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of June, 2001, a true copy of the foregoing was served via United States mail, first-class, postage prepaid, to:

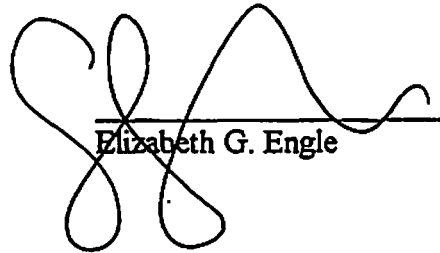
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6917 Arlington Road, Suite 350
Bethesda, Maryland 20814



Elizabeth G. Engle

Exempt pursuant to
Section 58.1-811(12)
of the 1950 Code of Virginia.

200 N. Henry Street - Tax # 107-11-000
1115 N. Cameron St. - Tax # 107-10-500

DEED IN TRUST

THIS DEED, made this 7th day of September, 1993, between JAMES M. DUNCAN, III, unmarried, Grantor, and JAMES M. DUNCAN, III, Trustee under a certain Intervivos Trust Agreement of even date herewith (known as "THE JAMES M. DUNCAN, III LIVING TRUST" on file in the law offices of Timothy J. Callahan, 8280 Greensboro Drive, Suite 730, McLean, Virginia 22102), Grantee, provides:

The said Grantor does hereby grant and convey, with General Warranty and English covenants of title, unto the said Grantee in Trust as aforesaid, all that certain parcel of real estate lying in the City of Alexandria, Virginia, as more fully described below:

BEGINNING at the northwest corner of Henry and Cameron Street; thence in a westerly direction along the northerly line of Cameron Street 246 feet 10 inches to the northeast corner of Cameron and Fayette Streets; thence from said front back between parallel lines 176 feet 7 inches, the easterly line of said lot being the westerly line of Henry Street and the westerly line of said lot being the easterly line of Fayette Street, containing 43,587 square feet.

AND BEING the same property conveyed to the Grantor by Deed recorded in Deed Book 715 at Page 117 and by the Will of the late Ruth Birch Deahl Duncan in Will Book 175 at Page 281 among the said land records.

The foregoing grant and conveyance is subject to all conditions, restrictions, easements, rights of way, and deeds of trust duly of record and the deeds forming the chain of title to the property conveyed.

As set forth in Section 55-17.1 of the Code of Virginia, the trust created by this conveyance shall not fail, nor shall any use relating to the above-described real estate be defeated because no beneficiaries are specified by name herein or because no duties are imposed upon the Trustee.

The Grantor hereto agrees, and this conveyance is made upon the express condition, that the Grantee shall have, and is hereby granted, full power and authority, without the joinder of any person whatsoever, to sell, exchange, lease, encumber, dedicate for public use, or otherwise dispose of the property interest transferred above or any part thereof, at one time or from time to time, and no person dealing with the Grantee shall be required to make further inquiry as to the right of the Grantee so to act, nor

Tax bills on 200 N. Henry St. To:
Duncan Living Trust
200 N. Henry Street
Alexandria, VA 22314

Return to Timothy J. Callahan, Esq.
8280 Greensboro Dr. Suite 730
McLean, VA 22102

Tax bills on 1115 Cameron Street to:
Duncan Living Trust c/o Hopkins Furniture Co.
810 King Street, Alexandria, VA 22314

shall such person be required as to the disposition of any proceeds.

The Grantee shall have no individual liability or obligation whatsoever arising from his ownership, as Trustee, of the legal title to said property, or with respect to any act done or contract entered into or indebtedness incurred by his in dealing with said property, or in otherwise acting as Trustee, except only so far as said trust property and any trust funds in the actual possession of the Grantee shall be applicable to the payment and discharge thereof.


Such Trust Agreement currently further provides that in the event of the death of the original Trustee, she shall assume the office of Trustee.


In accordance with the Trust Agreement, the Grantor reserves the right in his lifetime to substitute Trustees, which he shall do by filing a deed of appointment or substitution among the said land records.

Any revocation of the Trust Agreement by the Grantor shall not be effective as to the property herein conveyed unless he execute a deed, duly recorded, evidencing such revocation and reversion of title.

There is no consideration passing hands in this conveyance which is made pursuant to a revocable inter vivos trust in which the Grantor is Grantor and sole beneficiary of such trust during his lifetime and, as such, this conveyance is intended to be exempt from state and local recordation taxes pursuant to Section 58.1-811(12) of the 1950 Code of Virginia, as amended. No examination of title has been made in connection with this deed.

IN WITNESS WHEREOF, the said JAMES M. DUNCAN, III, Grantor, and JAMES M. DUNCAN, III, Trustee, as indicating acceptance of this deed and its terms, has hereunto set his hand and seal as of the date as first written.

 (SEAL)
JAMES M. DUNCAN, III
Grantor

 (SEAL)
JAMES M. DUNCAN, III, Trustee
Grantee

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

The undersigned, a Notary Public in and for the aforesaid County and State, whose commission expires 1-31-93, does hereby certify that JAMES M. DUNCAN, III, individually and as Trustee, whose name is signed to the foregoing Deed in Trust, has personally acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand and seal this 7th day of September, 1993.

Samuel M. Callahan
Notary Public

BK 1498PG 1243

VIRGINIA: IN THE CLERK'S OFFICE OF THE
CIRCUIT COURT OF THE CITY OF ALEXANDRIA

This deed was presented and with the
certificate annexed, admitted to record.

CONSIDERATION \$ _____
ASSUMPTION \$ _____
STATE GRANTEE'S TAX _____
CITY GRANTEE'S TAX _____
TRANSFER FEE 1.00
CLERK'S FEE 12.00
1.00
STATE GRANTOR'S TAX _____
CITY GRANTOR'S TAX _____
TOTAL 14.00

TESTE: [Signature] CLERK
by: Rosie Marshall DEPUTY CLERK

RECORDED ALEX. VA.
STATE TAX
CITY TAX
TRANSFER FEE
JUL 15 11 10 AM '94

016356

F-OCT-0006

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST
(Declaration dated September 7, 1993)

Complainant,

v.

In Chancery No. CH010249

THE CITY OF ALEXANDRIA, VIRGINIA, *et al.*,

Respondents.

RESPONDENT CITY OF ALEXANDRIA'S
RESPONSE TO COMPLAINANT'S
REQUESTS FOR ADMISSION

The City of Alexandria, by counsel, responds to Complainant's Requests for Admission as follows:

1. Admitted.
2. Denied as stated. Admitted that James M. Duncan, III was seized with fee simple title to the Property at the time of the execution of the First Trust Deed.
3. Admitted.
4. Admitted.
5. Denied.
6. Denied as stated. Admitted that in the moment immediately prior to his affixing his signature to the Second Trust Deed, James M. Duncan, III, as Trustee of the Living Trust, apparently had record title to the property but that James M. Duncan, III, as beneficiary of the Living Trust, had beneficial title to the property.

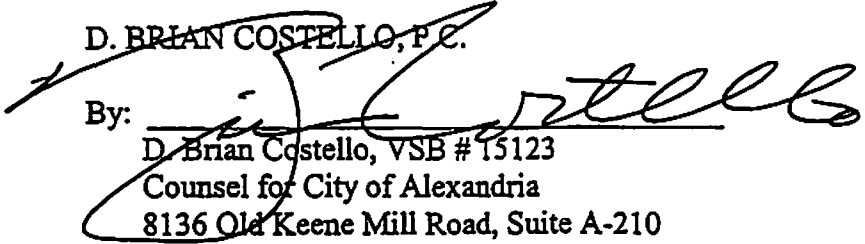
Respectfully submitted,

THE CITY OF ALEXANDRIA

By Counsel

D. BRIAN COSTELLO, P.C.

By:


D. Brian Costello, VSB # 15123
Counsel for City of Alexandria
8136 Old Keene Mill Road, Suite A-210
Springfield, Virginia 22152-1843
Telephone: (703) 644-9200

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was mailed to:

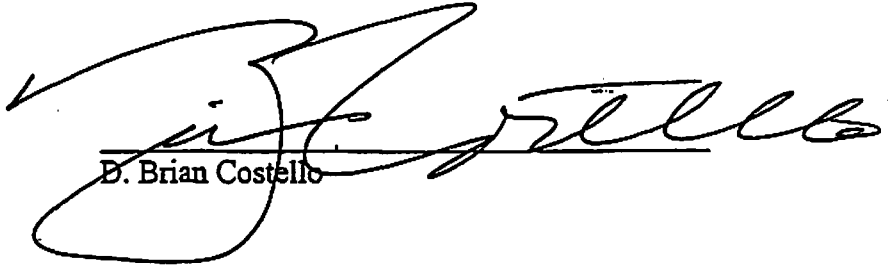
Peter A. Dingman, Esq. and
Elizabeth G. Engle, Esq.
Dingman Labowitz, P.C.
Counsel for Complainant
526 King Street, Suite 209
Alexandria, Virginia 22314

Gerald F. Chapman, Esq.
Counsel for Nationwide CH LLC
6917 Arlington Road, Suite 350
Bethesda, Maryland 20814

Rand L. Gelber, Esq.
Counsel for Nationwide CH LLC
8150 Leesburg Pike, Suite 600
Vienna, Virginia 22030

F. Gillar Boyd, Jr., Esq.
Counsel for St. Paul of the
Desert Episcopal Church
225 South Civic Drive, Suite 1-3
Palm Springs, California 92262

Gamma Mu Foundation
c/o Terry Basolo
1250 Cleveland Avenue
San Diego, California 92103


D. Brian Costello

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE)
JAMES M. DUNCAN, III, LIVING TRUST,)
(Declaration dated September 7, 1993),)

Complainant,)

v.)

Chancery No. CH010249

THE CITY OF ALEXANDRIA, et al.,)

Respondents.)

REQUESTS FOR ADMISSION TO RESPONDENT NATIONWIDE CH, LLC

TO: Nationwide CH LLC
c/o Gerald F. Chapman, Esquire
6917 Arlington Road, Suite 350
Bethesda, Maryland 20814

Copy to:
Rand L. Gelber, Esquire
8150 Leesburg Pike, Suite 600
Vienna, Virginia 22182

Complainant and Cross-Respondent William Y. Austin, Trustee of the James M. Duncan III Living Trust, by counsel, hereby propounds the following Requests for Admission upon Nationwide CH, LLC, pursuant to Rule 4:11 of the Rules of the Supreme Court of Virginia. Answers, under oath, are to be served upon counsel for William Y. Austin, Trustee of the James M. Duncan III Living Trust, on or before July 16, 2001. In responding to these Requests for Admission, the following definitions and instructions apply:

Definitions and Instructions

a. Where knowledge or information in possession of a person or entity is requested, such request includes knowledge of that party's agents, representatives, and unless privileged, his or her attorneys.

b. The term "document" or "documents" or any other form of these words, unless the context clearly indicates otherwise, shall mean all written materials of any kind or character, including but not limited to, letters, correspondence, telegrams, facsimile transmittals, memoranda, publications, records, minutes, agreements, records or notations of telephone or personal conversations or conversations, inter-office communications, microfilm, bulletins, circulars, pamphlets, studies, notices, summaries, reports, books, teletype messages, audio and/or video tape-recordings, and worksheets, and copies of any of the foregoing which are not identical to the original or to any other copy produced.

c. "Communication" refers to any written or oral expression, exchange, or transmission of facts, messages, information or the like, at any time or place, and under any circumstances whatsoever.

d. "Identify" with respect to a document means to set forth the following information, if known: (1) a general description thereof (e.g., letter, memorandum, report, etc); (2) a brief summary of its contents; (3) the name(s) and address(es) of the custodian of the original; (4) the name(s) and address(es) of the person(s) who drafted, prepared, compiled or signed the original; (5) any other descriptive information necessary in order to describe it adequately in a *subpoena duces tecum*.

e. "Identify" with respect to a person means set forth the following information, if known: (1) his or her name; (2) his or her residential address; (3) his or her relationship and/or affiliation with you or the James M. Duncan, III, Living Trust or the J. M. Duncan III Charitable Remainder Unitrust.

f. If your response refers to documents as defined in b., above or other tangible object, please describe the document or object in sufficient detail so as to permit its identification in a request for production, or, in the alternative, attach the document or other object to your responses.

g. "You" or "Your" refers to Nationwide CH, LLC.

h. The "Living Trust" refers to that certain trust, the James M. Duncan, III, Living Trust, created by Declaration of Trust dated September 7, 1993, a copy of which trust document is attached to the City Parties' Cross Bill of Complaint as Exhibit 1.

i. The "Unitrust" refers to that certain trust, the J. M. Duncan III Charitable Remainder Unitrust, created in a document dated August 4, 1999, and attached to the City Parties' Cross Bill of Complaint as Exhibit 2.

j. The "First Trust Deed" refers to that certain deed dated September 7, 1993, and recorded among the Land Records for the City of Alexandria in Deed Book 1498 at page 1240, and attached to these Requests for Admission as Exhibit A.

k. "City Parties" refers to Respondents City of Alexandria and Alexandria Library Board.

l. The "Property" refers, collectively, to those certain parcels of land located in the City of Alexandria, Virginia, being Tax Map Nos. 107-11-000 and 107-10-500 on the Tax Parcel Map for the City of Alexandria, and more commonly known as 200 North Henry Street and 1115 North Cameron Street, Alexandria, Virginia 22314.

m. The "Second Trust Deed" refers to that certain deed dated August 3, 1999, recorded among the Land Records of the City of Alexandria at Deed Book 1713 at Page 1822.

Requests for Admission

1. Admit or deny that the document attached to these Requests as Exhibit A is a true and accurate copy of the document recorded in the Land Records for the City of Alexandria.

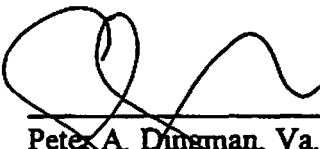
2. Admit or deny that, at the time of execution of the First Trust Deed, James M. Duncan, II was seized with fee simple title to the Property.

3. Admit or deny that the document attached to the City Parties' Cross Bill of Complaint as Exhibit 1 is a true copy of the Living Trust agreement.

4. Admit or deny that Duncan executed the Living Trust agreement.

5. Admit or deny that Duncan failed to deliver reasonable notice in writing and in advance of his intent to withdraw the Property from the Living Trust.

6. Admit or deny that, in the moment immediately prior to his affixing his signature to the Second Trust Deed, Duncan, as Trustee of the Living Trust, was seized with fee simple title to the Property.



Peter A. Dingman, Va. Bar # 14378
Elizabeth G. Engle, Va. Bar # 40010
DENGMAN LABOWITZ, P.C.
526 King Street, Suite 209
Alexandria, Virginia 22314
(703) 519-0999
Facsimile (703) 519-1511
Counsel for William Y. Austin, Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of June, 2001, a true copy of the foregoing was served via United States mail, first-class, postage prepaid, to:

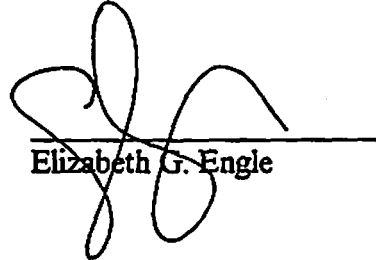
D. Brian Costello, Esquire
8138 Old Keene Mill Road, Suite A-210
Springfield, Virginia 22152-1843
Counsel for the City of Alexandria and
Alexandria Library Board

Rand L. Gelber, Esquire
8150 Leesburg Pike, Suite 600
Vienna, Virginia 22182
Counsel for Nationwide CH LLC

F. Gillar Boyd, Jr., Esquire
225 South Civic Drive, Suite 1-3
Palm Springs, California 92262
Counsel for St. Paul of the Desert Episcopal Church

Gamma Mu Foundation
c/o Terry Basolo
3634 7th Avenue, Unit 9A
San Diego, California 92103-4395

Gerald F. Chapman, Esquire
6917 Arlington Road, Suite 350
Bethesda, Maryland 20814



Elizabeth G. Engle

A

Exempt pursuant to
Section 58.1-811(12)
of the 1950 Code of Virginia.

200 N. Henry Street - Tax # 107-11-000
1115 N. Cameron St. - Tax # 107-10-500

16350
DEED IN TRUST

THIS DEED, made this 7th day of September, 1993, between JAMES M. DUNCAN, III, unmarried, Grantor, and JAMES M. DUNCAN, III, Trustee under a certain Intervivos Trust Agreement of even date herewith (known as "THE JAMES M. DUNCAN, III LIVING TRUST" on file in the law offices of Timothy J. Callahan, 8280 Greensboro Drive, Suite 730, McLean, Virginia 22102), Grantee, provides:

The said Grantor does hereby grant and convey, with General Warranty and English covenants of title, unto the said Grantee in Trust as aforesaid, all that certain parcel of real estate lying in the City of Alexandria, Virginia, as more fully described below:

BEGINNING at the northwest corner of Henry and Cameron Street; thence in a westerly direction along the northerly line of Cameron Street 246 feet 10 inches to the northeast corner of Cameron and Fayette Streets; thence from said front back between parallel lines 176 feet 7 inches, the easterly line of said lot being the westerly line of Henry Street and the westerly line of said lot being the easterly line of Fayette Street, containing 43,587 square feet.

AND BEING the same property conveyed to the Grantor by Deed recorded in Deed Book 715 at Page 117 and by the Will of the late Ruth Birch Deahl Duncan in Will Book 175 at Page 281 among the said land records.

The foregoing grant and conveyance is subject to all conditions, restrictions, easements, rights of way, and deeds of trust duly of record and the deeds forming the chain of title to the property conveyed.

As set forth in Section 55-17.1 of the Code of Virginia, the trust created by this conveyance shall not fail, nor shall any use relating to the above-described real estate be defeated because no beneficiaries are specified by name herein or because no duties are imposed upon the Trustee.

The Grantor hereto agrees, and this conveyance is made upon the express condition, that the Grantee shall have, and is hereby granted, full power and authority, without the joinder of any person whatsoever, to sell, exchange, lease, encumber, dedicate for public use, or otherwise dispose of the property interest transferred above or any part thereof, at one time or from time to time, and no person dealing with the Grantee shall be required to make further inquiry as to the right of the Grantee so to act, nor

Tax bills on 200 N. Henry St. To:
Duncan Living Trust c/o Suleiman Nassam
200 N. Henry Street
Alexandria, VA 22314

Return to Timothy J. Callahan, Esq.
8280 Greensboro Dr. Suite 730
McLean, VA 22102

Tax bills on 1115 Cameron Street to:
Duncan Living Trust c/o Hopkins Furniture Co.
810 King Street, Alexandria, VA 22314

shall such person be required as to the disposition of any proceeds.

The Grantee shall have no individual liability or obligation whatsoever arising from his ownership, as Trustee, of the legal title to said property, or with respect to any act done or contract entered into or indebtedness incurred by him in dealing with said property, or in otherwise acting as Trustee, except only so far as said trust property and any trust funds in the actual possession of the Grantee shall be applicable to the payment and discharge thereof.

Such Trust Agreement currently further provides that in the event of the death of the original Trustee, she shall assume the office of Trustee.

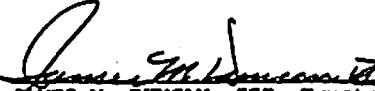
In accordance with the Trust Agreement, the Grantor reserves the right in his lifetime to substitute Trustees, which he shall do by filing a deed of appointment or substitution among the said land records.

Any revocation of the Trust Agreement by the Grantor shall not be effective as to the property herein conveyed unless he execute a deed, duly recorded, evidencing such revocation and reversion of title.

There is no consideration passing hands in this conveyance which is made pursuant to a revocable inter vivos trust in which the Grantor is Grantor and sole beneficiary of such trust during his lifetime and, as such, this conveyance is intended to be exempt from state and local recordation taxes pursuant to Section 58.1-811(12) of the 1950 Code of Virginia, as amended. No examination of title has been made in connection with this deed.

IN WITNESS WHEREOF, the said JAMES M. DUNCAN, III, Grantor, and JAMES M. DUNCAN, III, Trustee, as indicating acceptance of this deed and its terms, has hereunto set his hand and seal as of the date as first written.

 (SEAL)
JAMES M. DUNCAN, III
Grantor

 (SEAL)
JAMES M. DUNCAN, III, Trustee
Grantee

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

The undersigned, a Notary Public in and for the aforesaid County and State, whose commission expires 1-31-93 does hereby certify that JAMES M. DUNCAN, III, individually and as Trustee, whose name is signed to the foregoing Deed in Trust, has personally acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand and seal this 7th day of September 1993.

Samuel M. Callahan
Notary Public

VIRGINIA: IN THE CLERK'S OFFICE OF THE
CIRCUIT COURT OF THE CITY OF ALEXANDRIA

This deed was presented and with the
certificate annexed, admitted to record.

CONSIDERATION \$ _____
 ASSUMPTION \$ _____
 STATE GRANTEE'S TAX _____
 CITY GRANTEE'S TAX _____
 TRANSFER FEE 1.00
 CLERK'S FEE 12.00
1.00
 STATE GRANTOR'S TAX _____
 CITY GRANTOR'S TAX _____
 TOTAL 14.00

TESTE: [Signature] CLERK
 by: Rosetta Marshall DEPUTY CLERK

RECORDED
 1915 11 30 AM '94

RECORDED ALEX. VA.
 STATE TAX.
 CITY TAX.
 TRANSFER FEE.

016356

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE :
JAMES M. DUNCAN, III, LIVING TRUST :

Complainant, :

v. :

CHANCERY NO. CN010249

THE CITY OF ALEXANDRIA, VIRGINIA, :
et al. :

Defendants. :

RESPONSE OF RESPONDENT NATIONWIDE CH, LLC
TO REQUESTS FOR ADMISSION

Respondent Nationwide CH LLC ("Defendant Nationwide"), by and through its undersigned counsel, hereby responds to the Requests for Admissions to Respondent Nationwide CH, LLC from Complainant and Cross-Respondent William Y. Austin, Trustee as follows:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Denied.
6. Denied.

Respectfully submitted,

NATIONWIDE CH LLC

BY COUNSEL

Rand L. Gelber / at

Rand L. Gelber, VSB #23991
8150 Leesburg Pike, Suite 600
Vienna, VA 22030
(703) 356-0519

Gerald F. Chapman

Gerald F. Chapman
6917 Arlington Road, Suite 350
Bethesda, MD 20814
301-652-3900, ext 3014
FAX: 301-652-3023

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of July, 2001, a true and correct copy of the above and foregoing was sent by first class mail, postage prepaid, to:

Peter A. Dingman, Esq.
Elizabeth G. Engle, Esq.
Dingman & Labowitz, P.C.
526 King Street, Suite 209
Alexandria, VA 22314

D. Brian Costello, Esq.
8138 Old Keen Mill Road, Suite A-210
Springfield, VA 22152-1843

St. Paul of the Desert
Episcopal Church
125 West El Alameda
Palm Springs, CA 92262-5662

Gamma Mu Foundation
8350 Greensboro Drive
McLean, VA 22102

Gerald F. Chapman
GERALD F. CHAPMAN

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST
(Declaration dated September 7, 1993)

Complainant,

v.

THE CITY OF ALEXANDRIA, VIRGINIA, *et al.*,

Defendants.

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA
Aug 12 42 PM '01
EDWARD GEORGE M. CLERK
Deputy Clerk
In Chancery No. CH010229

THE CITY OF ALEXANDRIA, VIRGINIA, *et al.*,

Defendants and Cross-Complainants,

v.

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST
(Declaration dated September 7, 1993),

Complainant and Cross-Defendant.

NATIONWIDE CH LLC

Defendant and Counterclaimant,

v.

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST,

Plaintiff and Counter-Defendant

TO THE HONORABLE JUDGES OF SAID COURT:

STIPULATION OF FACTS

Come now the parties, by their respective counsel, and stipulate that the following facts are true.

1. The real property at issue in this suit (hereafter "the subject property") is located in the City of Alexandria, Virginia; is more fully described in a certain Deed recorded in Deed Book 1498 at Page 1240 among the land records of the City of Alexandria, Virginia; is shown on the Tax Parcel Map of the City of Alexandria, Virginia as Tax Map Nos. 107-11-000 and 107-10-500; and is commonly known as 200 North Henry Street and 1115 North Cameron Street.

2. On or about September 7, 1993, James M. Duncan, III, executed a Declaration of Trust dated September 7, 1993 creating and establishing the James M. Duncan, III, Living Trust (hereafter "the Living Trust").

3. The attached document titled "The James M. Duncan, III Living Trust" dated September 7, 1993, and labeled "Exhibit 1" is a true copy of the Declaration of Trust which created the Living Trust.

4. On or about September 7, 1993, Mr. Duncan made, executed, acknowledged and delivered a certain Deed in Trust (hereafter "the First Trust Deed") conveying the subject property from himself, individually, to himself as Trustee of the Living Trust.

5. The attached document titled "Deed in Trust" and labeled Exhibit 2 is a true copy of the First Trust Deed.

6. The First Trust Deed was recorded on June 15, 1994 in Deed Book 1498 at Page 1240 among the City of Alexandria, Virginia land records.

7. On or about June 30, 1994, Mr. Duncan executed a certain First Amendment to the James M. Duncan, III Living Trust (hereafter "the Living Trust Amendment").

8. The attached document titled "First Amendment to the James M. Duncan, III Living Trust Dated September 7, 1993" dated June 30, 1994 and labeled Exhibit 3, is a true copy of the First Trust Amendment.

9. On or about August 4, 1999, Mr. Duncan executed a certain trust agreement titled "The J.M. Duncan Charitable Remainder Unitrust" (hereafter "the Unitrust"), naming himself as Trustee.

10. The attached document titled "The J.M. Duncan III Charitable Remainder Unitrust" dated August 4, 1999 and labeled Exhibit 4 is a true copy of the Unitrust trust agreement.

11. On or about August 3, 1999, Mr. Duncan (as Grantor) made, executed acknowledged and delivered a certain Deed of Contribution (hereafter "the Unitrust Deed") for the subject property naming himself as Trustee for the J.M. Duncan, III Charitable Remainder Unitrust as Grantor.

12. The attached document titled "Deed of Contribution" dated August 3, 1999 and labeled Exhibit 5 is a true copy of the Unitrust Deed.

13. On or about October 20, 1999, Mr. Duncan executed a contract (hereafter "the Purchase Contract") to sell the subject property to Nationwide CH, LLC.

14. The attached document titled "Purchase Contract" dated October 20, 1999 and labeled Exhibit 6, is a true copy of the Purchase Contract.

15. Mr. Duncan died March 2, 2000.

16. William Y. Austin qualified in California as Trustee of the Living Trust.

17. Mr. Duncan was Settlor, Trustee and Beneficiary of the Living Trust at the time he executed the Unitrust, Unitrust Deed and the Purchase Contract.

18. Mr. Duncan was Donor, Trustee and Beneficiary of the Unitrust at the time he executed the Unitrust Deed and the Purchase Contract.

19. Except for the First Trust Deed and the Unitrust Deed described above, there were no other conveyances of the subject property.

Respectfully submitted,

WILLIAM Y. AUSTIN,
TRUSTEE

By Counsel

and

CITY OF ALEXANDRIA and
ALEXANDRIA LIBRARY BOARD

By Counsel

and

NATIONWIDE CH, LLC

By Counsel

DINGMAN LABOWITZ, P.C.


By: 

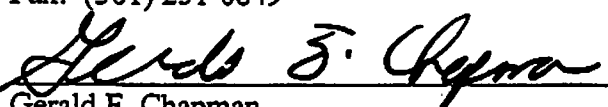
Peter A. Dingman, VSB # 14378
Elizabeth G. Engle, VSB # 40010
Counsel for William Y. Austin, Trustee
526 King Street, Suite 209
Alexandria, Virginia 22314
Telephone: (703) 519-0999
Fax: (703) 519-1511

D. BRIAN COSTELLO, P.C.

By: 

D. Brian Costello, VSB #15123
Counsel for City of Alexandria and
Alexandria Library Board
8136 Old Keene Mill Road, Suite A-210
Springfield, Virginia 22152-1843
Telephone: (703) 644-9200
Fax: (703) 644-9400


Rand L. Gelber, VSB # 23991
Counsel for Nationwide CH, LLC
8150 Leesburg Pike, Suite 600
Vienna, Virginia 22181
Telephone: (703) 356-0519
Fax: (301) 251-0849


Gerald F. Chapman
Counsel for Nationwide CH, LLC
6917 Arlington Road, Suite 350
Bethesda, Maryland 20814
Telephone: (301) 652-3900, ext. 3014
Fax: (301) 652-3023

THE JAMES M. DUNCAN, III LIVING TRUST



I, JAMES M. DUNCAN, III, of Riverside County, California, make this Declaration of Trust dated September 7, 1993, with myself as the initial Trustee ("my Trustee"). References in this document to "my Trustee" shall refer to myself, as the initial Trustee or to the successor Trustee(s), as the context requires. All references to "my Trust" or "trust," unless otherwise stated, shall refer to this Living Trust and the trusts created in it. Notwithstanding anything in my Trust to the contrary, when I am serving as a Trustee under my Trust, I may act for and conduct business on behalf of my Trust as Trustee without the consent of any other Trustee.

ARTICLE 1

CREATION AND DISPOSITION OF TRUST

1.1 Creation of Trust. I have initially funded my trust with the sum of Ten Dollars. I may transfer additional assets to my Trustee, either during my lifetime or by my will or by other means. Such additional assets shall be listed, for convenience, on the attached schedule. My Trustee shall hold, invest and distribute all assets received in trust under the terms of this Agreement. For reference, all assets transferred to this trust shall be referred to as the "Trust Estate."

1.2 The Name of My Trust. For convenience, my trust shall be known as: THE JAMES M. DUNCAN, III LIVING TRUST, dated September 7, 1993. For purposes of beneficiary designations and transfers directly to my trust, my trust shall be referred to as: JAMES M. DUNCAN, III, original Trustee, or his successors in trust, under THE JAMES

M. DUNCAN, III LIVING TRUST, dated September 7, 1993, including any amendments thereto.

ARTICLE 2

PROVISIONS FOR ME DURING MY LIFETIME

2.1 General Management. The Trustee shall hold, manage, invest, and reinvest the Trust Estate (if any requires such management and investment) and shall collect the income, if any, therefrom and shall dispose of the net income and principal as follows:

2.1.1 During my lifetime, the Trustee shall pay to me or apply for my benefit all the net income from this trust.

2.1.2 During my lifetime the Trustee may pay to me or apply for my benefit such sums from the principal of this trust as in its sole discretion shall be necessary or advisable from time to time for my medical care, comfortable maintenance, and welfare, taking into consideration to the extent the Trustee deems advisable, any other income or resources of mine known to the Trustee.

2.1.3 I shall have no power to direct the Trustee to make gifts of principal or income from the Trust to a third party. Any gift made directly by the Trustee to a third party in violation of this provision shall be construed as a distribution made directly to me, and then a gift from me to such third party.

2.2 During my Disability. During any period of time when I am disabled, my Trustee shall apply the trust property, including its income, exclusively for my benefit and for my valid obligations by observing the following procedural guidelines:

2.2.1 My Trustee shall provide as much of the principal and net income of my trust as is necessary or advisable, in its sole and absolute discretion, for my health, support, maintenance, and general welfare, and for the payment of any of my valid obligations as confirmed by my Trustee.

2.2.2 My Trustee shall provide as much of the principal and net income of my trust as my Trustee deems advisable for the payment of insurance premiums on policies owned by me, either directly or beneficially, or my trust.

2.2.3 I shall be deemed disabled during any period when, in the opinion of two licensed physicians, I am incapacitated or disabled because of illness, age, or any other cause which results in my inability to effectively manage my property or financial affairs.

2.2.4 Any net income which is not distributed annually under this Article shall be accumulated and added to principal.

ARTICLE 3

MY RIGHTS TO AMEND OR REVOKE TRUST

3.1 By signed instruments delivered to the Trustee during my lifetime, I may:

(1) withdraw property from this trust in any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Declaration of Trust in any other respect; (5) revoke this trust in its entirety or any provisions therein; provided, however, the duties or responsibilities of the Trustee shall

not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

ARTICLE 4

ADMINISTRATION OF MY TRUST UPON MY DEATH

4.1 Payment of Expenses, Claims, and Taxes. Upon my death, my Trustee is authorized, but not directed, to pay the following: expenses of my last illness, funeral, and burial, including memorials of all types and memorial services of such kind as my Trustee in its sole discretion shall approve; legally enforceable claims against me or my estate; expenses with regard to the administration of my estate; and Federal estate tax, applicable state inheritance or estate taxes, or any other taxes occasioned by my death.

4.1.1 The payments authorized under this Article are discretionary, and no claims or right to payment by third parties may be enforced against my trust by virtue of such discretionary authority.

4.1.2 My Trustee shall be indemnified from the trust property for any damages sustained by my Trustee as a result of its exercising, in good faith, the authority granted it under this Article.

4.2 Coordination with My Personal Representative. This Article shall be utilized to help facilitate the coordination between the personal representative of my probate estate and my Trustee with respect to any of my property owned outside of my trust at my death.

4.2.1 Authorized Payments. My Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Article either directly to the appropriate persons or institutions or to my personal representative of my probate estate. My Trustee may rely upon the written statements of my personal representative as to all material facts relating to these payments; my Trustee shall not have any duty to see to the application of such payments.

4.2.2 Purchase of Assets and Loans. My Trustee is authorized to purchase and retain in the form received, as an addition to my trust, any property which is apart of my probate estate. In addition, my Trustee may make loans, with or without security, to my probate estate. My Trustee shall not be liable for any loss suffered by my trust as a result of the exercise of the powers granted in this paragraph.

4.2.3 Distributions from My Personal Representative. My Trustee is authorized to accept distributions from my personal representative of my probate estate without audit and my Trustee shall be under no obligation to examine the records or accounts of my personal representative.

4.3 Apportionment. All expenses and claims and all estate, inheritance, and death taxes, excluding any generation-skipping transfer tax, resulting from my death shall be paid without apportionment and without reimbursement from any person, except as otherwise specifically provided in this trust.

4.3.1 Property Passing Outside My Trust. Notwithstanding anything to the contrary in my trust, estate, inheritance, and death taxes assessed with regard to property

passing outside of my trust or outside of my probate estate, but included in my gross estate for federal estate tax purposes, shall be chargeable against the persons receiving such property.

4.4 My Trustee's Authority to Make Tax Elections. My Trustee may exercise any available elections with regard to state or federal income, inheritance, estate succession, or gift tax law.

ARTICLE 5

TANGIBLE PERSONAL PROPERTY

5.1 Tangible personal property. Upon my death, I give all tangible personal property owned by the Trust to LEON ARNOLD DUNCAN, if he survives me. If he does not survive me, I give all tangible personal property owned by the Trust to my cousin, HARRIET F. FELLOWS, if she survives me.

5.2 Memorandum. I request that the recipients of my tangible personal property honor any memorandum I may leave as to distribution of specific items.

ARTICLE 6

THE CHARITABLE REMAINDER TRUST

Upon my death the Trustee shall divide the net assets of the Trust Estate into separate accounts or trusts, one for each of MARIE R. MALONE, CARL A. RUTHSTROM, and WILLIAM Y. AUSTIN, who are living at the time of my death. If one of these has predeceased me, the entire Trust Estate shall be allocated to the survivors.

If two of those have predeceased me, one-third shall be allocated to the survivor, and the balance shall be held and distributed pursuant to Paragraph 6.13. My Trustee shall manage each such Trust as a Charitable Remainder Trust, each referred to separately in this Article as "the Trust." For convenience, each Trust may be called, for example, the Marie R. Malone Charitable Trust. For convenience, references in this Trust to the "Income Beneficiary" shall refer to each of MARIE R. MALONE, CARL A. RUTHSTROM, and WILLIAM Y. AUSTIN, as to their Trust. Each Trust shall be managed separately, and each shall be administered and distributed as follows:

6.1 The Trustee shall hold, manage, invest and reinvest the assets, collect the rents, income, interest and dividends therefrom, and pay over to the Income Beneficiary or apply for his use and benefit, for and during the term of his life an amount (the "unitrust amount") equal to FIVE (5%) percent of the net fair market value of the Trust assets determined annually by the Trustee as of the first business day of each taxable year of the Trust. The unitrust amount shall be paid in equal quarterly installments from income and, to the extent that income is not sufficient, from principal. Any income of the Trust for a taxable year in excess of the unitrust amount shall be added to the principal.

6.2 Upon the death of the Income Beneficiary, the Trust shall terminate and my Trustee shall distribute all of the then principal and income of the Trust, other than any amount due the Income Beneficiary, to the charities listed in paragraph 6.13. If any charity is not an organization described in Sections 170(c), 2055(a), 2522(a) or (b) and 170(b)(1)(A) of the Internal Revenue Code of 1986 (the "Code") at the time when any

principal and income to such organization or organizations then described in Sections 170(c), 2055(a), 2522(a) or (b) and 170(b)(1)(A) of the Code, contributions to which are deductible for income, gift and estate tax purposes at such time, as my Trustee in its sole and absolute discretion, shall select, which are most similar in purpose to the disqualified charity I have specifically named.

6.3 No amount other than the unitrust amount shall be paid to the Income Beneficiary.

6.4 If the net fair market value of the Trust assets is incorrectly determined by my Trustee for any taxable year, then within a reasonable period after the final determination of the correct value, my Trustee shall pay to the Income Beneficiary in the case of undervaluation or shall receive from the Income Beneficiary in the case of an overvaluation an amount equal to the difference between the unitrust amount properly payable and the unitrust amount actually paid.

6.5 In determining the unitrust amount, my Trustee shall prorate the same, on a daily basis, for a short taxable year and for the period the Income Beneficiary lives in the taxable year of his death, in accordance with the applicable provisions of the Regulations issued under the Code.

6.6 Nothing in this instrument shall be construed to restrict my Trustee from investing the Trust assets in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of Trust assets.

6.7 The obligation to pay the unitrust amount shall commence with the date of my death, but payment of the unitrust amount may be deferred from the date of my death to the end of the taxable year of the Trust in which occurs the complete funding of the Trust. Within a reasonable time after the occurrence of such event, my Trustees shall pay the amount determined under the method describe in Section 1.664-1(a)(5)(ii) of the United States Treasury Regulations less the sum of any amounts previously distributed and interest thereon computed at six (6%) percent a year, compounded annually, from the date of distribution to the occurrence of such event.

6.8 If any additional contributions are made to the Trust after the initial contribution in Trust, the unitrust amount for the taxable year in which the assets are added to the Trust shall be FIVE (5%) percent of the sum of (a) the net fair market value of Trust assets (excluding the assets so added and any income from, or appreciation on, such assets) and (b) that proportion of the value of the assets so added that was excluded under (a) which the number of days in the period which begins with the date of contribution and ends with the earlier of the last day of the taxable year or the Income Beneficiary's death bears to the number of days in the period which begins on the first day of such taxable year and ends with the earlier of the last day in such taxable year or the Income Beneficiary's death. In the case where there is no valuation date after the time of contribution, the assets so added shall be valued at the time of contribution.

6.9 Except for the payment of the unitrust amount to the Income Beneficiary, my Trustee is prohibited from engaging in any act of self-dealing as defined in Section

4941(d) of the Code, from retaining any excess business holdings as defined in Section 4943(c) of the Code which would subject the Trust to tax under Section 4943 of the Code, from making any investments which would subject the Trust to tax under Section 4944 of the Code, and from making any taxable expenditures as defined in Section 4945(d) of the Code. My Trustee shall make distributions at such times in such manner as not to subject the Trust to tax under Section 4942 of the Code.

6.10 Any other provisions of this Trust to the contrary notwithstanding, the unitrust amount, shall not be reduced by any expenses of the Trust including, but not limited to, Trustee's commissions.

6.11 As used in this Article, the term "the net fair market value" of the Trust shall mean its net fair market value as that term is used in Section 664(d)(2) of the Code. All sections of the Code referred to in this Article shall be deemed to include future amendments to such sections as well as corresponding provisions of future Internal Revenue laws.

6.12 It is my intention that the Trusts created by this Article shall qualify for a charitable remainder deduction for Federal estate tax purposes. Accordingly, I direct that the provisions of this Trust be construed in accordance with this intention and I further direct that none of the powers granted to my Trustee shall be exercised in such a manner as to disqualify the Trust from such deduction.

6.13 The Charities. All references in this Declaration of Trust to the "charities," and the sole recipient of the remainder of The Charitable Remainder Trust(s), shall be

THE JAMES M. DUNCAN, JR., LIBRARY FOUNDATION (the "Foundation"), which shall be created, managed, and distributed as follows. The Trustee of my Trust shall manage the assets thereof and shall distribute such sums from the income and the principal, in amounts to be determined from time to time in the discretion of my Trustee, for the purpose of providing to the James M. Duncan, Jr., Library, in Alexandria, Virginia, funding for any of a broad selection of EDUCATIONAL benefits as determined by my Trustee, including but not limited to the development and presentation of courses and educational programs not available in the public school system, and the purchase of equipment for these courses and for textbooks not included in the general purchasing program. My Trustee is directed to distribute funds only for uses which are over and above what the City of Alexandria provides for its other libraries. My Trustee shall distribute each year enough funds, and shall take such other actions, so as to comply with the requirements of the Code and the Regulations thereunder for tax-exempt organizations. A further condition of distribution of funds is that the library be continuously named the James M. Duncan, Jr., Library, and that the name be prominently displayed.

ARTICLE 7

POWER OF TRUSTEE TO RESIGN

Any Trustee may resign this trusteeship during my lifetime by giving me thirty (30) days' notice in writing delivered to me in person or mailed to my last known address, the resignation to become effective as hereinafter provided. Upon receipt of such notice I shall appoint a successor Trustee. Upon the failure of the successor Trustee to accept the

trust within thirty (30) days from the time notice was delivered in person or mailed to me, the Trustee may resign to the court having jurisdiction over this Trust, which court may, if it deems advisable, accept the resignation and appoint a successor Trustee. Upon the appointment of and acceptance by a successor Trustee, the original Trustee shall pay over, deliver, assign, transfer, or convey to such successor Trustee the trust property and make a full and proper accounting to me, whereupon his resignation shall become effective. The substitute or successor Trustee upon acceptance of this Trust and the Trust property shall succeed to and possess all the rights, powers, and duties, authority, and responsibility conferred upon the Trustee originally named herein.

ARTICLE 8

SUBSTITUTE OR SUCCESSOR TRUSTEES

8.1 Successor Trustee. Upon the death or resignation of myself as the original Trustee, unless other provisions shall be made by me, the first successor Trustee shall be BURKE & HERBERT BANK & TRUST COMPANY of Alexandria, Virginia.

Upon or after my death or disability, a replacement successor Trustee, limited to a bank or trust company or an attorney at law, may be appointed by a majority of MARIE R. MALONE, CARL A. RUTHSTROM, and WILLIAM Y. AUSTIN or the survivors of them or, if another successor Trustee is needed and if they fail to act, by the court having jurisdiction over this Trust. The appointment of a successor Trustee or Co-Trustee shall be effective upon acceptance of fiduciary duties by the successor Trustee, at which time all references herein to "my Trustee" shall refer to the successor Trustee.

8.2 Appointing a Co-Trustee. Any sole Trustee may in his or her discretion appoint a Co-Trustee. Any successor Trustee shall be deemed to be in office and entitled to act upon delivery of its written acceptance of this Trust to an acting Trustee, or if none, to at least one beneficiary. Any Co-Trustee may delegate his or her powers in writing to the other Trustee for a period not to exceed one year, may revoke that designation, and may successively renew it. Any successor Trustee shall have all the powers, immunities and discretions given to the original Trustee.

8.3 Actions of Predecessor. No Trustee serving under this Agreement, who has been appointed by me, shall be responsible for or required to inquire into any fiduciary actions occurring before such Trustee's appointment.

8.4 Accountings. My Trustee shall make an annual accounting during my lifetime to me or to the one who, in the opinion of my Trustee, is primarily in charge of my affairs, and after my death, to the beneficiaries of this trust.

ARTICLE 9

DEFINITION OF TRUSTEE

Whenever the word "Trustee" or any modifying or substituted pronoun therefor is used in this Trust, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine, and neuter gender thereof, and shall apply equally to the Trustee named herein and to any successor or substitute Trustee acting hereunder, and such successor or substitute Trustee shall possess all the rights,

powers and duties, authority and responsibility conferred upon the Trustee originally named herein.

ARTICLE 10.

FEE SCHEDULE FOR TRUSTEE

For its services as Trustee, a corporate Trustee shall receive an amount which shall be determined by its Standard Fee Schedule in effect and applicable at the time of the performance of such services. If no such schedule shall be in effect at that time, or if the Trustee is an individual, the Trustee shall be entitled to reasonable compensation for the services rendered.

ARTICLE 11

TRUSTEE'S POWER TO SIGN AND EXECUTE

Notwithstanding anything in my trust to the contrary, when I am serving as Trustee under my Trust, I may act for and conduct business on behalf of my Trust as Trustee without the consent of any other Trustee.

No person or corporation dealing with the Trustee shall be required to investigate the Trustee's authority for entering into any transaction or to see to the application of the proceeds of any transaction.

ARTICLE 12

POWERS OF TRUSTEE

The Trustee shall have all the powers granted under Section 64.1-57 of the Code of Virginia, 1950, as amended. In addition, the Trustee is authorized in its fiduciary discretion (which shall be subject to the standard of reasonableness and good faith to all beneficiaries) with respect to any property, real or personal, at any time held under any provision of this Trust and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust or by statute or general rules of law:

12.1 To retain in the form received any property or undivided interest in property donated to, or otherwise acquired as part of the Trust Estate, including residential property and shares of the Trustee's own stock, regardless of any lack of diversification, risk or non productivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although said property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

12.2 To invest and reinvest all or any part of the Trust Estate in any property and undivided interest in property, wherever located, including bonds, debentures, notes, secured or unsecured, stocks of corporations regardless of class, interests in limited partnerships, real estate or any interest in real estate whether or not productive at the time of investment, interests in trusts, investment trusts, whether of the open and/or closed fund types, and participation in common, collective or pooled trust funds of the Trustee, insurance contracts on the life of any beneficiary or annuity contracts for any beneficiary, without being limited by any statute or rule of law concerning investments by fiduciaries.

12.3 To sell or dispose of or grant options to purchase any property, real or personal, constituting a part of the Trust Estate, for cash or upon credit, to exchange any property of the Trust Estate for other property,

at such times and upon such terms and conditions as it may deem best, and no person dealing with it shall be bound to see to the application of any monies paid.

12.4 To hold any securities or other property in its own name as Trustee, in its own name, in the name of a nominee (with or without disclosure of any fiduciary relationship) or in bearer form.

12.5 To keep, at any time and from time to time, all or any portion of the Trust Estate in cash uninvested for such period or periods of time as it may deem advisable, without liability for any loss in income by reason thereof.

12.6 To sell or exercise stock subscription or conversion rights.

12.7 To refrain from voting or to vote shares of stock which are a part of the Trust Estate at shareholder's meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the Trust Estate.

12.8 To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the Trust Estate, and to deposit such stock or other securities under any plan of reorganization or with any protective committee and to delegate to such committee discretionary power with relation thereto, to pay a proportionate part of the expenses of such committee and any assessments levied under any such plan, to accept and retain new securities received by the Trustee pursuant to any such plan, to exercise all conversion, subscription, voting and other rights, of whatsoever nature pertaining to such property, and to pay any amount or amounts of money as it may deem advisable in connection therewith.

12.9 To borrow money and to encumber, mortgage or pledge any asset of the Trust Estate for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the Trustee.

12.10 To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust.

12.11 To subdivide, develop, or dedicate real property to public use or to make or obtain the vacation of plats and adjust boundaries, to adjust differences in valuation on exchange or partition by giving or receiving consideration, and to dedicate easements to public use without consideration.

12.12 To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings.

12.13 To continue and operate any business owned by the Grantor at the Grantor's death and to do any and all things deemed needful or appropriate by the Trustee, including the power to incorporate the business and to put additional capital into the business, for such time as it shall deem advisable, without liability for loss resulting from the continuance or operation of the business except for its own negligence; and to close out, liquidate or sell the business at such time and upon such terms as it shall deem best.

12.14 To collect, receive, and receipt for rents, issues, profits, and income of the Trust Estate.

12.15 To insure the assets of the Trust Estate against damage or loss and the Trustee against liability with respect to third persons.

12.16 In buying and selling assets, in lending and borrowing money, and in all other transactions, irrespective of the occupancy by the same person of dual positions, to deal with itself in its separate, or any fiduciary capacity.

12.17 To compromise, adjust, arbitrate, sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best.

12.18 To employ and compensate agents, accountants, investment advisers, brokers, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for

the proper administration of the Trust Estate, and to do so without liability for any neglect, omission, misconduct, or default of any such agent or professional representative provided such person was selected and retained with reasonable care.

12.19 To determine what shall be fairly and equitably charged or credited to income and what to principal.

12.20 To hold and retain the principal of the Trust Estate undivided until actual division shall become necessary in order to make distributions; to hold, manage, invest, and account for the several shares or parts thereof by appropriate entries on the Trustee's books of account; and to allocate to each share or part of share its proportionate part of all receipts and expenses; provided, however, the carrying of several trusts as one shall not defer the vesting in title or in possession of any share or part of share thereof.

12.21 To make payment in cash or in kind, or partly in cash and partly in kind upon any division or distribution of the Trust Estate (including the satisfaction of any pecuniary distribution) without regard to the income tax basis of any specific property allocated to any beneficiary and to value and appraise any asset and to distribute such asset in kind at its appraised value; and when dividing fractional interests in property among several beneficiaries to allocate entire interests in some property to one beneficiary and entire interest in other property to another beneficiary or beneficiaries.

12.22 In general, to exercise all powers in the management of the Trust Estate which any individual could exercise in his or her own rights, upon such terms and conditions as it may reasonably deem best, and to do all acts which it may deem reasonably necessary or proper to carry out the purposes of this Trust Agreement.

12.23 To purchase property, real or personal, from the Grantor's general estate upon such terms and conditions as to price and terms of payment as the Grantor's executor or administrator and the Trustee shall agree, to hold the property so purchased as part of the Trust Estate although it may not qualify as an authorized trust investment except for this provision, and to dispose of such property as and when the Trustee shall deem advisable. The fact that the Grantor's executor or administrator and the Trustee are the same shall in no way affect the validity of this provision.

12.24 To lend funds to the Grantor's general estate upon such terms and conditions as to interest rates, maturities, and security as the Grantor's executor or administrator and the Trustee shall agree, the fact that they may be the same in no way affecting the validity of this provision.

12.25 To receive property bequeathed, devised or donated to the Trustee by the Grantor or any other person; to receive the proceeds of any insurance policy which names the Trustee as beneficiary; to execute all necessary receipts and releases to executors, donors, insurance companies and other parties adding property to the Trust Estate.

12.26 To combine assets of two or more trusts if the provisions and terms of each trust are substantially identical, and to administer them as a single trust, if the Trustee reasonably determines that the administration as a single trust is consistent with my intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

12.27 To divide any trust into separate shares or separate trusts or to create separate trusts if the Trustee reasonably deems it appropriate and the division or creation is consistent with the Grantor's intent, and facilitates the trust's administration without defeating or impairing the interests of the beneficiaries.

12.28 If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

12.28.1 Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

12.28.2 Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

12.28.3 If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee

may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust. Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts. The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

ARTICLE 13

RIGHTS OF MYSELF AND TRUSTEE IN INSURANCE POLICIES

During my life, I shall have all rights under any life insurance policies payable to the Trustee, including the right to change the beneficiary, to receive any dividends or other earnings of such policies without accountability therefor to the Trustee or any beneficiary hereunder, and may assign any policies to any lender, including the Trustee, as security for any loan to me or any other person; and the Trustee shall have no responsibility with respect to any policies, for the payment of premiums or otherwise, except to hold any policies received by the Trustee in safekeeping and to deliver them upon my written request and upon the payment to the Trustee of reasonable compensation for services. The rights of any assignee of any policy shall be superior to the rights of the Trustee. If any policy is surrendered or if the beneficiary of any policy is changed, this Trust shall be revoked with respect to such policy. However, no revocation of the Trust with respect to any policy, whether pursuant to the provisions of the preceding sentence or otherwise, shall be effective unless the surrender or change in beneficiary of the policy is accepted

by the insurance company. Upon the death of the insured under any policy held by or known to, and payable to, the Trustee, or upon the occurrence of some event prior to the death of myself that matures any such policy, the Trustee, in its discretion, may either collect the net proceeds and hold them as part of the principal of the Trust Estate, or may exercise any optional method of settlement available to it, and the Trustee shall deliver any policies on my life held by it and payable to any other beneficiaries as those beneficiaries may direct. Payment to, and the receipt of, the Trustee shall be a full discharge of the liability of any insurance company; which need not take notice of this agreement or see to the application of any payment. The Trustee need not engage in litigation to enforce payment of any policy without indemnification satisfactory to it for any resulting expenses.

ARTICLE 14

DISCRETION TO TERMINATE SMALL TRUST

If at any time any trust created hereunder has a fair market value as determined by the Trustee of Fifty Thousand Dollars (\$50,000.00) or less, the Trustee, in its absolute discretion if it determines that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one income beneficiary, the Trustee shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE 15

COMMON DISASTER PROVISION

If any beneficiary and I should die under such circumstances as would render it uncertain whether the beneficiary or I died first, then it shall be conclusively presumed for the purposes of this Trust that said beneficiary predeceased me.

ARTICLE 16

PROTECTION FROM CREDITORS

Except as otherwise provided herein, all payments payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of the Trustee, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

ARTICLE 17

PERPETUITIES SAVINGS CLAUSE

Notwithstanding anything herein to the contrary, the trusts created hereunder shall vest in ownership not later than Twenty-one (21) years after the death of the last survivor of my issue living at the time of the signing of this Trust or amendments, if any. If necessary in order to avoid the application of the Rule Against Perpetuities, at the latest date described above the Trustee shall distribute each remaining trust hereunder to the

beneficiary or beneficiaries of the current income thereof, and if there is more than one beneficiary, in the proportion in which they are beneficiaries or if no proportion is designated in equal shares to such beneficiaries.

ARTICLE 18

GOVERNING LAW

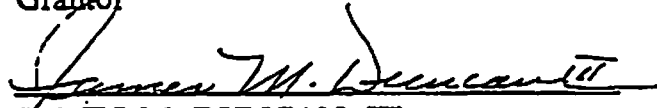
This Trust Agreement and the trusts created hereby shall be construed, regulated, and governed by and in accordance with the laws of the State of Virginia.

IN WITNESS WHEREOF, I have signed this Trust, as Grantor and as Trustee, effective the date written at the beginning.



JAMES M. DUNCAN, III

Grantor



JAMES M. DUNCAN, III

Trustee

STATE OF VIRGINIA

COUNTY OF FAIRFAX

The foregoing instrument was personally acknowledged before me this 7th day of September, 1993, by JAMES M. DUNCAN, III, Grantor and Trustee.



Notary Public

My commission expires April 30, 1997.

SCHEDULE A

(to THE JAMES M. DUNCAN, III LIVING TRUST)

This Schedule A is included only for the convenience of the Trustee and beneficiaries, and any failure to list assets on Schedule A will in no way alter the Trust's ownership of those assets. The undersigned acknowledges the following property to be a part of the Trust Estate:

1. The personal property listed or described in the attached Deed of Gift No. 1.
2. Life Insurance policy No. _____, issued by _____ Insurance Company, in the face amount of \$_____.
3. All my present and future interest in the following real estate, together with all present and future improvements thereon:
 - a. 200 N. Henry Street (alternately called 1101 Cameron Street), City of Alexandria, Virginia.
 - b. 1112 (or 1115) Cameron Street ("Hopkins warehouse"), City of Alexandria, Virginia.
 - c. My 3/4 interest in 1552 East Twin Palms Drive, Palm Springs, California.
 - d. 859 Comino Condor, Palm Springs, California.
4. My interest in the following accounts in the following institutions, together with all future additions, interest, or accumulations therein and also including all new accounts and the accumulations and the future additions, interest or accumulation in any and all other financial institutions in which new accounts are opened in the future:

Account at: Ferris, Baker Watts, Inc.
1720 I Street, N.W.
Washington, DC 20006
Acct. No. 02222230-02-32
Loren Danielson, 202-429-3500

Account at: Bank of Palm Springs
601 E Tahquitz Way
Palm Springs, CA 92262
Acct. #022-092365
(A branch of the Bank of California)

5. My interest in the following securities in the following companies together with all future accumulations and purchases in said companies, together with all future securities and accumulations purchased in any and all other companies:

Burke & Herbert Bank & Trust Co.
#01140752

6. All my rights, title and interest in the following:


JAMES M. DUNCAN, III
Trustee

DEED OF GIFT No. 1

I, JAMES M. DUNCAN, III, hereby transfer unto THE JAMES M. DUNCAN, III LIVING TRUST, created by document of this date by and between myself as Grantor and Trustee, all of my tangible personal property of every kind and description including, without limitation, household goods, furniture and jewelry, presently owned or hereafter acquired by me.


JAMES M. DUNCAN, III

Date: September 7, 1993

BK 1498PG1240

EXHIBIT

2

ALL-STATE LEGAL SUPPLY CO.

Exempt pursuant to Section 58.1-811(12) of the 1950 Code of Virginia.

200 N. Henry Street - Tax # 107-11-00
1115 N. Cameron St. - Tax # 107-10-500

DEED IN TRUST

THIS DEED, made this 7th day of September, 1893, between ~~JAMES M. DUNCAN, III~~, unmarried, Grantor, and ~~JAMES M. DUNCAN, III~~, Trustee under a certain intervivos Trust Agreement of even date herewith (known as "THE JAMES M. DUNCAN, III LIVING TRUST" on file in the law offices of Timothy J. Callahan, 8280 Greensboro Drive, Suite 730, McLean, Virginia 22102), Grantee, provides:

The said Grantor does hereby grant and convey, with General Warranty and English covenants of title, unto the said Grantee in Trust as aforesaid, all that certain parcel of real estate lying in the City of Alexandria, Virginia, as more fully described below:

BEGINNING at the northwest corner of Henry and Cameron Street; thence in a westerly direction along the northerly line of Cameron Street 246 feet 10 inches to the northeast corner of Cameron and Fayette Streets; thence from said front back between parallel lines 176 feet 7 inches, the easterly line of said lot being the westerly line of Henry Street and the westerly line of said lot being the easterly line of Fayette Street, containing 43,587 square feet.

AND BEING the same property conveyed to the Grantor by Deed recorded in Deed Book 715 at Page 117 and by the Will of the late Ruth Birch Deahl Duncan in Will Book 175 at Page 281 among the said land records.

The foregoing grant and conveyance is subject to all conditions, restrictions, easements, rights of way, and deeds of trust duly of record and the deeds forming the chain of title to the property conveyed.

As set forth in Section 55-17.1 of the Code of Virginia, the trust created by this conveyance shall not fail, nor shall any use relating to the above-described real estate be defeated because no beneficiaries are specified by name herein or because no duties are imposed upon the Trustee.

The Grantor hereto agrees, and this conveyance is made upon the express condition, that the Grantee shall have, and is hereby granted, full power and authority, without the joinder of any person whatsoever, to sell, exchange, lease, encumber, dedicate for public use, or otherwise dispose of the property interest transferred above or any part thereof, at one time or from time to time, and no person dealing with the Grantee shall be required to make further inquiry as to the right of the Grantee so to act, nor

Tax bills on 200 N. Henry St. for
Duncan Living Trust c/o Suleiman Hammad
200 N. Henry Street
Alexandria, VA 22314

Return to Timothy J. Callahan, Esq.
8280 Greensboro Dr. Suite 730
McLean, VA 22102

Tax bills on 1115 Cameron Street for
Duncan Living Trust c/o Hopkins Furniture Co.
810 King Street, Alexandria, VA 22314

BK1498PG1241

shall such person be required as to the disposition of any proceeds.

The Grantee shall have no individual liability or obligation whatsoever arising from his ownership, as Trustee, of the legal title to said property, or with respect to any act done or contract entered into or indebtedness incurred by him in dealing with said property, or in otherwise acting as Trustee, except only so far as said trust property and any trust funds in the actual possession of the Grantee shall be applicable to the payment and discharge thereof.


Such Trust Agreement currently further provides that in the event of the death of the original Trustee, she shall assume the office of Trustee.

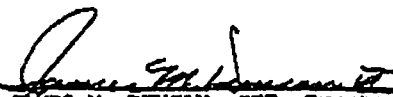
In accordance with the Trust Agreement, the Grantor reserves the right in his lifetime to substitute Trustees, which he shall do by filing a deed of appointment or substitution among the said land records.

Any revocation of the Trust Agreement by the Grantor shall not be effective as to the property herein conveyed unless he execute a deed, duly recorded, evidencing such revocation and reversion of title.

There is no consideration passing hands in this conveyance which is made pursuant to a revocable inter vivos trust in which the Grantor is Grantor and sole beneficiary of such trust during his lifetime and, as such, this conveyance is intended to be exempt from state and local recordation taxes pursuant to Section 58.1-811(12) of the 1950 Code of Virginia, as amended. No examination of title has been made in connection with this deed.

IN WITNESS WHEREOF, the said JAMES M. DUNCAN, III, Grantor, and JAMES M. DUNCAN, III, Trustee, as indicating acceptance of this deed and its terms, has hereunto set his hand and seal as of the date as first written.

 (SEAL)
JAMES M. DUNCAN, III
Grantor

 (SEAL)
JAMES M. DUNCAN, III, Trustee
Grantee

BK1498PG1242

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to-wit:

The undersigned, a Notary Public in and for the aforesaid County and State, whose commission expires 1.31.93, does hereby certify that JAMES M. DUNCAN, III, individually and as Trustee, whose name is signed to the foregoing Deed in Trust, has personally acknowledged the same before me in my jurisdiction aforesaid.

Given under my hand and seal this 7th day of September, 1993.

Samuel C. Callahan
Notary Public

BK 1498PG 1243

VIRGINIA: IN THE CLERK'S OFFICE OF THE
CIRCUIT COURT OF THE CITY OF ALEXANDRIAThis deed was presented and with the
certificate annexed, admitted to record.

CONSIDERATION \$ _____

ASSUMPTION \$ _____

STATE GRANTEE'S TAX _____

CITY GRANTEE'S TAX _____

TRANSFER FEE 1.00CLERK'S FEE 12.00

STATE GRANTOR'S TAX _____

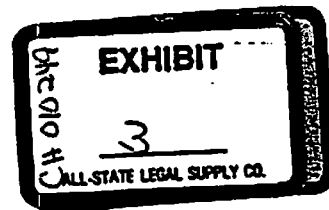
CITY GRANTOR'S TAX _____

TOTAL 14.00TESTE: [Signature] CLERKBY: Ronika Marshall DEPUTY CLERKRECORDED ALEX. VA.
STATE TAX
CITY TAX
TRANSFER FEE
FEB 16 11 20 AM '04

016356

F-CCT-0006

Any provision contained herein which purports to restrict or affect the holding, occupancy, ownership, rental, lease or transfer of any interest on the basis of race, color, sex, religion, ancestry, national origin, familial status, age sexual orientation or disability is invalid and unenforceable.



Bill

FIRST AMENDMENT
TO
THE JAMES M. DUNCAN, III LIVING TRUST
DATED SEPTEMBER 7, 1993

This First Amendment to The James M. Duncan, III Living Trust is made this 30th day of June, 1994 by JAMES M. DUNCAN, III, Trustor and Trustee. The Trustor hereby amends as follows:

ARTICLE 6.

Paragraph One of Article 6 shall be amended to read as follows:

THE CHARITABLE REMAINDER TRUST

Upon my death, the Trustee shall continue the Trust for the benefit of WILLIAM Y. AUSTIN. For convenience, references in this Trust to the "Income Beneficiary" shall refer to WILLIAM Y. AUSTIN. If WILLIAM Y. AUSTIN shall not survive, Trust balance shall be held and distributed pursuant to Article 6 and Paragraph 6.13. The Trust shall be distributed as follows:

Continuing paragraphs 6.1 through paragraphs 6.13 shall remain unchanged.

ARTICLE 8

Article 8 shall be amended as follows:

SUBSTITUTE OR SUCCESSOR TRUSTEES

8.1 Successor Trustee. Upon the death or resignation of myself as the original Trustee, unless other provisions shall be made by me, the first successors shall be Co-Trustees. BURKE & HERBERT BANK & TRUST COMPANY of Alexandria, Virginia and WILLIAM Y. AUSTIN shall serve as Co-Trustees.

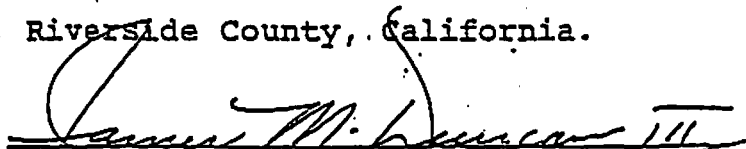
The appointment of a successor Trustee or Co-Trustee shall be effective upon acceptance of fiduciary duties by the successor Trustee, at which time all references herein to "my Trustee" shall refer to the successor Trustee. On resignation or death of WILLIAM Y. AUSTIN, BURKE & HERBERT BANK & TRUST COMPANY shall serve as sole Trustee. If BURKE & HERBERT BANK & TRUST COMPANY shall not serve, another professional Bank & Trust Company shall serve.

8.2 Appointing a Co-Trustee. Any Trustee may in his or her discretion appoint a Co-Trustee to succeed that Trustee. Any successor Trustee shall be deemed to be in office and entitled to act upon delivery of its written acceptance of this Trust to an acting Trustee, or if none, to beneficiary or beneficiaries. Any Co-Trustee may delegate his or her powers in writing to the other Trustee for a period not to exceed one year, may revoke that designation, and may successively renew it. Any successor Trustee shall have all the powers, immunities and discretions given to the original Trustee.

Continuing paragraphs 8.3 and 8.4 shall remain unchanged.

Except as herein amended, the Trustor hereby ratifies approves and confirms The James M. Duncan, III Living Trust, dated September 7, 1993.

The Trustor and Trustee has executed this First Amendment to The James M. Duncan, III Living Trust this 30th day of June, 1994 at the City of Palm Springs, Riverside County, California.


JAMES M. DUNCAN, III, TRUSTOR/TRUSTEE

First Amendment to
Living Trust

JAMES M. DUNCAN, III

ALL PURPOSE ACKNOWLEDGEMENT

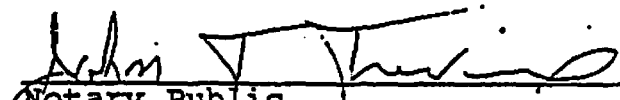
STATE OF CALIFORNIA

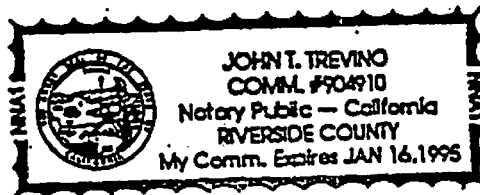
)
) ss
)

COUNTY OF RIVERSIDE

On June 30, 1994 before me, JOHN T. TREVINO, Notary Public, personally appeared JAMES M. DUNCAN, III, Trustor/Trustee of the JAMES M. DUNCAN, III LIVING TRUST dated September 7, 1993, personally known to me, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his 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.


Notary Public



CAPACITY CLAIMED BY SIGNER

INDIVIDUAL
XXX TRUSTOR/TRUSTEE

SIGNER IS REPRESENTING:

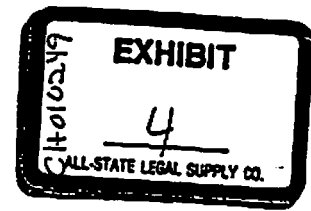
Name of Person(s) or Entit(ies)
JAMES M. DUNCAN, III, Trustor/
Trustee

TITLE OR TYPE OF DOCUMENT: FIRST AMENDMENT TO JAMES M. DUNCAN, III
NUMBER OF PAGES: 3 LIVING TRUST
DATE OF DOCUMENT: June 30, 1994
SIGNER(S) OTHER THAN NAMED ABOVE: _____

First Amendment to
Living Trust

3

JAMES M. DUNCAN, III



**THE J. M. DUNCAN III
CHARITABLE REMAINDER UNITRUST**

This TRUST AGREEMENT ("Agreement") is made and is effective on ^{August} ~~July~~ 4, 1999, by and between JAMES M. DUNCAN, III, residing at 1552 East Twin Palms Drive, Palm Springs, CA 92264 (the "Donor") and, JAMES M. DUNCAN, III, and his successor(s) (the "Trustee" and sometimes as "it" or "its").

I.

AGREEMENT OF TRUST

The Donor is irrevocably assigning, transferring and delivering to the Trustee all right, title and interest in and to the property described in Exhibit A, a copy of which is attached hereto and specifically made a part hereof by this reference. The Trustee hereby accepts such irrevocable gift and agrees to hold, administer and distribute such property, together with any other property which is or shall become an asset of this trust, in accordance with the provisions of this Agreement. The trust created hereunder shall be known as "THE J. M. DUNCAN III CHARITABLE REMAINDER UNITRUST" (the "Trust").

II.

DISTRIBUTIONS

A. Income and Principal. During the lifetime of the Donor, the Trustee shall distribute the income and principal of this Trust as follows:

1. In each taxable year of this Trust, the Trustee shall pay the Unitrust Amount (as defined in Paragraph A.2 of this Article II) to the Donor during the Donor's lifetime.
2. The "Unitrust Amount" shall include the amount described in Paragraph A.2(a) during the Initial Period and the amount described in Paragraph A.2(b) during the Remaining Period. The "Initial Period" shall commence on the effective date of this Trust and shall terminate on the last day of the taxable year in which the Triggering Event occurs. The "Remaining Period" shall commence on the first day of the taxable year that immediately follows the taxable year in which the Triggering Event occurs and shall terminate on the date of death of the Donor. The "Triggering Event" shall occur in the year in which the property that is

any time be incompetent, the Trustee may pay the Unitrust Amount to the trustee of any trust established exclusively for the benefit of the Donor, if such a trust has been established, and if not, then to the conservator, custodian or legally appointed guardian of the person or estate of the Donor. Any such payment for the benefit of the Donor shall release the Trustee from its obligation to pay the Unitrust Amount, and the Trustee shall have no duty to supervise or inquire into the application of any funds so paid.

5. Upon the death of the Donor, the Trustee shall distribute the then principal and income of this Trust in accordance with Article III herein.

B. Valuation Date. The net fair market value of the Trust assets shall be determined annually on the first day of each taxable year of this Trust (including any short taxable year), in accordance with the provisions of Paragraph F of this Article II.

C. Short Years. The first taxable year of this Trust shall commence on the date hereof and shall end on December 31 of that year. Subsequent taxable years shall be on a calendar year basis, except that the last taxable year of this Trust shall end on the date that this Trust terminates pursuant to Article III herein. In the case of a taxable year which is for a period of less than twelve (12) months (other than the taxable year in which the survivor of the Donors dies), the amount described in Paragraph A.2(a)(ii) of this Article II or Paragraph A.2(b) of this Article II, as the case may be, shall be such amount multiplied by a fraction the numerator of which is the number of days in the taxable year of this Trust and the denominator of which is 365 (366 if February 29 is a day included in the numerator). In the case of the taxable year in which the survivor of the Donors dies, the amount described in Paragraph A.2(a)(ii) of this Article II or Paragraph A.2(b) of this Article II, as the case may be, shall be such amount multiplied by a fraction the numerator of which is the number of days in the period beginning on the first day of such taxable year and ending on the date of death of the survivor of the Donors and the denominator of which is 365 (366 if February 29 is a day included in the numerator). Notwithstanding the foregoing, the obligation of the Trustee to pay the Unitrust Amount shall terminate with the regular periodic payment next preceding the date of death of the survivor of the Donors

D. Additional Contributions. Any person may contribute property to this Trust, with the consent of the Trustee, either during life or at death. For the taxable year of this Trust in which any additional contribution is made, the additional property shall be valued at the time of contribution, and the amount described in Paragraph A.2(a)(ii) of this Article II or Paragraph A.2(b) of this Article II, as the case may be, shall be NINE percent (9%) of the sum of the following components:

1. The net fair market value of the Trust assets determined on the first day of the taxable year (and thus excluding the value of the additional property, and earned income from, and any appreciation on, such property after its contribution); and

2. That proportion of the value of the additional property (that was excluded under subparagraph 1 immediately above) which the number of days in the period that begins with the date of contribution and ends with the earlier of the last day of such taxable year or the date of death of the Donor bears to the number of days in the period that begins on the first day of such taxable year and ends with the earlier of the last day of such taxable year or the date of death of the Donor.

If an additional contribution is made by Will, the obligation to pay the Unitrust Amount payable with respect to the additional contribution shall commence with the date of death of the person under whose Will the additional contribution is made. Payment of that portion of the Unitrust Amount may be deferred, however, from such date of death to the end of the taxable year in which occurs the complete funding of the additional contribution. Within a reasonable time following such complete funding of the additional contribution, the Trustee shall pay to the Donor, in the case of an underpayment, or receive from the Donor, in the case of an overpayment, the difference between: (a) any Unitrust Amount actually paid to the Donor, plus interest on such amounts, compounded annually, computed for any period at the rate of interest that the Federal Income Tax Regulations (the "Regulations") under Section 664 of the Code prescribe for this Trust for such computation for such period; and (b) the Unitrust Amount payable, plus interest compounded annually, computed for any period at the rate of interest that the Regulations under Section 664 of the Code prescribe for this Trust for such computation for such period. Any payments required to be made because of an underpayment shall be paid to the Donor (or the

Donor's estate) who received the underpayment. Any repayments required to be made because of an overpayment shall be repaid by the Donor (or the Donor's estate) who received the overpayment.

E. Net Income. The net income of this Trust shall be determined by the Trustee pursuant to the terms of this Agreement, Section 643(b) of the Code and the Regulations thereunder.

F. Fair Market Value. The Trustee shall compute the net fair market value of the Trust assets considering all assets and liabilities without regard to whether particular items are taken into account in determining the net income of this Trust; provided, however, in the event an unmarketable asset as described in Regulation Section 1.664-1(a)(7)(ii) is transferred to or held by this Trust, and whenever this Trust is required to value such assets, the valuation shall be either performed exclusively by an Independent Special Trustee (as defined below) or determined by a current qualified appraisal, as defined in Regulation Section 1.170A-13(c)(3), from a qualified appraiser, as defined in Regulation Section 1.170A-13(c)(5). All determinations of the net fair market value of the Trust assets shall be in accordance with generally accepted fiduciary accounting principles and any United States Treasury requirements governing charitable remainder unitrusts. In any conflict, Treasury requirements shall prevail over generally accepted fiduciary accounting principles and any inconsistent provisions of this Agreement. In the event that the net fair market value of the Trust assets is determined incorrectly for any taxable year, the Trustee shall pay to the Donor, or the Donor's estate (in the case of an undervaluation), or be repaid by the Donor, or the Donor's estate (in the case of an overvaluation), an amount equal to the difference between the Unitrust Amount which the Trustee should have paid to the Donor if the correct values were used, and the Unitrust Amount which the Trustee actually paid to the Donor. Such payments or repayments shall be made within a reasonable period after the final determination of the correct value.

III.

TERMINATION

This Trust shall terminate within a reasonable time after the date of death of the Donor; provided, however, that such reasonable time shall not extend beyond the last day of the month in

which occurs the ninetieth (90th) day following the date of death of the Donor. Upon termination, the Trustee shall distribute all of the then principal and income of this Trust, free of trust, other than any amount due to the Donor or the Donor's estate as follows: (1) forty-nine percent (49%) to the JAMES M. DUNCAN, JR., LIBRARY, in Alexandria, Virginia; (2) fifty percent (50%) to the ST. PAUL OF THE DESERT EPISCOPAL CHURCH of Palm Springs, California; and one percent (1%) to Gamma Mu Foundation, 8350 Greensboro Road, McLean, Virginia 22102.

Notwithstanding any contrary provision of this Agreement, during the Donor's lifetime, the Donor shall retain the right, by acknowledged written instrument, to change the charitable remainderman or remaindermen by adding or substituting new organizations and/or omitting certain organizations or by altering the share each is to receive. If more than one written instrument is so delivered to the Trustee, the written instrument bearing the latest date shall control and shall be deemed to revoke all prior written instruments unless the most recent one shall provide otherwise.

The originally designated charitable remainderman and any such additional and/or substitute charitable remainderman shall herein be referred to as "Donee" in the singular, and "Donees" in the plural. If any Donee is not an organization described in each of Sections 170(b)(1)(A), 170(c), 2055(a) and 2522(a) of the Code at the time when any principal or income of this Trust is to be distributed to it, the Trustee shall distribute such principal or income in proportion to the relative shares of the Donees which are so described and, if none of the Donees is so described, to one or more organizations then so described as the Trustee shall select and in such shares as it shall determine. The terms "Donee" and "Donees" as used herein shall include an alternate charitable remainderman (or remaindermen) selected by the Trustee in accordance with the immediately preceding sentence.

IV.

THE TRUSTEE

A. Appointment. JAMES M. DUNCAN, III, shall serve as Trustee of this Trust. If he shall for any reason fail to qualify or cease to act as Trustee, then the Northern Trust Bank of

California N.A., shall be appointed as successor Trustee to act in his place and stead. No bond or other security shall be required of any person acting as Trustee, whether serving jointly or alone.

B. Special Trustee.

1. If the Donee shall at any time act as Trustee, the Donee shall have the right and option to appoint an "Independent Special Trustee" (as defined below) whenever:

(a) An unmarketable asset as described in Regulation Section 1.664-1(a)(7)(ii) is transferred to or held by this Trust, to exclusively determine the fair market value of such asset at the time of contribution or acquisition and for purposes of the annual determination of the net fair market value of the Trust assets; or

(b) The Trustee determines that the acquisition or ownership of an "Annuity Contract" (as defined below) or any other investment would cause this Trust to be treated as a grantor trust under Sections 671-679 of the Code, to exercise solely any and all of the powers delineated in Article V herein with respect to any such investment; or

(c) The Trustee determines that such appointment is appropriate, to take such action as the Trustee shall clearly define.

2. An "Independent Special Trustee" (and any successor) must be appointed pursuant to this Paragraph B and must be an "Independent Trustee" as defined in Regulation Section 1.664-1(a)(7)(iii).

3. If any Donee is not a Trustee hereunder, or if one of the Trustees is not an Independent Special Trustee, the Trustee(s) must appoint an Independent Special Trustee for the situation described in Paragraph B.1(b) of this Article IV and shall have the right and option to appoint an Independent Special Trustee for the situations described in Paragraphs B.1(a) and (c) of this Article IV.

4. The Independent Special Trustee shall have no powers, duties, or liabilities hereunder, except with respect to matters specifically described in this Paragraph B, and solely with respect to such matters, the Independent Special Trustee may exercise the powers, authority and discretion accorded to a Trustee pursuant to Article V herein. However, the Independent Special Trustee may not function in a manner which would jeopardize the status of this Trust as a

charitable remainder trust as defined in Section 664 of the Code, the Regulations thereunder and Internal Revenue Service rulings governing the operation thereof. No Trustee (other than an Independent Special Trustee) shall have any power, duty or liability hereunder with respect to matters described in this Paragraph B.

5. If an Independent Special Trustee is appointed hereunder, the Trustee shall make such appointment in a separate written instrument that expressly refers to this Paragraph B. Any Independent Special Trustee so appointed may resign by giving written notice to the Trustee by certified mail to the last known address of the Trustee at least ninety (90) days before such resignation shall become effective.

C. Resignation. Any Trustee may resign at any time by giving written notice to the Donor and to all beneficiaries of this Trust, individual and charitable, by certified mail to the last known address of such beneficiaries at least ninety (90) days before such resignation shall become effective.

D. Replacement. The Donor, while living and legally competent, shall have the right, upon ninety (90) days written notice to the Trustee or Independent Special Trustee (herein referred to in the singular as "Fiduciary" and in the plural as "Fiduciaries") to replace or discharge an acting Fiduciary, and to designate a successor Fiduciary or successor Co-Fiduciaries. Upon the legal disability of the Donor, this right may be exercised by any person entitled to receive the Unitrust Amount on behalf of the Donor pursuant to Paragraph A.5 of Article II hereof.

E. Liability of Successor. A successor Fiduciary shall not be responsible to any beneficiary of this Trust or to this Trust for any act or omission of a former Fiduciary, and shall not be required to audit or investigate the acts or administration of any former Fiduciary. In addition, unless requested in writing by a beneficiary of this Trust and indemnified adequately (in such Fiduciary's discretion therefor), no successor Fiduciary shall have any duty to take action to seek redress for breach of trust by a former Fiduciary.

F. Compensation. A Fiduciary other than any Donee shall be entitled to reasonable compensation for any and all services rendered as Fiduciary.

G. Liability for Retaining Property. The Fiduciary shall not be liable for any loss or depreciation in value sustained by this Trust as a result of the Fiduciary accepting or retaining any

property upon which hazardous materials or substances are discovered, unless the Fiduciary contributed to the loss or depreciation in value through willful default, willful misconduct or gross negligence.

H. Indemnification. The Donor shall indemnify the Fiduciary against any claims (except for claims due to the Fiduciary's willful default, willful misconduct or gross negligence) filed against the Fiduciary (i) as an "owner" or "operator" under the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 (as from time to time amended) or any regulation thereunder and (ii) under any other federal, state or local environmental law, rule, regulation or order relating to the property contributed to this Trust by the Donor.

I. Jurisdiction. This Trust shall not be administered under the jurisdiction of any court. Should a question or issue be submitted to a court of competent jurisdiction at any time or from time to time, such court shall acquire jurisdiction of only the question or issue submitted to it, and the jurisdiction of such court shall terminate upon the conclusion or settlement of such question or issue.

V.

POWERS OF THE TRUSTEE

All powers, authority and discretion exercisable by the Trustee under this Trust or by law shall be binding and conclusive on all interested parties; shall be exercisable by the Trustee in its sole and absolute discretion; shall be construed in the broadest possible manner; and shall be exercisable without prior or subsequent application to any court under the jurisdiction of which this Trust may be administered. Not in derogation of or in limitation upon the powers, authority and discretion conferred by law upon a trustee, the Trustee is vested with the following powers, authority and discretion:

A. To alter, repair, improve, erect buildings upon, demolish, manage, partition, mortgage, lease for any period, including a period in excess of any fixed by statute or extending beyond the duration of this Trust, exchange, grant options to lease or to buy, and sell or dispose of, at public or private sale, and upon such conditions and such terms as to cash and credit as it deems advisable, any of the Trust assets;

B. To compromise, settle, subordinate, arbitrate, extend, renew, modify, or release, in whole or in part, any claim held by it or held against any of the Trust assets hereunder;

C. To continue to hold the property transferred to it hereunder in the form in which it shall be when transferred or as the form thereof may be changed pursuant to the other provisions of this Agreement, without regard to the limitations imposed by law upon the investment of trust funds;

D. To borrow money and to encumber or hypothecate Trust assets whether by mortgage, deed of trust, pledge or otherwise;

E. To commence or defend litigation with respect to the Trust assets, at the expense of the Trust assets;

F. To employ any person, firm, corporation, bank, or trust company for advice with respect to investment policy or any other matter, but the Trustee may follow or refrain from following any recommendation so obtained and such recommendations shall not in any way limit the discretionary power and authority conferred upon the Trustee hereunder with respect to investments or other matters;

G. To retain accountants, attorneys, brokers, investment advisers, investment counselors and other agents, and may pay reasonable compensation for their services;

H. To enter into any and all agreements with the Internal Revenue Service or any other governmental body and to execute, from time to time, any declarations of policy or disclaimers restricting the powers, authority and discretion granted to the Trustee;

I. To invest and to reinvest the Trust assets in every kind of property, real, personal or mixed, and every kind of investment, specifically including, but not limited to, corporate and government obligations of every kind, stocks (preferred or common), partnerships (general or limited), limited liability companies, options, shares or interests in common trust funds, life insurance contracts and annuity contracts, regardless of any laws or rules of law governing the investment of trust funds; to lawfully disregard any laws or rule of law that, in the absence of contrary trust provisions, would limit the amount any trustee can invest in or pay for any life insurance contract and annuity contract; with respect to unproductive property (i.e., property

which is not producing fiduciary income currently for distribution to the income beneficiary or beneficiaries), the Fiduciary is hereby authorized to continue to hold or to acquire such property, especially when such unproductive property is appreciating or may appreciate in value; and carrying charges for such property shall be paid first out of income and then out of principal; and upon the sale of such property, the Fiduciary shall allocate fiduciary income and principal as set forth in Paragraph L of this Article V; and nothing in this Agreement shall be construed to restrict the Fiduciary from investing the Trust assets in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of Trust assets;

J. With respect to any investment held by the Trustee, to participate in and consent to any corporate or financial reorganization, dissolution, liquidation, merger, consolidation, sale or lease, or in and to any other change in its financial structure; and to become a depositor with any protective, reorganization, or similar committee, and to make any necessary payments incident to the foregoing; to organize or participate in the organization of corporations or other business entities, and to transfer to them any part or all of the Trust assets in exchange for an investment therein; to exercise or to sell any conversion, subscription, or similar rights; and in general to exercise in respect to any investment the unrestricted rights of a personal owner, including voting in person and granting proxies, discretionary, general, or otherwise;

K. In any case in which the Trustee makes any payments or other distribution of Trust assets, to make such payment or distribution in money or in kind, including undivided interests in any property, or partly in money and partly in kind; and in the case of any distribution in kind to any Donee, the adjusted basis of the Trust property distributed shall be fairly representative of the adjusted bases of all Trust properties available for distribution on the date of distribution;

L. To apportion and allocate Trust receipts and expenses between income and principal accounts (provided that no pre-gift appreciation shall be allocable to fiduciary income); and to treat as fiduciary income the increase in value of an obligation for the payment of money, payable at a future time in accordance with a fixed, variable or discretionary schedule of appreciation in excess of the fair market value on the date of contribution or the price at which it was issued, or the increase in value of an interest in a partnership or other investment in excess of the fair market value on the date of contribution or the price paid, as the case may be, including but

not limited to a bond, a zero coupon bond, an annuity contract before annuitization, a life insurance contract before the death of the insured and/or an interest in a common trust fund as defined under Section 584 of the Code; and such increase in value of an obligation for the payment of money or the increase in value of an interest in a partnership or other investment shall be available for distribution only when the Trustee receives cash on account of the obligation, partnership interest or other investment;

M. To retain the services of an independent appraiser to assist in valuing assets of this Trust and to reasonably compensate such appraiser for such services;

N. If required by the Code, the Regulations or any Internal Revenue Service rulings thereunder to maintain the status of the Trust as a charitable remainder unitrust, to set aside a reserve or allowance from Trust income for the depreciation or depletion of any property transferred to or invested in by the Trust; otherwise, the Trustee shall have discretion whether or not to set aside such a reserve;

O. With respect to any environmental hazards on Trust property;

1. To take all appropriate actions to prevent, identify or respond to actual or threatened violations of any environmental law, rule or regulation, including compliance with any federal, state or local agency or court order directing an assessment, abatement or cleanup of any environmental hazard;

2. To disclaim, in whole or in part, any interests in property for any reason, including but not limited to, a concern that such property could cause potential liability under any federal, state, or local environmental law, rule or regulation; and/or

3. To set aside any interests in property, which could cause potential liability under any federal, state, or local environmental law, rule or regulation as a separate trust to be held and administered upon the same terms as those governing the remaining Trust assets;

P. To designate as custodian of any Trust property any business entity authorized and engaged in the business of brokers or dealers in securities;

Q. To the extent permitted by law, to register any of such property in its name as Trustee or in the names of nominees, or to take and keep the same unregistered or in bearer form, or in such condition as to pass by delivery; and/or

R. Except as otherwise provided in Paragraph B of Article IV, whenever the Trust acquires by gift or purchase an annuity contract of any type ("Annuity Contract"), to exercise with respect to such Annuity Contract any rights, duties and discretion as owner thereof, including but not limited to the right, duty or discretion to:

1. Partially or totally surrendering the Annuity Contract at any time(s) or from time to time;
2. Making partial withdrawals from the Annuity Contract giving due regard to any withdrawal or partial surrender penalties that may be imposed and to the best interest of all Trust beneficiaries;
3. Electing any annuity option(s) therein granted; provided, however, that the option so elected guarantees the payment to the Trust by or upon the death of the annuitant of an amount at least equal to the surrender value of the Annuity Contract(s) as of the day before the day the annuity payments commence;
4. Designating the day the annuity payments commence; and/or;
5. Seeing to the allocation of any payments of any type received from the Annuity Contract between principal and income as is required by this Trust and the Principal and Income Laws under the State or Commonwealth which governs this Trust pursuant to Article VI hereof.

S. To pay premiums on a Trust-owned policy of life insurance; provided, however, any such premium payment shall be charged solely to the Trust's principal account and, notwithstanding any statute, rule or convention to the contrary, no part of any such premiums shall be paid with Trust income (as income is defined for purposes of Section 677(a)(3) of the Code only).

Anything in this Agreement to the contrary notwithstanding, it is the intention of the Donor to create a qualifying charitable remainder unitrust under Section 664 of the Code; therefore, no powers, authority or discretion either otherwise granted by this Agreement or by applicable state law that exceed or are inconsistent with those allowed under Section 664 of the Code and the Regulations thereunder are to be possessed or exercised by the Trustee.

VI.

APPLICABLE LAW

The validity of this Trust shall be controlled by the laws of the State of California. The construction and administration of this Trust shall be controlled by the laws of the State of California, or if the Trustee designates in writing to the contrary, by the laws of the Commonwealth or State in which this Trust is administered. However, in any conflict with Section 664 of the Code, the Regulations thereunder or any other existing or hereafter promulgated legislative or Treasury requirements for the qualification of this Trust and for the Donor's obtaining the full benefit of any income, gift and estate tax charitable deductions to which the Donor (and the Donor's estate) may be entitled, Section 664 of the Code, the Regulations thereunder and the legislative and Treasury requirements shall govern.

VII.

IRREVOCABILITY AND AMENDMENT

This Trust shall be irrevocable. However, the Trustee shall have the power, acting alone, to amend this Agreement in any manner required for the sole purpose of ensuring that this Trust qualifies and continues to qualify as a charitable remainder unitrust within the meaning of Section 664 of the Code and the Regulations thereunder.

VIII.

PROHIBITED ACTS

Notwithstanding any other provision of this Agreement, no Fiduciary shall (except for the payment of the Unitrust Amount) engage in any act of self-dealing (as defined in Section 4941(d) of the Code), retain any excess business holdings (as defined in Section 4943(c) of the Code) which would subject this Trust to tax under Section 4943 of the Code, make any investments which would subject this Trust to tax under Section 4944 of the Code, or make any taxable expenditure (as defined in Section 4945(d) of the Code). If Section 4942 of the Code is deemed applicable to this Trust by reason of Section 508(e) of the Code or otherwise, then the Trustee shall make distributions at such times and in such manner as not to subject this Trust to tax under Section 4942 of the Code.

IX.

INTENTION TO CREATE UNITRUST

It is the Donors' intention to obtain the full benefit of any income, gift and estate tax charitable contribution deductions to which they (and their estates) may be entitled to under the Code and for this Trust to qualify as a charitable remainder unitrust within the meaning of Regulation Section 1.664-3(a)(1)(i)(c), and Code Section 664(d)(2) and (3) and Code Section 664(d)(2), as the case may be.

X.

DEATH TAXES

No federal estate taxes, state death taxes or any other estate, death, inheritance or welfare transfer taxes ("death taxes") with respect to this Trust shall be allocated to or be recoverable from this Trust. The Donor agrees to provide in his/her Will, or any other appropriate estate planning documents, that any death taxes arising from the creation of this Trust, or the interest of the Donor therein, shall be payable from the estate of the Donor, excluding the assets of this Trust. The Donor hereby imposes an affirmative obligation on his/her estate to pay all of such death taxes (if any) from sources other than this Trust and agrees that this obligation may be enforced by the Trustee or any Donee, acting alone or together.

XI.

MISCELLANEOUS

A. Spendthrift. The Donor shall not have any power to sell, transfer, assign, pledge, mortgage, or alienate all or any part of the Donor's beneficial interest in the principal or income of this Trust in any manner whatsoever. The interest of the Donor shall not be subject to the claims of the Donor's creditors or to attachment, execution, bankruptcy proceedings or any other legal process.

B. Internal Revenue Code. Throughout this Agreement, the word "Code" shall mean the Internal Revenue Code of 1986, as amended from time to time, and references to a Section of the Code shall include any successor provisions to the Section referred to and to any corresponding provisions of any subsequent federal tax laws.

IN WITNESS WHEREOF, the parties hereto have executed this Trust Agreement on ~~July~~ *August* *me*
4, 1999, at Palm Springs, California 92264

DONOR:

James M. Duncan III
JAMES M. DUNCAN, III

TRUSTEE:

James M. Duncan III
JAMES M. DUNCAN, III

State of California)
County of ~~San Diego~~ ^{SS.} Riverside

On ~~July~~ ^{Aug} 4, 1999, before me, Donna Kassler, a notary public,
personally appeared JAMES M. DUNCAN, III, personally known to me (or proved to me on the
basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within
instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or entity upon
behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Donna Kassler

(Seal)

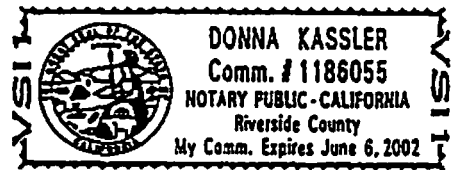


EXHIBIT A

**THE DUNCAN
CHARITABLE REMAINDER UNITRUST**

1. All that certain parcel of land situate in the City of Alexandria, State of Virginia, generally described as follows:

BEGINNING at the northwest corner of Henry and Cameron Street; thence in a westerly direction along the northerly line of Cameron Street 246 feet 10 inches to the northeast corner of Cameron and Fayette Streets; thence from said front back between parallel lines 176 feet 7 inches, the easterly line of said lot being the westerly line of Henry Street and the westerly line of said lot being the easterly line of Fayette Street containing 43,587 square feet, LESS AND EXCEPT a portion of said parcel of land at the corner of North Henry Street and Cameron Street leased to the American Oil Company with a frontage of 110 feet on Cameron Street and 125 feet on North Henry Street; it being understood that there is a plat prepared by Holland Surveyors, Alexandria, Virginia, dated February 12, 1959, more particularly describing this property.

Receipt of the above described asset is hereby acknowledged this 4 day of ~~July~~^{August}, 1999.

TRUSTEE:


JAMES M. DUNCAN, III

NORTHERN TRUST BANK OF CALIFORNIA N.A. by and through the undersigned authorized officer, hereby declines to accept its appointment as successor Trustee of THE J.M. DUNCAN, III CHARITABLE REMAINDER UNITRUST created under that certain Trust Agreement dated August 4, 1999, wherein James M. Duncan, III, was the Donor and initial Trustee.

Signed this 21st day of April, 2000, in Indian Wells, California.

NORTHERN TRUST BANK OF CALIFORNIA N.A.

By: _____

Michael V. Smith
Michael V. Smith

Its: _____

Vice President

BK 1713PG1822

18556

EXHIBIT

18556

CALL-STATE LEGAL SUPPLY CO.

PREPARED WITHOUT BENEFIT OF A TITLE REPORT

DEED OF CONTRIBUTION

THIS DEED is made this 3rd day of August, 1999, by and between JAMES M. DUNCAN, III ("Grantor"); and JAMES M. DUNCAN, III, TRUSTEE FOR THE J. M. DUNCAN, III CHARITABLE REMAINDER UNITRUST ("Grantee").

W I T N E S E T H :

That for and in consideration of the premises and the sum of TEN DOLLARS (\$10.00), cash in hand paid, the receipt and sufficiency of which is hereby acknowledged, the Grantor does hereby contribute, grant, bargain, sell, and convey unto the Grantee, all of Grantor's right, title and interest in all of that certain lot or parcel of land situate, lying, and being in the City of Alexandria, Virginia, and more particularly described on Exhibit A attached hereto and incorporated herein by reference, together with all of Grantor's right, title and interest to any improvements or appurtenances thereto (collectively, the "Real Estate").

Grantee's Address: 1552 East Twin Palms Drive
Palm Springs, CA 92264
Consideration: Exempt from Recordation Taxes pursuant
to Va. Code 58.1-84.A.12

Hazel & Thomas

19341.001
3110 Fairview
Park Drive
Suite 1400
Falls Church,
VA 22042

This document was prepared by:
Benjamin F. Tompkins
HAZEL & THOMAS, P.C.
3110 Fairview Park Drive, Suite 1400
Falls Church, Virginia 22042

James M. Duncan, III, Trustee, or his successors shall have full power and authority to protect and conserve the Real Estate; to sell, contract to sell, and grant options to purchase the Real Estate and any right, title, or interest therein on any terms; to exchange the Real Estate or any part thereof for any other real or personal property upon any terms; to convey the Real Estate by deed or other conveyance to any grantee with or without consideration (including the grant of easements and dedications of rights-of-way); to mortgage, pledge, or otherwise encumber the Real Estate or any part thereof; to lease, contract to lease, grant options to lease and renew, extend, amend, and otherwise modify leases on the Real Estate or any part thereof from time to time, for any period of time, for any rental and upon any other terms and conditions; to release, convey, or assign any other right, title, or interest whatsoever in the Real Estate or any part thereof; and no party dealing with the Trustee in relation to the Real Estate in any manner whatsoever, and (without limiting the foregoing) no party to whom the Real Estate or any part thereof or any interest therein shall be conveyed, contracted to be sold, leased, or mortgaged by the Trustee,

BK1713PG1824

shall be obligated to see to the application of any purchase money, rent, or money borrowed or otherwise advanced on the Real Estate or to inquire into the authority, necessity, or expediency of any act of the Trustee.

The above-described property is conveyed subject to all recorded leases, easements, conditions, restrictions, mortgages, deeds of trust and agreements that lawfully apply to said property or any portion thereof.

TO HAVE AND TO HOLD the aforesaid property, together with all rights, privileges, and advantages thereunto belonging or appertaining to the Grantee, its successors and assigns, forever.

BK1713PG1825

IN WITNESS WHEREOF, JAMES M. DUNCAN, III has executed
this Deed as of the date first set forth above.


JAMES M. DUNCAN, III

COMMONWEALTH OF VIRGINIA,
COUNTY OF FAIRFAX, to wit:

I, the undersigned notary public, in and for the state
and county aforesaid, whose commission expires on the 30th
day of November, 1999, do hereby certify that JAMES M.
DUNCAN, III, whose name is signed to the foregoing Deed,
appeared before me and personally acknowledged the same in my
jurisdiction aforesaid.

GIVEN under my hand and seal this 3rd day of August,
1999.

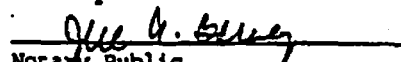

Notary Public

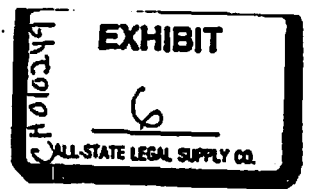
EXHIBIT A

1. All that certain parcel of land situate in the City of Alexandria, State of Virginia, generally described as follows:

BEGINNING at the northwest corner of Henry and Cameron Street; thence in a westerly direction along the northerly line of Cameron Street 246 feet 10 inches to the northeast corner of Cameron and Fayette Streets; thence from said front back between parallel lines 176 feet 7 inches, the easterly line of said lot being the westerly line of Henry Street and the westerly line of said lot being the easterly line of Fayette Street containing 43,587 square feet, LESS AND EXCEPT a portion of said parcel of land at the corner of North Henry Street and Cameron Street leased to the American Oil Company with a frontage of 110 feet on Cameron Street and 125 feet on North Henry Street; it being understood that there is a plat prepared by Holland Surveyors, Alexandria, Virginia, dated February 12, 1959, more particularly describing this property, such plat being recorded with that certain Deed of Lease recorded in Deed Book 497, at page 89, among the land records of the City of Alexandria, Virginia.

INSTRUMENT 1990018556
RECORDED IN THE CLERK'S OFFICE OF
ALEXANDRIA ON
AUGUST 5, 1999 AT 09:22AM
EDWARD SEMONIAN, CLERK

BY:  (DC)



PURCHASE CONTRACT

THIS PURCHASE CONTRACT (the "Agreement"), dated as of the 20th day of October, 1999 (the "Effective Date"), between J. M. DUNCAN, III IRREVOCABLE CHARITABLE TRUST ("Seller") and NATIONWIDE CH LLC ("Purchaser") recites and provides as follows:

RECITALS

R-1. Seller is the fee simple owner of parcels of real estate containing approximately 1.0 acre of land (the "Land") and more particularly described in the attached Exhibit A, together with all improvements thereon and appurtenances thereto owned by Seller, and all tangible and intangible personal property owned by Seller and used in the rental, operation, and maintenance thereon, including but not limited to any assignable licenses or permits in Seller's possession, known as 1115 Cameron Street (the "Hopkins Furniture Property") and 200 N. Henry Street (the "Tune & Lube Property") in the City of Alexandria, Virginia and referred to as approximately 43,587 square feet of land identified on Tax Identification Maps as 064.03-04-21-2 and 064.03-04-21-0 excluding such of the foregoing which is in fact owned by the tenants therein (collectively all of the foregoing shall be referred to as the "Property").

R-2. Purchaser desires to purchase and Seller desires to sell the Property on the terms and conditions hereinafter set forth.

AGREEMENT

NOW THEREFORE, for and in consideration of the Recitals, the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to convey the Property and Purchaser agrees to acquire the Property upon the following terms and conditions:

ARTICLE I

PURCHASE AND SALE; PURCHASE PRICE; DEPOSIT

1.1 Purchase and Sale; Purchase Price. Subject to the terms hereof, Seller agrees to sell and Purchaser agrees to acquire the Property for the sum of TWO MILLION TWO HUNDRED THOUSAND AND NO HUNDREDTHS DOLLARS (\$2,200,000.00) (the "Purchase Price"), which shall be payable in cash by wire transfer in immediately available funds at "Settlement" (as hereinafter defined). The purchase price for the Hopkins Furniture Property alone shall be \$1,100,000; provided however, that if the Hopkins Furniture Property is purchased without also purchasing the Tune & Lube Property, the purchase price for the Hopkins Furniture shall be \$1,500,000. The

Purchase Price for the Tune & Lube Property shall be \$1,100,000. If Purchaser elects to purchase only one of the two parcels, Purchaser shall pay all costs associated with subdivision of the Property except for such contributions as may be required from tenants.

1.2 Deposit. Within five (5) business days of the full execution of this Agreement, Purchaser shall deposit TWENTY FIVE THOUSAND DOLLARS (\$25,000.00), as a good faith deposit (which shall be kept in an interest bearing escrow account) (the "Deposit") with Gerald F. Chapman LLC ("Escrow Agent") which shall either be applied by Purchaser toward the payment of the Purchase Price, or returned to Purchaser if Purchaser elects to terminate this Agreement pursuant to any right granted by this Agreement, or paid to Seller in the event of failure by Purchaser, beyond any applicable notice and cure periods set forth in this Agreement, to comply with any of the Purchaser's obligations pursuant to this Agreement. The Deposit shall be increased to \$100,000.00 upon the expiration of the Study Period defined below, provided however, that up to 50% of the Deposit may be used by Purchaser for expenses incurred in the pursuit of the Special Use Permit and/or rezoning of the Property contemplated herein and provided further that if only the Hopkins Furniture Property is purchased then the deposit shall only be increased to \$50,000 instead of \$100,000. Notwithstanding the foregoing sentence, in the event the Purchaser elects to purchase only one tax parcel of the Property, then Purchaser shall not be entitled to draw on the increased Deposit for expenses. Beginning six months from the Effective Date, \$1,500 per month of the Deposit shall be released to the Seller until such time as this Agreement is either terminated or settlement shall occur hereunder.

ARTICLE II DUE DILIGENCE PERIOD; PERMITS

2.1 Initial Option Period. For a period of one hundred twenty (120) days from the Effective Date (the "Initial Option Period"), Purchaser shall attempt to negotiate terminations of existing leases ("Lease Terminations") with the tenants of the Property, which terminations shall be subject to Settlement hereunder. If, during the Initial Option Period, Purchaser is unable to obtain Lease Terminations on terms and conditions acceptable to Purchaser in Purchaser's sole discretion, then Purchaser shall have the right to terminate this Agreement by giving Seller written notice of termination on or before the expiration of the Initial Option Period, in which event the Deposit shall promptly be returned to the Purchaser and neither party shall have any further liability to the other under this Agreement (other

than with respect to the indemnities contained in Sections 2.3 and 2.4 of this Agreement). Any lease termination agreements with the tenants shall expressly provide that they are contingent upon Purchaser's acquisition of the Property and copies of any such lease termination agreements shall be provided to Seller prior to their execution by Purchaser and fully executed copies of such lease termination agreements shall be provided to Seller immediately upon their execution.

2.2. Study Period. During the Initial Option Period, and for a period of ninety (90) days after the expiration of the Initial Option Period (the "Study Period"), Purchaser shall have complete access to the Property for the purpose of conducting such soil borings, soil analyses, engineering tests and studies, environmental tests and studies, economic and/or topographic tests, studies, investigations and analyses as Purchaser may deem necessary in order to determine whether the property is suitable for Purchaser's intended use thereof. In the event that Purchaser determines, in its sole discretion, that the Property is not suitable for Purchaser's intended use, then Purchaser may terminate this Agreement by delivering written notice thereof to Seller on or before the expiration of the Study Period, in which event the Deposit shall promptly be returned to the Purchaser and neither party shall have any further liability to the other under this Agreement both in law and in equity (other than with respect to the indemnities contained in Sections 2.3 and 2.4 of this Agreement). In the event that this Agreement is terminated for any reason prior to Settlement, Purchaser shall assign to Seller complete copies of any engineering, environmental, soils, surveys, site plans or other documents in Seller's possession or control with respect to the Property and the lease termination agreements.

2.3 Access and Inspection. Subject to the rights of tenants, Seller hereby grants to Purchaser and its agents a license to enter upon the Property for the purpose of inspecting and testing the conditions or status of the Property, undertaking such tests and inspections as Purchaser desires. All of Purchaser's agents entering the Property shall be licensed, bonded or insured. Purchaser hereby agrees to promptly repair any damage to the Property caused by such inspections and testing and to indemnify and hold Seller harmless against any injury, loss or damage to the Property or for any personal injury to any persons as a result of such inspections and testing. The foregoing indemnity shall not include, however, any cost, expense, claim or liability arising out of or in any way related to contaminated soil, asbestos or other environmental hazards or other pre-existing hazards or unsafe conditions discovered by Purchaser's inspections.

2.4 Seller Provided Information. Seller shall deliver to Purchaser within fourteen (14) days after the Effective Date a copy of Seller's survey and title documents, copies of all leases, deeds, easements, restrictions, service contracts, any environmental reports or engineering reports in Seller's possession, and any subordination, non-disturbance and attornment agreements.

2.5. Permits Purchaser intends to file and process for approval with the City of Alexandria a Special Use Permit (the "Special Use Permit") application to permit the development of the Property in a mix of commercial/office/retail and residential unit types, including residential condominium units for the Property. Purchaser also intends to file and process for issuance by the City of Alexandria appropriate building permits (the "Building Permits") necessary to construct the commercial/office/retail and residential improvements contemplated for the Property. Purchaser, at its sole cost and expense, agrees to prepare, submit and process for approval by all appropriate City of Alexandria governmental authorities the necessary applications to obtain the Special Use Permit and the Building Permits. Prior to the submission of the Special Use Permit application, Purchaser shall provide to Seller a copy of the same for its reasonable review and approval. If Seller does not object in writing to Purchaser's submission within ten days of such submission being provided to Seller, then Seller shall be conclusively deemed to have approved such submission. Purchaser agrees to diligently and continuously pursue obtaining approval of the Special Use Permit and shall provide Seller with monthly written reports with respect to the same. Seller agrees to reasonably cooperate with Purchaser in order for Purchaser to obtain expeditious final approval of the Special Use Permit and issuance of the Building Permits including promptly executing such documents and applications as Purchaser may reasonably request. Seller shall not be required to consent to any development conditions that would require that Seller dedicate any property, incur any out-of-pocket expenses or prohibit the use of the Property for its present uses if Purchaser does not acquire the Property. If Purchaser is unable to obtain the Special Use Permit and the Building Permits, then Purchaser may elect to terminate this Agreement and shall be entitled to prompt repayment of its Deposit and neither party shall have any further liability to the other under this Agreement (other than with respect to the indemnities contained in Sections 2.3 and 2.4 of this Agreement). Additionally, if Purchaser reasonably determines that further efforts to obtain the Special Use Permit and the Building Permits are not economically feasible, Purchaser may terminate this Agreement by delivering written notice thereof to Seller, in which event the Deposit shall promptly be returned to the Purchaser and

neither party shall have any further liability to the other under this Agreement (other than with respect to the indemnities contained in Sections 2.3 and 2.4 of this Agreement).

ARTICLE III SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Seller hereby makes the following representations, warranties and covenants with respect to Seller and the Property, which Seller shall reaffirm at Settlement and which shall survive Settlement:

3.1 Organization and Power. Seller has all requisite powers, authorizations, consents and approvals to enter into and to perform his obligations hereunder and under any document or instrument required to be executed and delivered on behalf of the Seller hereunder.

3.2 Authorization and Execution. This Agreement has been duly authorized by Seller, has been duly executed and delivered by Seller, constitutes the valid and binding agreement of Seller and is enforceable in accordance with its terms.

3.3 Noncontravention. The execution and delivery of and performance by Seller of his obligations hereunder, do not and will not contravene, or constitute a default under, any provisions of applicable law or regulation, or any agreement, judgment, injunction, order, decree or other instrument binding upon Seller, or result in the creation of any lien or other encumbrance on any asset of Seller. Seller has received no written notice of any default or breach by Seller under any of the covenants, conditions, restrictions, or easements affecting the Property.

3.4 Litigation. There is no action, suit or proceeding, pending or known to be threatened against or affecting Seller or the Property which in any manner raises any question affecting the validity or enforceability of this Agreement, including any condemnation proceedings except for that certain environmental issue regarding the Property being monitored by the Virginia Department of Environmental Quality PC#92-2268. Except as disclosed in the foregoing sentence, Seller has received no notice of any violations of any federal, state or local governmental regulation or law affecting the Property.

3.5 Brokerage Commission. Seller has not engaged the services of any real estate agent, broker, finder or any other person or entity for any brokerage or finder's fee, commission or other amount with respect to the transactions described herein or any lease transactions entered into by Seller at the Property prior

to Settlement. Seller shall indemnify and hold Purchaser harmless from and against any and all loss, liability, and expense, including reasonable attorneys' fees and costs, suffered by Purchaser due to a breach of the foregoing representation, covenant and warranty.

3.6 Service Agreements. Seller represents that Seller has no Service Contracts.

3.7 Contract Period. Prior to Settlement, Seller covenants and agrees:

(i) not to create any new liens, contracts or encumbrances against the Property which will not be released at or prior to Settlement;

(ii) to comply with all of the landlord's duties and obligations as set forth in the tenant leases in all material respects (the "Leases"), and to comply with Seller's obligations under the Service Contracts;

(iii) to operate, repair, and maintain the Property in the same manner as prior to the date of this Agreement, including without limitation to maintain the current insurance on the Property;

(iv) after the Effective Date, Seller shall not, without the Purchaser's prior written consent, amend, modify, renew or extend any Lease in any respect unless required by law, or enter into any new leases or approve any assignment of leases or subletting of leased space, or terminate any Lease. Prior to the expiration of the Study Period, Seller shall deliver to Purchaser copies of any amendment, modification, renewal, expansion, termination, assignment or sublease of any Lease, or of any new leases executed after the date hereof; and

(v) to knowingly not violate any law affecting the Property, and to promptly notify Purchaser of any notice, filing, litigation, arbitration, or administrative hearing affecting the Property, which is instituted after the Effective Date. In the event of any violation of any law affecting the Property prior to Settlement which decreases the value of the Property by an amount greater than Fifty Thousand Dollars (\$50,000.00), then Purchaser shall have the right to terminate this Agreement in accordance with Section 7.1 hereof. If the Property value is diminished by less than \$50,000.00, then Seller

shall have the option to remedy the violation. If Seller elects not to remedy the violation, Purchaser may either waive this provision or terminate this Agreement.

3.8 Structures and Improvements. Seller has no knowledge that the structures and improvements upon the Property have not been constructed and installed in full compliance with all applicable laws, statutes, ordinances, codes, covenants, conditions, regulations, and restrictions of any kind or nature affecting the land or improvements constituting the Property.

3.9 [intentionally omitted]

3.10 Ownership. Seller owns fee simple title to the Property, free and clear of all mechanic's liens, certified liens, mortgages, encumbrances, obligations, reservations, lawsuits, judgments, or any other encumbrances, claims or liens of any sort whatsoever except only for those items disclosed in this Agreement. Notwithstanding the foregoing, Seller hereby discloses that the tenant of the Tune & Lube Property has a right of first refusal to purchase the Property, the Seller's ownership is subject to matters of title and the environmental issue, and Seller does not own certain other tenant improvements on the Property.

3.11 Rent Roll. The Rent Roll attached hereto as Exhibit B accurately and correctly sets forth for each tenant with an interest in the Property their respective name, street or unit number, monthly rental, percentage rental, amount of deposit or security, tax escalation provisions, amount of common area maintenance, term of lease and options (if any) with respect to the tenant's lease, the present status of rental payments, and any and all rebates, concessions, free rent, inducement to rent or other benefits in connection with the lease.

3.12 [intentionally deleted]

3.13 Utilities. Seller has not entered into any special agreements with any utility companies, governmental agencies or bodies, or with any entity furnishing any utility services to the Property the cost of which is not disclosed in this Agreement.

3.14 Seller Interests. Neither the Seller nor any partner thereof, nor any affiliate or affiliated person or entity of any of same: (a) own any property adjoining or adjacent to the Property; or (b) have any ownership interest of any kind whatsoever in any tenant on the Property.

3.15 Security Deposits. All security or other deposits or

fees of tenants are fully and accurately disclosed on the Rent Roll attached as Exhibit B. The Seller will not apply any security or other deposits or fees of tenants toward any tenant default except in accordance with the terms of the respective leases.

3.16 Leasing Commissions. There are no leasing commissions or other brokerage commissions or finder's fees due and owing except as fully disclosed in this Agreement.

3.17 Hazardous Materials. Except as disclosed in written reports provided by the Seller to the Purchaser prior to the execution of this Agreement and the remediation plan approved by the Virginia Department of Environmental Quality ("VDEQ") (VDEQ PC#92-2268), the Property, and the improvements thereon, shall be conveyed as is - where is. Seller has no actual knowledge of any environmental matters affecting the Property except for those matters disclosed in the foregoing written reports. In the event that at closing hereunder, VDEQ has not issued a closure letter with respect to environmental contamination and remediation, Seller agrees to escrow from the Purchase Price a sum equal to 125% of the reasonably estimated costs to complete any remediation required by the approved remediation plan and to obtain a closure letter, the foregoing escrow not to exceed a maximum of 10% of the Purchase Price.

3.18 Seller's Indemnity. Except for Purchaser's negligence or intentional misconduct, Seller hereby indemnifies and holds Purchaser harmless from and against any and all claims, liabilities, losses, damages, causes of action and expenses, including legal costs and reasonable attorney's fees, in connection with or arising out of (a) the operation of the Property prior to Settlement, and (b) the obligations of the lessor/landlord under the Leases prior to Settlement.

ARTICLE IV PURCHASER'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Purchaser hereby makes the following representations, warranties and covenants:

4.1 Organization and Power. Purchaser is a duly formed and validly existing corporation under the laws of the Commonwealth of Virginia, and has all requisite powers and all authorizations, consents and approvals to enter into and perform its obligations hereunder and under any document or instrument required to be executed and delivered on behalf of the Purchaser hereunder.

4.2 Authorization and Execution. This Agreement has been

duly authorized by all necessary action on the part of Purchaser, has been duly executed and delivered by Purchaser, constitutes the valid and binding agreement of Purchaser and is enforceable in accordance with its terms.

4.3 Noncontravention. The execution and delivery of and the performance by Purchaser of its obligations hereunder do not and will not contravene, or constitute a default under, any provisions of applicable law or regulation or any agreement, judgment, injunction, order, decree or other instrument binding upon Purchaser or result in the creation of any lien or other encumbrance on any asset of Purchaser.

4.4 Litigation. There is no action, suit or proceeding, pending or known to be threatened, against, or affecting Purchaser which in any manner raises any question affecting the validity or enforceability of this Agreement or any other agreement or instrument to which Purchaser is a party or by which it is bound and that is to be used in connection with, or is contemplated by, this Agreement.

4.5 Brokerage Commission. Purchaser has not engaged the services of any real estate agent, broker, finder or any other person or entity for any brokerage or finder's fee, commission or other amount with respect to the transaction described herein. Purchaser shall indemnify and hold Seller harmless against any loss, liability, and expense, including reasonable attorneys' fees and costs, suffered by Seller due to a breach of the foregoing representation, covenant and warranty.

ARTICLE V SETTLEMENT

5.1 Settlement. Settlement shall be held at a location designated by Purchaser at the earlier to occur of: (1) 18 months from the date of this Agreement; or (2) within forty-five days following approval and issuance of the Special Use Permit and building permits ("Settlement"). Possession of the Property shall be delivered to Purchaser at Settlement subject only to the Leases and to state and county ad valorem taxes and assessments not yet due and payable. At Settlement, Seller shall also deliver to Purchaser all security and other deposits held from any tenants on the Property consistent with the Rent Roll specified below. In the event that the Special Use Permit and building permits have not been approved within 18 months of the date of this Agreement, Purchaser shall be entitled to extend the date for Settlement for up to 180 days in 30 day increments until the Special Use Permit and building permits have been approved upon the payment of

additions to the Deposit of \$7,500 per 30-day extension. In the event that Purchaser is unable to obtain the Special Use Permit and building permits within the above specified periods of time, Purchaser may elect to terminate this Agreement and shall be entitled to the prompt repayment of its Deposit and both parties shall be relieved of any further liability to the other party both in law or in equity. However, if settlement is consummated, the fees paid for the extensions shall be applied against the Purchase Price.

5.2 Seller's Deliveries: At Settlement, Seller shall deliver or cause to be delivered to Purchaser all of the following instruments:

(a) A deed conveying fee simple title to the Property in the form of a special warranty deed subject to existing leases, easements, conditions and restrictions of record.

(b) [intentionally omitted]

(c) The originals of all Leases or true, correct and complete copies thereof with assignments thereof to Purchaser.

(d) [intentionally omitted]

(e) Appropriate resolutions and consents in accordance with Seller's organizational documents.

(f) All keys for the Property in possession of Seller.

(g) [intentionally omitted]

(h) An affidavit in form acceptable to the Purchaser's title company sufficient to remove any exception for mechanics' and materialmen's liens and parties in possession (other than tenants pursuant to the Leases).

(i) An affidavit certifying that the Seller is not a foreign entity under the Foreign Investment in Real Property Act, in the form attached hereto as Exhibit C.

(j) Such other agreements or documents as Purchaser, Purchaser's lender, or Purchaser's title company may reasonably request.

(k) A Rent Roll, updated to the date of Settlement, which shall be substantially in the form as Exhibit B, which Seller shall

certify and warrant as true, correct and complete.

(1) An executed Tenant Letter advising each tenant of the transfer of ownership in the Property.

5.3 Purchaser's Deliveries. At Settlement, Purchaser shall pay or deliver to Seller the following:

(a) The Bill of Sale, executed by Purchaser.

(b) The Purchase Price as adjusted pursuant to the terms of this Agreement.

5.4 Settlement Costs. Each party hereto shall pay its own legal fees and expenses. Seller shall pay the grantor's tax. Purchaser shall be responsible for the payment of the State and City recordation taxes associated with the deed. The cost of Purchaser's settlement agent and any title insurance premium, survey, and other settlement costs shall be paid by Purchaser.

5.5 Income and Expense Allocations. At Settlement, all income and expenses with respect to the Property, and applicable to the period of time before and after Settlement, determined in accordance with generally accepted accounting principles consistently applied, shall be allocated between Seller and Purchaser as of the date of Settlement. Seller shall be entitled to all income and responsible for all expenses for the period of time up to but not including the date of Settlement.

ARTICLE VI CONDEMNATION; RISK OF LOSS

6.1 Condemnation. In the event of any actual or threatened taking, pursuant to the power of eminent domain, of all or any portion of the Property, or any proposed sale in lieu thereof, Seller shall give written notice thereof to Purchaser promptly after Seller learns or receives notice thereof. If a part of the Property is, or is to be, so condemned or sold then Purchaser shall have the right to terminate this Agreement pursuant to Section 7.1. If this Agreement is not so terminated, all proceeds, awards and other payments arising out of such condemnation or sale (actual or threatened) shall be paid or assigned to Purchaser at Settlement.

6.2 Risk of Loss. The risk of loss or damage to the Property prior to the delivery of the Deed shall remain upon Seller.

ARTICLE VII TERMINATION

Termination. If Purchaser shall be entitled to terminate this Agreement, it shall be entitled to receive a refund of the Deposit. If Purchaser defaults in performing its obligations hereunder, Seller's remedy shall be to either: (a) retain, as liquidated damages for Purchaser's default, whatever Deposit has been paid by Purchaser to Escrow Agent; or (b) exercise its remedies at law and in equity. In the event Seller defaults in performing its obligations hereunder, Purchaser shall be entitled to pursue all available remedies at law or in equity, or both, including the right to specific performance.

ARTICLE VIII CONDITION OF PROPERTY AT SETTLEMENT

8.1 Maintenance of Property. Seller shall maintain the physical condition of the Property, including the grounds and all other elements thereof, in good condition through the date of Settlement, reasonable wear and tear excepted. Seller shall make all ordinary repairs and maintenance of the Property until Settlement as it would in the normal course of operating the Property. Notwithstanding the foregoing provisions of this paragraph 8.1, Seller shall only be required to comply with the applicable provisions of the tenant leases.

8.2 [intentionally omitted]

ARTICLE XI MISCELLANEOUS PROVISIONS

9.1 Completeness; Modification. This Agreement constitutes the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes all prior discussions, understandings, agreements and negotiations between the parties hereto. This Agreement may be modified only by a written instrument duly executed by the parties hereto.

9.2 Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns.

9.3 Governing Law. This Agreement and all documents referred to herein are governed by and shall be construed and interpreted in accordance with the laws of the Commonwealth of Virginia.

9.4 Counterparts. To facilitate execution, this Agreement may be executed in as many counterparts as may be required. It shall not be necessary that the signature on behalf of both parties hereto appear on each counterpart hereof. All counterparts hereof

shall collectively constitute a single agreement.

9.5 Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant, condition or provision to other persons or circumstances, shall not be affected thereby, and each term, covenant, condition or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.6 Notices. Whenever any notice may be given or is required to be given under the terms of this Agreement, the same shall be given in writing and either sent by certified mail, return receipt requested, postage pre-paid or by a national overnight delivery service, delivery pre-paid or delivered by hand with written receipt acknowledged, or by telecopy followed by another permitted means of delivery. For purposes of giving notice hereunder the addresses of the respective parties are:

For the Seller:

James M. Duncan, III
1552 E. Twin Palms Drive
Palm Springs, CA 92264

with a copy to:

Lawrence Schonberger, Esq.
Fagelson, Schonberger, Payne & Deichmeister, P.C.
11320 Random Hills Road, Suite 690
Fairfax, VA 22030

For the Purchaser:

Nationwide CH LLC
Attn: Ira Bloom
2801 New Mexico Avenue, N.W., #1221
Washington, DC 20007
FAX No. 202-33-7576

with a copy to:

GERALD F. CHAPMAN LLC
Gerald F. Chapman, Esq.
6917 Arlington Road, Suite 350

Bethesda, MD 20814
FAX No. 301-652-3023

Any notice required or given hereunder shall be deemed received if sent by telecopy, hand or overnight courier, or three (3) days after posting if sent by certified mail, return receipt requested. Any party hereto may change its address or designate different or other persons or entities to receive copies by notifying the other party in a manner described in this Section. Further, all notices given pursuant to this Agreement from Seller to Purchaser or from Purchaser to Seller will be effective if executed and sent by counsel to the respective party.

9.7 Further Assurances. Seller and Purchaser each covenant and agree to sign, execute and deliver, or cause to be signed, executed and delivered, and to do or make, or cause to be done or made, upon the written request of the other party, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, as may be reasonably required or requested by either party hereto for the purpose of or in connection with consummating the transactions described herein.

9.8 Automatic Termination. If this Agreement has not been fully executed on behalf of both parties hereto within five days of the execution by the first party to sign this Agreement, this Agreement shall be construed as an offer which has not been accepted and shall automatically terminate and be of no force and effect.

9.9 Construction. Each party hereto and its counsel have reviewed and revised (or requested revisions of) this Agreement, and therefore any usual rules of construction requiring that ambiguities are to be resolved against a particular party shall not be applicable in the construction and interpretation of this Agreement or any exhibits hereto or amendments hereof.

9.10 Facsimile Signatures. Facsimile or photocopied signatures of or on behalf of either Seller or Purchaser on this contract or any subsequent modifications shall be effective for all purposes, including delivery, as an original.

9.11 Survival of Terms. All of the representations, warranties, covenants and agreements of Seller and Purchaser made in, or pursuant to, this Agreement shall survive Settlement and shall not merge into the Deed or any other document or instrument executed and delivered in connection herewith.

9.12 Headings. The headings and captions contained in this


Agreement are inserted only as a matter of convenience, and shall not be considered in interpreting or construing the provisions of this Agreement.

9.13 Waiver. Seller and Purchaser each hereby reserve the right to waive, in whole or in part, any provision hereof which is for their respective benefit. Neither party hereto shall be entitled to assert the failure of any condition precedent to the other party's obligations hereunder as grounds for such party's failure or refusal to perform its obligations hereunder.

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be executed in their names by their respective duly authorized representatives.

SELLER:

J.M. DUNCAN, III
IRREVOCABLE CHARITABLE TRUST

 (SEAL)
JAMES M. DUNCAN, III, Trustee

PURCHASER:

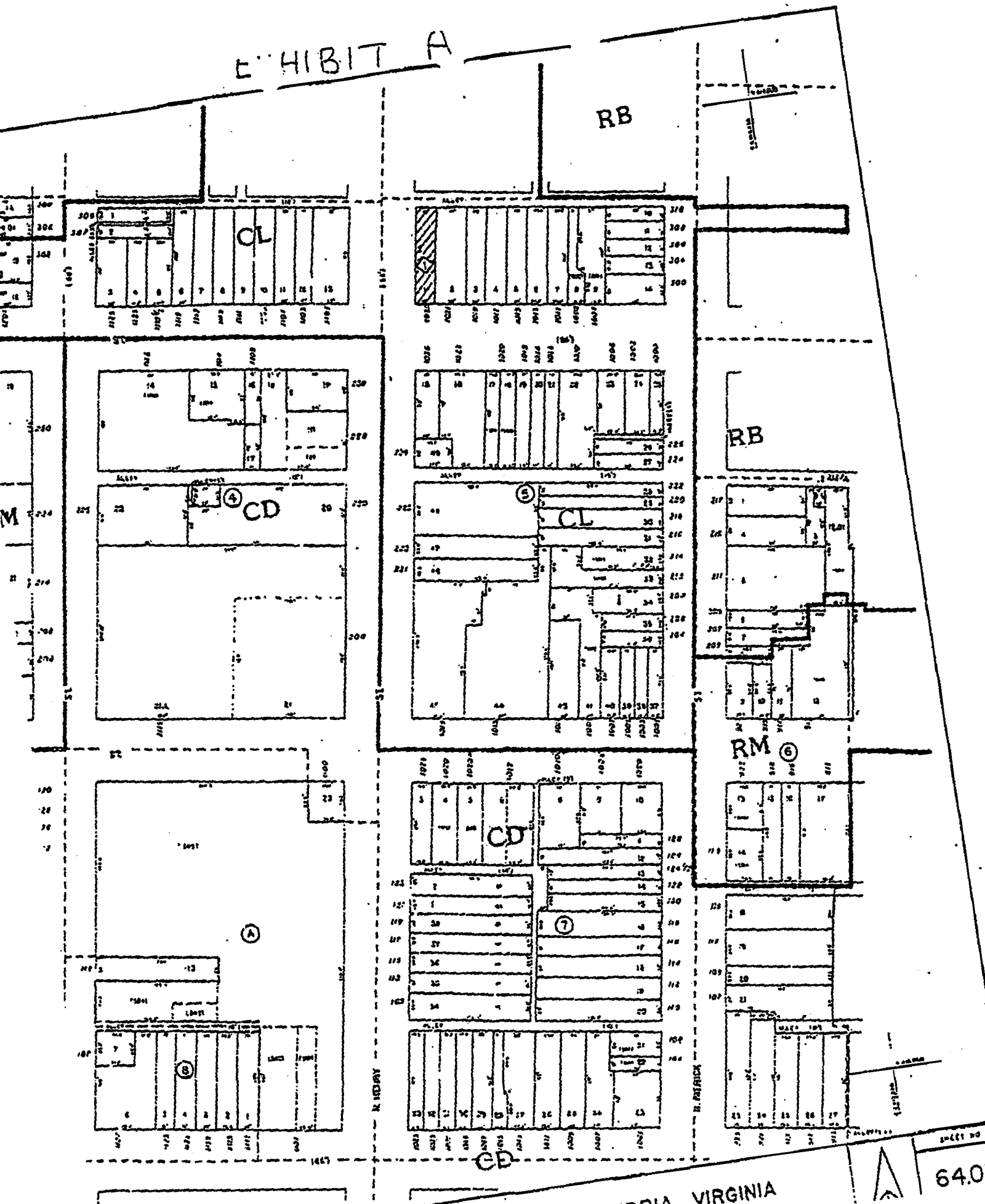
NATIONWIDE CH LLC, OR ASSIGNS

By:  (SEAL)
IRA M. BLOOM, President

EXHIBIT INDEX

DESCRIPTION OF LAND	EXHIBIT A
RENT ROLL.....	EXHIBIT B
FOREIGN INVESTMENT AFFIDAVIT.....	EXHIBIT C

EXHIBIT A



ALEXANDRIA, VIRGINIA

64.0

LAW OFFICES
GERALD F. CHAPMAN LLC
6917 ARLINGTON ROAD
SUITE 350
BETHESDA, MD 20814
TEL: (301) 652-3900, ext. 3014
FAX: (301) 652-3023

FACSIMILE COVERSHEET

DATE: May 3, 2001	OUR FILE: Nationwide
FROM: Gerald F. Chapman	NO. OF PAGES TO FOLLOW: 15

TO: Brian Costello, Esq.
FAX NO.: 703-644-9400

COMMENTS: Copy of Contract on Duncan property

If you experience any problem receiving this document, please call (301) 652-3900.

The documents accompanying this telecopy transmission contain information from Gerald F. Chapman LLC which is confidential and/or legally privileged. The information (including all attached pages) is intended only for the use of the individual or entity named on this transmission sheet. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or taking of any action in reliance on the contents of this telecopy information is strictly prohibited and that the documents should be returned to this firm immediately. In this regard, if you have received this telecopy in error, please notify us immediately so that we can arrange for the return of the original documents to us at no cost to you.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST
(Declaration dated September 7, 1993),

Complainant,

v.

In Chancery No. CH010249

THE CITY OF ALEXANDRIA, VIRGINIA, *et al.*,

Respondents.

OPPOSITION OF THE CITY OF
ALEXANDRIA AND THE ALEXANDRIA
LIBRARY BOARD TO COMPLAINANT'S
MOTION FOR SUMMARY JUDGMENT

CROSS-MOTION FOR SUMMARY
JUDGMENT OF THE CITY OF
ALEXANDRIA AND THE ALEXANDRIA
LIBRARY BOARD

Come now the City of Alexandria and the Alexandria Library Board, Defendants and Cross-Complainants in this cause, and oppose the Motion for Summary Judgment filed by Respondent. At the same time, the City of Alexandria and the Alexandria Library Board (hereafter referred to as "the City Parties") move this Honorable Court for Summary Judgment on their Cross-Bill previously filed on the grounds that there are no material issues of fact genuinely in dispute and that the City Parties are entitled to judgment on their Cross-Bill as a matter of law.

The material facts not in dispute are those recited in the Stipulation of Facts filed with this Court August 13, 2001. Those facts, including the documents attached to the Stipulation as exhibits, are incorporated herein by this reference, and will not be repeated here.

The nature of this case is such that the facts and law on which the City Parties base their opposition to Complainant's Motion for Summary Judgment are the same facts and law which support the Cross-Motion for Summary Judgment filed on behalf of the City Parties. For this reason, the arguments will be stated only once.

I. Complainant's Authorities are Inapplicable
Because this Case is Unique.

James M. Duncan, III created the Living Trust, transferred the subject property to himself as Trustee for the Living Trust, and then changed his mind. For reasons unknown and unknowable, he decided that he would rather have the subject property disposed of under the terms of the Charitable Remainder Unitrust instead of the terms of the Living Trust. The following facts are essential to the City Parties' Cross-Motion for Summary Judgment, and are fatal to Complainant's claim:

1. When Mr. Duncan changed his mind, he was grantor, trustee and beneficiary of the Living Trust, as well as grantor, trustee and beneficiary of the Unitrust; and

2. When Mr. Duncan changed his mind, he was the only person who, in any capacity, had any vested right or interest in the subject property - no third party had any vested claim to the real estate or to any right or interest under the Living Trust.

Because there were no vested rights in any third party at any time before Mr. Duncan signed the Nationwide Sale Contract, the case law on which Complainant relies is inapplicable to the facts of this case and should be disregarded by the Court, as explained in the following paragraphs.

Air Power, Inc. v. Thompson, 244 Va.534, 422 S.E. 2d 768 (1962) required the Virginia Supreme Court to determine whether the failure to join a trust beneficiary to a mechanic's lien suit was fatal to the claims of a subcontractor under the mechanic's lien statutes. Note that the subcontractor "perfected a mechanic's lien on the tract of land" at issue in that case and thereby created a vested lien right. Id., 244 Va. at 535. The Court's decision hinged on the facts that the trustees were the contracting parties and that they had authority to contract for and dispose of the property or any interest in it under the terms of the trust instrument. This case cannot be read to stand for proposition that a person who is a grantor, trustee and beneficiary cannot remove property from a trust, revoke a trust in whole or in part either expressly or by implication, or must follow any particular form in undoing the trust he created and in disposing of his property in some other fashion.

Similarly, Curtis v. Lee Land Trust, 235 Va. 491, 369 S.E.2d 853 (1988), has no bearing on the facts of the present case. The Court merely decreed that the beneficiaries of the land trust in question were not liable on a note signed by the trustee of the trust. Again, the Court was determining rights and obligations in a circumstance in which a third party (a lender) had a substantial interest in the trust *res*. No such interest exists here. The only party in interest, in any capacity, at all relevant times, was James M. Duncan, III.

The cases of Langman v. Alummi Association of the University of Virginia, 247 Va. 491, 442 S.E.2d 669 (1994) and Irby v. Roberts, 256 Va. 324, 504 S.E. 2d 841 (1998) demonstrate the dangers of taking the rulings of Virginia's Supreme Court out of context and using them to prop up legal positions never contemplated by the Court. Langman, another third-party interest case, decided one, and only one, primary issue: "whether a deed containing a mortgage assumption clause was repudiated by the grantee." Langman, supra, 247 Va. At 491. Irby focused on the construction of a deed of easement, as to whether it was sufficiently definite and unambiguous as to transfer riparian rights for the purpose of constructing a pier. Irby, supra, 26 Va. At 329.

The case now before this Court does not require the construction of a deed. It requires the examination of four distinct instruments to determine the intent of James M. Duncan, III, concerning his real estate. Those four instruments (the Living Trust, the First Trust Deed, the Unitrust and the Unitrust Deed) lead to the inevitable conclusion that Mr. Duncan at all times reserved the power to change the disposition of the subject property and that he effectively exercised that power to the point of entering into a valid and binding contact of sale with Nationwide as the final expression of his intent.

II. The Facts of This Case Take It Outside the Ambit of §55-17.1

James M. Duncan, III first created the Living Trust. He specifically included the subject real estate as trust property in Schedule A of the Living Trust, and conveyed the subject real estate from himself individually to himself as trustee. *See* Stipulated Exhibits 1 and 2. Thereafter, he created the Charitable Remainder Unitrust with provisions substantially contrary to those of the Living Trust. He specifically included the subject real estate as trust property in Schedule A of the Unitrust, and conveyed the

subject real estate from himself (without using the descriptive term "Trustee") to himself as trustee of the Unitrust. *See* Stipulated Exhibits 4 and 5.

Under the terms of the Living Trust, Mr. Duncan was, at all relevant times, the grantor, the trustee and the beneficiary. Under the terms of the Unitrust, he was, at all relevant times, the grantor, the trustee and the beneficiary. Until he signed a contract of sale as Trustee for the Unitrust to Nationwide CH LLC, no other party but himself had any vested interest in the real estate in any capacity.

Section 55-17.1, by its very language, is intended to define the rights and powers of trustees and beneficiaries as they relate to third parties. The statute does not limit the power of trustees, beneficiaries and grantors of trusts to deal among themselves in such a way as to amend or revoke any type of trust, whether in whole or in part. For that reason, the cases relied upon by Complainant which apply this statute have no application to the current controversy.

It is important to note that the Act of Assembly which amended this statute in 1993 provided " (t)hat this act is declarative of existing law." Acts 1993, c.454, cl.2. Existing law permitted Mr. Duncan to do exactly what he did. Existing law likewise compels this Court to give full force and effect to Mr. Duncan's intent as expressed in final form in the Unitrust, the Unitrust Deed and the Nationwide contract.

III. Determination of Intent is Always an Issue in Construing Trust Instruments

Virginia's Supreme Court has often been called upon to construe trust instruments, deeds and other writings. There are times when the Court has found that the instrument in question is so clear and unambiguous that resorting to rules of construction

is unnecessary *see, e.g.,* Langman v. Alumni Association of the University of Virginia, *supra*.

However, there are a number of instances in which the Court has been called upon to reconcile ambiguous and even contradictory clauses in a trust declaration or deed. In so doing, the Court has recognized that each fact situation is unique, and that where ambiguity exists,

(a)s a general rule, adjudicated cases afford slight aid
in the interpretation of instruments of this nature,
inasmuch as no two instruments are wholly alike.

Mills v. Embrey, 166 Va. 3838, 186 S.E. 47 (1936).

Mr. Duncan did not create ambiguity within his instruments; rather, he created ambiguity between his instruments. However, a careful reading of the provisions of the Living Trust, in light of the absence of vested third party rights, shows that Mr. Duncan effectively removed the subject property from the Living Trust and acted in such a way as to revoke those portions of the Living Trust relating to the subject property. For the reasons set out below, the four instruments can be harmoniously construed to give effect to Mr. Duncan's intent.

IV. Mr. Duncan complied with the Living Trust's terms
in transferring the real estate to the Unitrust.

The Living Trust reserved to Mr. Duncan significant rights and powers with respect to that Trust and to all Trust property:

ARTICLE 3
MY RIGHTS TO AMEND OR REVOKE TRUST

3.1 By signed instruments delivered to the Trustee during my lifetime, I may: (1) withdraw property from this trust in

any amount and at any time upon giving reasonable notice in writing to the Trustee; (2) add other property to the trust; (3) change the beneficiaries, their respective shares and the plan of distribution; (4) amend this Declaration of Trust in any other respect; (5) revoke this trust in its entirety or any provisions therein; provided, however, the duties or responsibilities of the Trustee shall not be enlarged without the Trustee's consent nor without satisfactory adjustment of the Trustee's compensation.

No particular means of exercising any of these rights and powers was specified, except to the extent that some form of "signed instruments" were required, and "reasonable notice in writing" had to be given to his Trustee to withdraw property from the Living Trust. "His Trustee" was himself.

The "signed instrument" and the "reasonable notice in writing" took the form of the written Unitrust and the deed conveying the subject real estate to himself as Trustee of the Unitrust. He signed both documents himself and delivered both to himself. He also recorded the deed. These acts were so obviously contrary to the terms of the Living Trust and the First Trust Deed that they can be interpreted in no other way than as a revocation of the Living Trust as it relates to the subject real estate and a withdrawal of the real estate from that Trust.

V. Virginia law supports the acts of Mr. Duncan and validates the Unitrust and its deed.

The Virginia Supreme Court has, on many occasions in the preceding century, spoken at length on the right and power of grantors, beneficiaries and trustees of trusts. The power to revoke was exhaustively discussed by the Court in Cohn v. Central Nat. Bank, 191 Va. 12, 60 S.E.2d 30 (1950). Although the Court declared in that case that a trust instrument could not be revoked by a will, it also upheld the general rule that a

grantor may revoke a trust deed where he is the sole beneficiary of the trust, and that "any mode sufficiently manifesting an intention of the trustor to revoke is effective." Id., 191 Va. at 19.

The Court has gone so far as to hold that an irrevocable trust may be revoked with the consent of all interested parties. In Bottimore v. First & Merchants Nat'l Bank, 170 Va. 221, 196 S.E. 593 (1938), the grantor established an irrevocable trust of which she was also the sole beneficiary; the trust remainder was to be distributed by her will or by intestate succession after her death. The Court held that (though she was not the trustee), she was the sole beneficiary, as well as the grantor (or trustor); therefore, she could revoke the trust even though its express terms prohibited revocation.

(w)here all of the beneficiaries are *sui juris* and consent to a revocation, the agreement may be revoked by the trustor And this is so even though the agreement expressly provides that it shall be irrevocable.

Id., 170 Va. at 226-227. See also Russell's Ex'rs v. Passmore, 127 Va. 475, 497-498, 103 S.E. 652 (1920).

Existing law contradicts the Complainant's assertion that Mr. Duncan individually had no interest in the subject real estate. Section 55-17.1 notwithstanding,

Virginia law recognizes the beneficiary as "equitable owner of the trust property."

Old Republic Nat'l Title Ins. Co. v. Tyler, 155 F.2d 718 (4th Cir. 1998). That decision, and the cases on which it relies, make no distinction between trusts involving real estate and trusts involving any other type of property.

VI. Had Mr. Duncan lived, he could have been compelled to convey all his interest in the realty.

A seller of real property can be compelled to convey whatever interest he has in the property, through the instrument of specific performance.

(E)quity will decree specific performance so far as the vendor is capable of performing [the] contract, if the vendee be willing to receive the same.

God v. Hurt, 219 Va. 160, 163, 247 S.E.2d 351 (1978). *See also* Clarke v. Reins, 53 Va. (12 Gratt.) 98 (1855); Boston v. DeJarnette, 153 Va. 591, 151 S.E. 146 (1930). The interests that Mr. Duncan had were his interest as grantor of each trust, his interest as trustee of each trust, and his interest as beneficiary of each trust. Even if it is assumed that he had nothing but a beneficial interest, he could be compelled, in his capacity as Trustee, to convey his legal title.

Where the parties in whom the absolute beneficial interest in the property was vested have disposed of the whole of their equitable estate to the purchaser, the purchaser is entitled to require a conveyance of the legal estate from the trustees. . . .

Rowley v. American Trust Company, 144 Va. 375, 132 S.E. 347 (1926). All of the cases cited by the City Parties are part of the "existing law" of which §55-17.1 is declarative.

VII. Conclusion.

Mr. Duncan had legal title to the realty and the beneficial interest in it; the property in his hands as Trustee of the Living Trust or as Trustee of the Unitrust had the same properties and characteristics under these facts as if he were the absolute fee simple owner at common law. See 19 Michie's Jurisprudence Trusts and Trustees § 57. The

Court is obliged to recognize the final expression of his intent to deal with the real estate, and that final expression of intent is found in the Unitrust and its deed.

It is always the case that settlor-beneficiaries can terminate a trust by an unequivocal act manifesting that intent.

Settlor-Beneficiaries of a trust by which a trustee holds legal title to real estate for their benefit can terminate the trust at any time by acting in such a manner as to unequivocally indicate the trusteeship is ended, such as by conveying title to another person.

Capital Inv. Co. v. Devers, 360 F.2d 462 (4th Cir.), *cert. denied*, 385 U.S. 934, 87 S. Ct. 294, 17 L.Ed.2d 214 (1966), *rehearing denied*, 385 U.S. 1021 86 S.Ct. 702, 17 L.Ed.2d 560 (1967) (emphasis added).

For these reasons, the Court should deny Complainant's Motion for Judgment, grant the Motion for Summary Judgment filed by the City Parties, and award the relief requested by the City Parties in their Cross-Bill.

Respectfully submitted,

THE CITY OF ALEXANDRIA, and
THE ALEXANDRIA LIBRARY BOARD

By counsel

D. BRIAN COSTELLO, P.C.

By: 

D. Brian Costello, VSB # 15123

Counsel for City of Alexandria and
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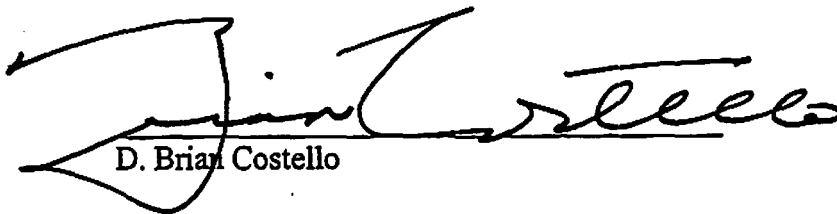
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was faxed and mailed on the 17th day of August, 2001 to the following persons.

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Rand L. Gelber, Esq.
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D. Brian Costello

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE :
JAMES M. DUNCAN, III, LIVING TRUST :

Complainant/Counter-Defendant, :

v. :

CHANCERY NO. CN010249

THE CITY OF ALEXANDRIA, VIRGINIA, :
et al., :

Respondents/Counter-Claimants.:

OPPOSITION OF RESPONDENT NATIONWIDE CH LLC
TO COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT

EDWARD J. HUGHES, CLERK
DEPUTY CLERK

AUG 21 3 21 PM '01

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA

MOTION FOR SUMMARY JUDGMENT OF
COUNTER-CLAIMANT NATIONWIDE CH LLC AND
CROSS-MOTION FOR SUMMARY JUDGMENT OF NATIONWIDE CH LLC

COMES NOW Respondent and Counter-Claimant Nationwide CH LLC ("Nationwide") and opposes the Motion for Summary Judgment filed by Complainant William Y. Austin, Trustee. At the same time, Respondent moves this Honorable Court for: (a) summary judgment in favor of Nationwide on the Bill of Complaint filed by Complainant; and (b) summary judgment in favor of Nationwide on the Counterclaim filed by Nationwide as to Count I of the Counterclaim. Nationwide respectfully submits that there are no material issues of fact genuinely in dispute and that Nationwide is entitled to judgment as a matter of law.

As grounds for its Opposition to Complainant's Motion for Summary Judgment and in favor of Nationwide's Motion for Summary Judgment on the Bill of Complaint and the Counterclaim filed in this case, Nationwide adopts the factual stipulations, arguments and reasons set forth in the Opposition and Cross-Motion for Summary Judgment filed herein by the City of Alexandria and the Alexandria Library Board.

For the foregoing reasons, this Court should deny Complainant's Motion for Summary Judgment, and grant Nationwide's Motion for Summary Judgment as to the Bill of Complaint and as to Count I of the Counterclaim.

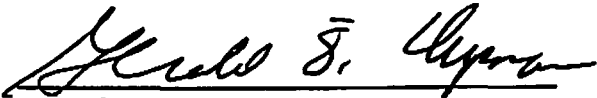
Respectfully submitted,

NATIONWIDE CH LLC

BY COUNSEL



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Attorneys for Nationwide CH LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of August, 2001, a true and correct copy of the above and foregoing was sent by first class mail, postage prepaid, to:

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St. Paul of the Desert
Episcopal Church
125 West El Alameda
Palm Springs, CA 92262-5662

Gamma Mu Foundation
8350 Greensboro Drive
McLean, VA 22102


GERALD F. CHAPMAN

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE :
JAMES M. DUNCAN, III, LIVING TRUST :

Complainant/Counter-Defendant, :

v. :

THE CITY OF ALEXANDRIA, VIRGINIA, :
et al., :

Respondents/Counter-Claimants.:

CHANCERY NO. CH010249

FILED
CLERK OF COURTS
CITY OF ALEXANDRIA
Aug 21 3 21 PM '01
EDWARD STUBBINS, CLERK
BY DEBORAH CLERK

OPPOSITION OF RESPONDENT NATIONWIDE CH LLC
TO COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT

MOTION FOR SUMMARY JUDGMENT OF
COUNTER-CLAIMANT NATIONWIDE CH LLC AND
CROSS-MOTION FOR SUMMARY JUDGMENT OF NATIONWIDE CH LLC

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As grounds for its Opposition to Complainant's Motion for Summary Judgment and in favor of Nationwide's Motion for Summary Judgment on the Bill of Complaint and the Counterclaim filed in this case, Nationwide adopts the factual stipulations, arguments and reasons set forth in the Opposition and Cross-Motion for Summary Judgment filed herein by the City of Alexandria and the Alexandria Library Board.

For the foregoing reasons, this Court should deny Complainant's Motion for Summary Judgment, and grant Nationwide's Motion for Summary Judgment as to the Bill of Complaint and as to Count I of the Counterclaim.

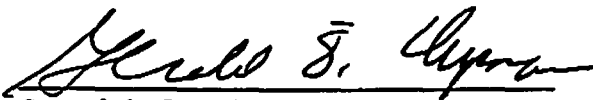
Respectfully submitted,

NATIONWIDE CH LLC

BY COUNSEL



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Attorneys for Nationwide CH LLC

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McLean, VA 22102


GERALD F. CHAPMAN

V I R G I N I A :

020162

Filed in the
Alexandria
Circuit Court
12-5-01
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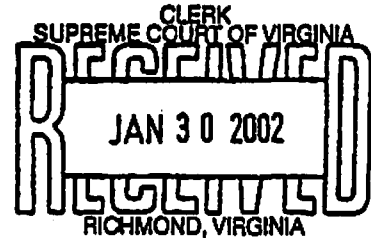
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IN THE CIRCUIT COURT FOR THE CITY OF ALEXANDRIA

----- x

WILLIAM Y. AUSTIN, Trustee of the
James M. Duncan, III, Living Trust,
(Declaration dated September 7,
1993),

Complainant,



-vs-

IN CHANCERY

NO. CH010249

CITY OF ALEXANDRIA, VIRGINIA,

and

ALEXANDRIA LIBRARY BOARD,

and

NATIONWIDE C.H., L.L.C.,

Defendants.

----- x

Alexandria Courthouse
Courtroom 4
Alexandria, Virginia
Friday, August 24, 2001

The above-entitled matter came on to be heard
before THE HONORABLE ALFRED D. SWERSKY, Judge,
without a jury, in the Circuit Court of the City of
Alexandria, Alexandria, Virginia, commencing at

Page 2

approximately 10:16 o'clock, a.m., when there were
present on behalf of the respective parties:

APPEARANCES:

On Behalf of the Complainant:

Peter A. Dingman, Esquire
Elizabeth G. Engle, Esquire
DINGMAN LABOWITZ, P.C.
526 King Street, Suite 209
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(703) 519-0999

On Behalf of the Defendant City of
Alexandria and Alexandria Library Board:

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On Behalf of the Defendant Nationwide:

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Vienna, Virginia 22030

GERALD F. CHAPMAN, Esquire
6917 Arlington Road, Suite 350
Bethesda, Maryland 20814

* * * * *

Page 3

C O N T E N T S**Proceedings Page 4****EXHIBITS**

>> None <<

Page 5

1 motions on summary judgment. The matter was
2 previously briefed and argued on demurrer. We have
3 filed motions in limine which perhaps also argues
4 the same issues.

5 I will try to be relatively brief and
6 respectfully as the Court, in its review of this
7 matter, to focus on the documents, because from my
8 point of view, this is a simple straightforward
9 document case.

10 Respectfully, I would ask the Court to
11 look at the Deed in Trust, which is dated September
12 7, 1993, and is a deed from James M. Duncan, Roman
13 numeral 3, to James M. Duncan, Roman numeral 3, as
14 trustee of the 1993 trust.

15 That document is one of the documents
16 which the parties have stipulated into evidence in
17 this case.

18 The deed is quite detailed. It is a
19 deed under Section 55-17.1 of the Virginia Code, and
20 by itself, even if there was not a declaration for
21 the 1993 trust, creates a Virginia land trust for
22 this property, and puts the property out of the

Page 4

P R O C E E D I N G S

(Whereupon, the court reporter was duly sworn.)

3 **THE COURT:** This is the matter of
4 Austin, Trustee, versus City of Alexandria and
5 others, Chancery 01029 (sic).

Is counsel ready?

MR. DINGMAN: Yes, your Honor.**MR. COSTELLO:** Yes, your Honor.

9 **THE COURT:** All right. You all may
0 have a seat.

1 We're going to proceed at this point to
2 hear the arguments on the cross motions for summary
3 judgment; is that correct?

MR. DINGMAN: Yes, your Honor.

5 **THE COURT:** All right. You're for the
6 plaintiff, Mr. Dingman.

7 **MR. DINGMAN:** Peter Dingman on behalf
8 of William Y. Austin, the trustee of the James M.
9 Duncan, Roman numeral 3, living trust, which I will
0 try to refer to as the 1993 trust. There is, of
1 course, the 1999 trust.

I know your Honor has our briefs and

Page 6

1 estate of James M. Duncan as an individual, and into
2 the estate of James M. Duncan as trustee of the
3 living trust.

4 Again, I would respectfully ask the
5 Court to pay careful attention, in addition to all
6 the other language of the deed, to the third from
7 the last paragraph of that deed, which says:

8 Any revocation of the trust
9 agreement by the grantor shall
10 not be effective as to the
11 property herein conveyed,
12 unless he execute a deed fully
13 recorded evidencing such
14 revocation and reversion of
15 title.

16 So from the moment that this property
17 left Jim Duncan's individual hands and went into the
18 trust, into the hands of the trustee as to legal
19 title on beneficial title, vesting in the
20 beneficiaries of that trust, he did so
21 unequivocally, stating he was putting it beyond
22 casual reversion. He was putting it outside his own

Page 7

1 control.

2 The same day he executed that document,
3 he executed the declaration for the James M. Duncan
4 living trust, the 1993 trust, and that document is
5 again carefully drafted and the entire document
6 worthy of the Court's attention, but -- because I
7 know the Court has a great deal to read in this case
8 -- I will ask a couple of -- ask the Court to pay
9 careful attention to a couple of things.

10 One of the things that I think is
11 extremely pertinent to the decision in this case is
12 that, in drafting that instrument, Jim Duncan
13 carefully executed it both in his individual
14 capacity and as trustee.

15 Next, Article 3, he reserved to himself
16 certain rights. He reserved to himself the right to
17 withdraw property from the trust, to add and change
18 beneficiaries, to amend the trust and to revoke the
19 trust in its entirety.

20 He set out in this trust instrument
21 carefully what was necessary for him to do in order
22 to revoke this trust or to withdraw property from

Page 8

1 it.

2 And what he needed to do under this
3 trust was to, number one, deliver to himself, from
4 himself as an individual to himself as trustee or
5 whoever was then serving as trustee, a prior written
6 request to withdraw the property from the trust.

7 That is something that never happened
8 in this case. He never delivered such a writing to
9 himself.

10 The City parties argue that, well, the
11 1999 deed is close enough, good enough. But in
12 fact, he never did -- he never did that.

13 Even if he had, even if he had
14 delivered something to himself or even if the Court
15 were to hold the hand over one eye and say close
16 enough is good enough, the 1999 deed is a sufficient
17 fulfillment of that requirement, the fact is he
18 never fulfilled the second requirement set out in
19 the 1993 deed, a deed back, a reversion deed back
20 out.

21 He never did that. There is no
22 reversion deed in the record in this case because

Page 9

1 none was ever executed and done.

2 Mr. Duncan also limited himself further
3 as to his property in the trust declaration, thereby
4 clearly setting out his intention to put the
5 property beyond casual reversion, beyond his own
6 reach. He did that in a number of places.

7 In Article 6.9 of the trust, he
8 prohibited the trustee from self-dealing. Now, this
9 is an argument that has been construed by --
10 characterized by some in the case as silly, because
11 in referring to self-dealing, he refers to the
12 Internal Revenue Code and the definitions set out in
13 the Internal Revenue Code for self-dealing, which
14 are focused on self-dealing by trustees of
15 charitable organizations, charitable foundations.

16 But it's clear that Jim Duncan intended
17 the self-dealing to also include the general
18 prohibition, which is recognized under Virginia law
19 against a trustee engaging in self-dealing, because
20 he excluded from the self-dealing the income stream
21 which he had reserved to himself under this trust
22 declaration.

Page 10

1 So it's clear that he contemplated
2 casual self-dealing kind of reversion points, and he
3 prohibited them.

4 Even more clearly, in Article 16 of
5 this trust declaration, he declared this to be a
6 spendthrift trust. That's at page 22 of the living
7 trust declaration.

8 He declared this to be a spendthrift
9 trust, another clear, unequivocal statement that
10 this is not a casual trust. This is not a
11 paper-thin trust. This is not something that's
12 going to fall apart if I do some other act. This is
13 intended to put my assets beyond my individual
14 estate, outside my individual estate.

15 And that's what he accomplished.

16 The only way they could have come back
17 into his individual estate was upon satisfaction of
18 those two requirements: The prior written notice to
19 the trustee of a desire to withdraw property, and a
20 deed of reversion from the trustee.

21 Jim Duncan signed that declaration in
22 both capacities, clearly indicating that he

Page 11

1 understood the two capacities to be separate and
2 distinct.

3 He subsequently amended the trust
4 declaration, and when he did that, he again signed
5 in a manner indicating that the distinction of the
6 two capacities, individual and as trustee of this
7 trust, was maintained.

8 He signed as -- he only signed his name
9 once, but he designated himself as signing in that
10 instance both as trustor and trustee.

11 The Virginia Supreme Court has looked
12 at a case which is very closely on point to this
13 one, I submit. It's a 1950 case, so we know it has
14 value. It's been around a long time. It is the
15 case of Cone versus the Central National Bank of
16 Richmond, 191 Virginia 12.60 Southeast 2d 30 1950.

17 A case in which the -- an individual
18 created a trust, and again, provided express means
19 by which he could revoke that trust or withdraw
20 property from it.

21 He -- he subsequently executed a will
22 by which he purported to withdraw life insurance

Page 12

1 policies from that trust.

2 Making a will was not one of the means
3 which had been specified in the trust, and he -- and
4 the Supreme Court therefore held that despite the
5 fact that he had executed a will clearly evidencing
6 in that case an intent to withdraw the property from
7 the trust, it was inadequate, because it's not an
8 adequate compliance with the trust instrument.

9 He had set out and specified how
10 revocation or withdrawal could occur. He had not
11 acted in conformity with that, and therefore, the
12 attempted revocation or withdrawal would be
13 disallowed.

14 There is a common law rule that, absent
15 such specification, then any clear expression of
16 intent is adequate, but if the trust instrument is
17 clear and unambiguous in limiting what can be done,
18 then the -- then that is the means which must be
19 followed.

20 I would ask the Court to carefully
21 review the Cone case, because it does one other
22 thing that I like, and that is it distinguishes the

Page 13

1 case which the City parties chiefly rely on. That
2 case is Bottamore versus First National Bank, 170
3 Virginia 221 1965 '93, which I understand why the
4 City parties like to cite that case.

5 It's a case in which a trust that was
6 irrevocable was nevertheless revoked by Court decree.

7 The difference, the distinguishment
8 between the two cases is that in Bottamore, we were
9 dealing with a proceeding before the Court. In
10 Bottamore, all of the beneficiaries of the trust
11 were before the Court, and the application was made
12 to therefore revoke the trust, and that was granted.

13 Cone clearly distinguishes that from
14 the situation which we have here, which is a
15 situation in which a trustee has put property into a
16 trust, put it beyond his own control, unless he acts
17 in a particular way, delivering a writing to the
18 trustee.

19 That didn't happen, and therefore, the
20 purported revocation or withdrawal is disallowed.

21 That, your Honor, I believe is the sum
22 total of this case. Jim Duncan put property, the

Page 14

1 property right up here off Cameron Street, the
2 Hopkins warehouse and that lube operation that's
3 right beside it, put it into a living trust.

4 He provided an income stream for
5 himself. He provided that that would continue for
6 Mr. Austin. He provided that, at Mr. Austin's
7 death, it would go to benefit the Duncan Library,
8 and he said, That's where that property is going to
9 stay, unless I do two things.

10 One, I deliver to the trustee a notice
11 of intent to withdraw, and two, the trustee executes
12 a deed of reversion.

13 Neither of those things happened.
14 Instead, in late 1999, Mr. Duncan, acting solely in
15 his individual capacity, executed another deed.

16 That deed was done without benefit of
17 title search. There is -- it is simply a deed by an
18 individual who no longer owns property, who has
19 deeded away his control of that property, and he
20 deeds it to a trust which he created the next day.

21 That's not enough to either revoke the
22 1993 trust or to withdraw the property from it.

Page 15

1 I believe this Court should grant
2 summary judgment in favor of Mr. Austin and deny the
3 motions for summary judgment on behalf of the other
4 parties. Thank you.

5 THE COURT: Thank you, Mr. Dingman.
6 Mr. Costello.

7 MR. COSTELLO: Thank you, your Honor.

8 I'm Brian Costello. I represent the
9 City of Alexandria and the Alexandria Library
10 Board. We're designated in pleadings as
11 individuals, but collectively for purposes of this
12 case, we have been denominated the City parties.

13 The City parties have moved for summary
14 judgment asking the Court to uphold the unit trust,
15 the charitable remainder unit trust, which was the
16 second trust created by Mr. Duncan, to uphold the
17 unit trust deed, as it's referred to in the filings,
18 and to uphold the contract of sale between Mr.
19 Duncan as trustee of the unit trust and Nationwide,
20 which is a party to this proceeding.

21 The reason that we ask that is set
22 forth at great length in the motions and the briefs

Page 16

1 in support of that motion that has been filed, and
2 trusting in the Court's determination to plow
3 through all of that, I will not repeat much of that.

4 There are some things, however, I do
5 feel appropriate to emphasize.

6 First of all, I do not believe that it
7 is accurate to say that James Duncan placed this
8 property beyond his control. Article 3.1 of the
9 living trust, which is Exhibit 1 in this case,
10 specifically allowed him to remand or revoke the
11 trust or withdraw property from the trust, not by
12 notice, but by a signed instrument delivered to his
13 trustee.

14 He delivered two signed instruments,
15 the unit trust and the unit trustee, delivered three
16 signed instruments if you count the Nationwide
17 contract.

18 All of those instruments manifested his
19 intent to withdraw the property from the operation
20 of the living trust and place it within the property
21 governed by the unit trust.

22 And the unit trust specifically stated

Page 17

1 that the property at issue in this case was property
2 of the unit trust.

3 We're certainly in agreement that the
4 Court ought to focus on paragraph 4 of the first
5 trust deed, though, and that's found on page two of
6 Exhibit 2.

7 It requires the execution of a deed by
8 the grantor of the trust. The grantor of the living
9 trust was James M. Duncan, III.

10 The execution of the unit trust deed
11 was done by the grantor, James M. Duncan, III.

12 That identity of parties is really the
13 heart of this case, your Honor. Consent or
14 acquiescence of all parties who are concerned with
15 the matter, I think your Honor would recognize,
16 cures any objection or argument that Mr. Dingman may
17 raise on behalf of the complainant.

18 We have here a situation in which James
19 M. Duncan was the grantor of the living trust. He
20 was the trustee of the living trust. He was the
21 beneficiary of the living trust.

22 As such, nobody else had any vested

Page 18

1 interest in that trust or that trust property except
2 James M. Duncan.

3 James M. Duncan was the grantor of the
4 unit trust. He was the trustee of the unit trust
5 and he was the beneficiary of the unit trust.

6 And so again, nobody has any vested
7 interest in the trust or trust property at any time,
8 except James M. Duncan.

9 Now, let's suppose the situation
10 existed in which John and George and Joe created a
11 trust, and John was a grantor and Joe was the
12 trustee and George was the beneficiary, and they
13 executed this most solemn document that said, We
14 will not change anything in this trust unless it is
15 done in writing.

16 And time goes by and they get together
17 and say, You know, we don't want to do this
18 anymore. It's a bad idea. We're changing our minds.

19 And so they all unite in agreement that
20 the trust property should be disposed of in some
21 other fashion.

22 That's perfectly proper and it's

Page 19

Page 21

1 perfectly effected when there are no other vested
2 interests involved.

3 If someone had come in after the
4 execution of the first trust deed and in some
5 fashion put a lien on that property or if
6 Mr. Duncan, as trustee of the living trust, had
7 executed a contract of sale for that property and
8 subsequently took action with regard to the unit
9 trust, then it's unlikely that we would be here.

10 But nothing intervened to prevent him
11 from doing whatever he wanted to do with his own
12 property.

13 And I emphasize that for all practical
14 purposes, this remained his own property because he
15 reserved to himself the right to do anything he
16 wanted to do with it, to revoke the first trust in
17 whole or in part, to withdraw property from the
18 trust.

19 And to say that he has to write a
20 memorandum to himself saying, Dear me, I hereby
21 revoke my trust, or, Dear me, I hereby revoke -- or
22 withdraw the property from the unit trust, signed

1 agreement may be revoked by the trustor. And this
2 is so, even though the agreement expressly provides
3 that it shall be irrevocable.

4 The Fourth Circuit has considered the
5 situation in which beneficiaries of a trust disposed
6 of property without jumping through all of the hoops
7 that Mr. Dingman says Mr. Duncan had to jump through
8 in order to create the unit trust and effectively
9 put the subject property into the unit trust estate,
10 and the Court determined that any manifestation of
11 intent by the interested parties was adequate to
12 accomplish that purpose.

13 The settlor beneficiaries of a trust by
14 which a trustee holds legal title to real estate for
15 their benefit can terminate the trust at any time by
16 acting in such a matter as to unequivocally indicate
17 the trusteeship has ended such as by convey title to
18 another person. That is Capital Investment Company
19 versus Devers 360 Fed 2d 462, a Fourth Circuit case
20 from 1966.

21 There can certainly be no more
22 unequivocal indication of removal of this property

Page 20

Page 22

1 myself, carries the letter of the law to absurdity.

2 The fact is that this property was his
3 to do with as he wished. He did what he wished,
4 perhaps a little more sloppily than would have been
5 the case if he had had counsel, but the fact remains
6 that he did it.

7 There is no particular form of written
8 instrument required to be delivered to himself as
9 trustee of the unit trust or trustee of the living
10 trust.

11 There is no particular form of deed
12 that was required in order to withdraw the property
13 from the living trust and put it into the unit trust.

14 What is significant is that he, being
15 the only party who had any interest in this matter,
16 consented to what was done.

17 And Mr. Dingman's dislike of the
18 Bottamore case notwithstanding, the grantor there
19 did establish an irrevocable trust of which she was
20 the sole beneficiary.

21 The Court did declare that where all of
22 the beneficiaries consent to a revocation, the

1 from the living trust than the execution of a
2 unit trust which specifically declares that the
3 subject property is part of the unit trust.

4 There can be no more unequivocal
5 manifestation of intent to withdraw the property
6 from the trust than by executing a deed as grantor
7 conveying the property to himself as trustee of the
8 unit trust.

9 And please note that the first trust
10 deed said any deed which would withdraw the property
11 from the first trust had to be executed by the
12 grantor. It didn't say anything about execution by
13 the trustee.

14 And so, your Honor, we have here a
15 situation that doesn't arise very often, but it has
16 arisen here, and it needs to be dealt with as the
17 unique fact situation that it is.

18 That is, we have one person wearing
19 three hats, one person acting in three capacities,
20 whether those capacities are expressly stated in
21 written instrument or not.

22 We have the only party with a vested

Page 23

1 interest acting as he wished, and the final
2 expression of his wish is found in the unit trust,
3 not the living trust.

4 The complainant would have us look at
5 this case backwards. What we should be doing is
6 focusing on the fact that the final expression of
7 Jim Duncan's intent was found in the unit trust and
8 the unit trust deed.

9 By what right do they claim or by what
10 authority do they claim that he did not have the
11 right to do that? There is no such authority.

12 When all parties consent, that consent
13 is adequate to do what Mr. Duncan did. It would be
14 the same as if there were any other kind of contract
15 in which there were three contracting parties, and
16 those three contracting parties, notwithstanding the
17 fact the contract said it cannot be modified except
18 in a writing signed by all parties; those three
19 parties got together and decided to modify the
20 contract.

21 And that factual situation is upheld
22 constantly by the Courts of this Commonwealth, and

Page 24

1 that is the situation we're facing here, and that's
2 why, your Honor, we ask that you uphold the unit
3 trust, uphold the unit trust deed and the Nationwide
4 sale contract as the final and valid expression of
5 Jim Duncan's intent to do what he wanted to do with
6 his own real estate.

7 THE COURT: Thank you. Mr. Chapman.

8 MR. CHAPMAN: Thank you, your Honor.
9 Gerald Chapman on behalf of Nationwide C.H., L.L.C.,
10 and I won't go back over the arguments that
11 Mr. Costello has advanced here, so I'll be very
12 brief.

13 I don't think it can be emphasized
14 enough that the -- well, first of all, in construing
15 a contract, a Court necessarily must look to the
16 intent of the parties and to seek to do what the
17 parties intended, and I think that the --
18 particularly in an equity court as we are in here
19 today, that's a particularly pointed direction for
20 the Court to go.

21 The three documents, which I submit are
22 the clearest intent of Mr. Duncan, are the

Page 25

1 charitable remainder unit in which he conveyed or
2 attempted to convey property which had previously
3 been conveyed to the living trust, the second deed,
4 whereby he deeded the property from himself as
5 grantor to the unit trust, and then subsequently
6 entering into a sales contract to sell that property
7 to my client, Nationwide C.H., L.L.C.

8 Now, one of the issues that has been
9 raised by Mr. Dingman is the language in that first
10 deed, saying that in order for there to be a
11 subsequent -- or to be revocation, there has to be
12 another deed signed by the grantor. As Mr.
13 Costello's pointed out, there is indeed a second
14 deed that had been signed by the grantor.

15 Why should the provisions of the
16 language of the first deed be of any more
17 significance or more importance than the second
18 deed, particularly here where there are no third
19 parties who are impacted by that?

20 All of these actions have been taken by
21 Mr. Duncan in his united capacities as grantor,
22 beneficiary and trustee.

Page 26

1 Who had the ability to change the terms
2 of this living trust? Mr. Duncan did.

3 The fact that he may or may not have
4 put after his signature trustee, grantor and
5 beneficiary I don't think is of significance here.

6 Would I have liked to have seen it? Of
7 course, but that's not the case here and I think
8 it's incumbent upon the Court to try to manifest the
9 intent, which is just blatantly clear here.

10 Certainly the position being taken by
11 Mr. Austin is that the creation of the unit trust
12 and the conveyance of property into it is a nullity,
13 that the second deed is a nullity, that the purchase
14 contract is a nullity.

15 I think that the -- in particular,
16 since no third parties are impacted adversely with
17 respect to that, I think the Court can very readily
18 conclude that the intent of Mr. Duncan was as we
19 have stated, and therefore, that summary judgment in
20 favor of Nationwide C.H. as well as the City parties
21 should be upheld.

22 Thank you.

Page 27

1 THE COURT: All right. Thank you, Mr.
2 Chapman.

3 MR. DINGMAN: Your Honor, briefly to
4 rebut if I might, let me, on the -- going last first
5 approach, the question of intent is asserted by
6 Nationwide and to a certain extent by the City
7 parties. We briefed that issue extensively in the
8 motion in limine.

9 In construing a deed, in construing
10 documents, the Court does not look beyond the four
11 corners, ought not look beyond the four corners
12 where they're clear on their face.

13 I submit it is a very strained reading
14 of the first deed, the 1993 deed, to suggest that
15 it, by itself, completely revoked 200 years of title
16 law in Virginia and provided that the -- we didn't
17 need the grantee of the last deed to sign the -- as
18 grantor of the next deed in order to have a proper
19 chain in title.

20 In fact, I don't think that Nationwide
21 would have raised the issue in this case if they
22 thought that was true.

Page 28

1 It is, I submit, a bit at least ironic,
2 if not inappropriate, for Nationwide to suggest that
3 the Court infer intent from the '99 deed and other
4 actions in 1999, actions which they have in other
5 pleadings taken the position, Well, maybe the intent
6 was fraud.

7 I don't suggest that Jim Duncan was
8 guilty of fraud. I suggest that the fact that
9 Nationwide carries those two thoughts around in its
10 head suggests the underlying reason why courts don't
11 start speculating about the intent of people where
12 the documents are clear and unambiguous on their
13 faces.

14 Moving up to Mr. Costello's arguments,
15 he places some alliance now on the Capital
16 Investor's case, and that is an interesting
17 reliance, given that in that case, Mr. Morrison
18 conveyed property to Mr. Devers.

19 The Court subsequently determined, the
20 United States District Court, determined that that
21 was a trust deed, although it read on its face as an
22 absolute conveyance, under all the circumstances,

Page 29

1 the Court subsequently concluded that no, in fact,
2 Mr. Morrison was trying to defraud his wife, and
3 that that was a trust deed.

4 Then Mr. Morrison, who apparently was
5 not a very trusting soul, became concerned that
6 Mr. Devers was going to do him dirty, and so Mr.
7 Morrison turned around a year later and he did a
8 deed of the property. He conveyed it away.

9 And the Fourth Circuit did hold that,
10 you know, you can't ignore the formalities. You
11 can't convey more than you own. Just because you're
12 a beneficiary of this trust we found doesn't mean
13 that you can convey the property. You've got to get
14 Mr. Devers to convey it.

15 So I would ask the Court to review that
16 portion of the Capital case that's relied on by the
17 City parties.

18 Again, your Honor, the case comes down
19 to this: Jim Duncan put the property outside his
20 own control. If a subsequent act by him in his
21 individual capacity is enough to withdraw the
22 property from the living trust, the 1993 trust, and

Page 30

1 to subject it to the claims of others, like
2 Nationwide, then what is the meaning of a
3 spendthrift trust?

4 What is the meaning of the living trust
5 documents that he created?

6 What is the meaning of the 1993 deed in
7 which all of these documents were put beyond his
8 individual control, put in such a way that a title
9 examiner running through the land records of the
10 City of Alexandria would see a conveyance into
11 Duncan, Trustee, and would see no conveyance out by
12 Duncan, Trustee?

13 And this -- with all due respect, your
14 Honor, I submit that the 1999 deed is as valid as if
15 your Honor were to deed my house to someone else.

16 It simply doesn't lie, and the summary
17 judgment ought to be granted in favor of the trust
18 that was created by Mr. Duncan, is clear on its
19 face.

20 Whatever his intentions were in 1999
21 are now beyond the pale of the grave. We don't know
22 those. Nationwide can pursue its remedies as it

Page 31

1 sees fit. Thank you.

2 THE COURT: Mr. Costello, Mr. Chapman,
3 I'll hear any brief response you want to make.

4 MR. CHAPMAN: Very briefly, your Honor,
5 just for the record, to make clear, Count II of the
6 counterclaim of Nationwide C.H., L.L.C. is a claim
7 of constructive fraud.

8 And as we discussed in chambers prior
9 to this hearing today, that is being severed and
10 will be heard another day, and that's not a part of
11 the summary judgment motion, although Mr. Dingman
12 made reference to it.

13 I just want to make clear that that's a
14 pleading in the alternative that if indeed we are
15 unsuccessful with respect to the declaratory
16 judgment of Nationwide C.H., then we would assert
17 the constructive fraud claim.

18 THE COURT: All right. Anything else,
19 Mr. Costello?

20 MR. COSTELLO: Your Honor, I'm going to
21 rely on the extensive writings that I have filed.

22 I will simply point out that the

Page 32

1 concept of Mr. Duncan acting in his individual
2 capacity is a fiction.

3 He was all things in this case, and he
4 acted in all capacities in this case, whether it's
5 specifically written on any instrument or not,
6 because he was the only party who had any interest
7 in this property.

8 THE COURT: All right. Thank you.
9 I'll try to let you all know something just as
10 quickly as I can. I recognize there are some
11 serious time considerations here.

12 In the meantime, I would urge counsel,
13 if there's some way that this matter could be
14 resolved, to make every effort to do that. I'm
15 hopeful to have something for you by the end of the
16 week.

17 Maybe that's a little bit optimistic,
18 but I'm sure going to try to do that.

19 MS. ENGLE: Your Honor, one quick
20 point: You had mentioned in chambers getting a
21 record of this. I didn't know if you wanted a
22 transcript.

Page 33

1 THE COURT: No, no, no. I was talking
2 about in the event there were witnesses called.

3 MS. ENGLE: Okay. All right.

4 THE COURT: Thank you.

5 (Whereupon, at approximately 10:55 o'clock,
6 a.m., the hearing in the above-entitled matter was
7 concluded.)

Page 34

CERTIFICATE OF COURT REPORTER

1 I, Vicki L. Pardee, who was duly sworn to well
2 and truly report the foregoing proceedings, do
3 hereby certify that they are true and correct to the
4 best of my knowledge and ability; and that I have no
5 interest in said proceedings, financial or
6 otherwise, nor through relationship with any of the
7 parties in interest or counsel.

VICKI L. PARDEE

Circuit Court of Alexandria
Virginia

Judges

DONALD M. HADDOCK

ALFRED D. SWERSKY

JOHN E. KLOCH



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August 31, 2001

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Re: Austin, Trustee v. City of Alexandria, et al.
Chancery No. CH010249

Dear Counsel,

This cause is before the Court on cross-motions for Summary Judgment and the related motion in limine to allow parol evidence if summary judgment is not granted.

The material facts are not in dispute, the documents are clear and unambiguous, and the cause can be decided as a matter of law. Hence, summary judgment is the appropriate remedy and no parol evidence will be permitted. Summary Judgment will be granted to Defendants.

James M. Duncan, III, conveyed certain real property to a trust created in 1993 (hereinafter referred to as the "living" trust). The conveyance was from Duncan as an individual to himself as trustee of the living trust.

In 1999, Duncan created another trust (hereinafter referred to as the "unitrust") and conveyed the same property to that trust, signing the deed individually not as trustee of the living trust.

Complainant is trustee of the living trust, which is to provide him with a lifetime income and then to pass to the James M. Duncan Library Foundation. Defendants are beneficiaries of the unitrust. The property was sold to Defendant Nationwide and Complainant brings this action contesting the validity of the sale from Duncan as trustee of the unitrust to Nationwide. Austin argues that Duncan, as trustee of the unitrust, never had authority to convey the property because the conveyance from Duncan individually to himself as trustee of the unitrust was invalid. He relies on Air Power, Inc. v. Thompson, 244 Va. 534 (1992), for the proposition that the beneficiary of a trust retains no interest in the real property but only a personal property interest in proceeds, rents, and profits and upon Cohn v. Central National Bank, 191 Va. 12 (1950) for the proposition that the withdrawal of the property from the living trust could only have been done strictly in accordance with the terms of the trust.

In the conveyance of the property to the living trust in 1993, the Deed in Trust states:

any revocation of the trust agreement by grantor shall not be effective as to the property herein conveyed unless he executes a deed, duly recorded, evidencing such revocation and reversion of title.

The document creating the living trust states that Duncan may withdraw the property from the trust by giving reasonable notice in writing to the trustee "by signed instrument delivered to the trustee during my lifetime... ."

Defendants argue that by conveying the same property to the unitrust by deed Duncan complied with both provisions above. The requirement of a deed, they argue, is met by the deed conveying the property to Duncan as trustee of the unitrust and that this deed evidences Duncan's intent to revoke the conveyance to the living trust. Further, they argue that the trust document does not specify the kind of "signed instruments" to be delivered to the trustee of the living trust and that to require Duncan to give a particular type of written notice to himself would be the requiring of a useless act.

Further, they argue that the documents must be interpreted so as to give effect to Duncan's intentions.

Duncan's actions complied with the requirements of the living trust documents for revocation of the conveyance and, therefore, the subsequent conveyances to Duncan as trustee of the unitrust and to Nationwide are valid.

The deed to Duncan as trustee of the unitrust conveys with it the power and authority to protect and conserve, sell, contract to sell, grant options to purchase, convey with or without consideration, and to encumber the real property. By conveying the "entire bundle of rights", Duncan clearly evidenced an intent to revoke the prior conveyance and to revert the title.

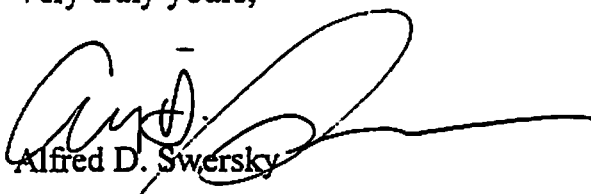
This case is distinguishable from Cohn, *supra*, where the trust documents did not authorize a revocation after the death of the settlor nor by his will. Not only does the deed comply with the requirements of the Deed in Trust, it also, along with the trust document creating the unitrust, satisfies the living trust document's requirement that withdrawal of the property must be by signed "instrument" (no type of instrument being specified) and by reasonable written notice to the trustee. Clearly, there has been a delivery of a signed instrument to the trustee when Duncan himself signed the unitrust documents and deed. This also satisfies the requirement of reasonable written notice to the trustee.

Duncan as grantor of the living trust had the authority to withdraw the real estate from that trust. He did so by virtue of the documents creating the unitrust and the deed to himself as trustee of the unitrust.

For the foregoing reasons, summary judgment will be granted to Defendants on the issue of the validity of the conveyances to the unitrust and to Nationwide. The counts of the cross-bill alleging constructive fraud by Duncan will, I assume, be voluntarily dismissed.

Counsel should prepare an appropriate order noting Complainant's objections.

Very truly yours,


Alfred D. Swersky

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

WILLIAM Y. AUSTIN, TRUSTEE OF THE
JAMES M. DUNCAN, III, LIVING TRUST
(Declaration dated September 7, 1993),

Complainant,

v.

In Chancery No. CH010249

THE CITY OF ALEXANDRIA, VIRGINIA, *et al.*,

Respondents.

DECREE

THIS CAUSE came before the Court August 24, 2001 upon the Motion for Summary Judgment filed by Complainant, the Cross-Motions for Summary Judgment filed by Respondents The City of Alexandria, Virginia and the Alexandria Library Board against Complainant, and by Respondent Nationwide CH, LLC, upon the Motion for Summary Judgment filed by Respondent Nationwide CH, LLC against Complainant as to Count I of the Counterclaim of Nationwide CH, LLC, and upon Stipulation of Facts and written memoranda of the parties, and was argued by counsel.

THIS COURT, having considered the Motion for Summary Judgment filed by Complainant William Y. Austin ("Austin"), the Cross-Motions for Summary Judgment filed by Respondents The City of Alexandria, Virginia and the Alexandria Library Board ("Alexandria") and Nationwide CH, LLC ("Nationwide"), the Motion for Summary Judgment filed by Nationwide as to Count I of its Counterclaim, and the oppositions of

the parties thereto, a hearing thereon having been held and good cause having been shown, it is,

ORDERED, ADJUDGED AND DECREED that the letter opinion of this Court dated August 31, 2001, entered in this matter is incorporated herein by this reference; and it is further

ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment by Austin as to the Bill of Complaint filed herein against Respondents Alexandria and Nationwide is DENIED; and it is further

ORDERED, ADJUDGED AND DECREED that the Cross-Motions for Summary Judgment filed herein by Alexandria as to its Cross-Bill of Complaint against Austin and by Nationwide are hereby GRANTED; and it is further

ORDERED, ADJUDGED AND DECREED that the Motion for Summary Judgment filed herein by Nationwide as to Count I of its Counterclaim against Austin is hereby GRANTED; and it is further

ORDERED, ADJUDGED AND DECREED that:

1. The execution by James M. Duncan III of the J.M. Duncan III Charitable Remainder Unitrust dated August 4, 1999 ("The Unitrust Agreement") and the Deed of Contribution dated August 3, 1999 (the "Unitrust Deed") conveying that certain real property commonly known as 200 North Henry Street and 1115 North Cameron Street in the City of Alexandria, Virginia as more fully described in that certain Deed recorded in Deed Book 1498 at Page 1240 among the land records of the City of Alexandria, Virginia (the "Property") operated to remove the Property from the James M. Duncan III Living

Trust (the "Living Trust") and to transfer and convey such Property to the Unitrust and amended and/or revoked the Living Trust as to the Property;

2. The Purchase Contract dated October 20, 1999 between the Unitrust and Nationwide (the "Sales Contract") is a valid and enforceable agreement as between Nationwide and the Unitrust with respect to the Property;


3. This Court hereby appoints D. Brian Costello as trustee of the Unitrust to complete the terms of the Sales Contract on such terms and conditions as the trustee shall deem appropriate and to distribute proceeds of the sale of the Property upon settlement as provided by the Unitrust and to carry out the terms of the Unitrust;

4. The Unitrust Agreement and the Unitrust Deed are hereby declared to be valid, enforceable, and the controlling documents concerning the ownership of the Property and the right to transfer and convey the same;

5. The Trustee shall administer the Sales Contract on behalf of the Unitrust, provided, however, that the Sales Contract shall have an effective date as of the date of the acceptance by the Trustee of his appointment hereunder. *after this Decree shall be final and not subject to any further appeal.*

THIS DECREE IS FINAL and the Clerk is directed to file it among the ended causes.

ENTERED this 31 day of October, 2001.


ALFRED D. SWERSKY, Judge
Circuit Court of Alexandria, Virginia

WE ASK FOR THIS:

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✓ By: D. Brian Costello
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The Alexandria Library Board
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SEEN AND OBJECTED TO: FOR THE REASONS AND GROUNDS
ARTICULATED IN COMPLAINANT'S MOTION FOR SUMMARY
JUDGMENT, MOTION IN LIMINE
DINGMAN LABOWITZ, P.C. AND ~~MOTION~~ OPPOSITION TO

By: Peter A. Dingman
Peter A. Dingman, Esq., VSB # 14378
Elizabeth G. Engle, VSB # 40010
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MOTION FOR SUMMARY JUDGMENT
AND COMPLAINANT'S RESPECTFUL
EXCEPTION TO THE COURT'S
FINDING THAT DUNCAN'S
ACTIONS COMPLIED WITH
REQUIREMENTS OF THE
LIVING TRUST

ASSIGNMENTS OF ERROR

- I. The Trial Court erred in holding that the actions of James M. Duncan, III complied with the requirements of the James M. Duncan, III Living Trust for revocation of his conveyance of the Property at issue into that trust.
- II. The Trial Court erred in holding that the execution by Duncan of the J. M. Duncan III Charitable Remainder Unitrust and the Deed of Contribution removed the Property at issue from the Living Trust and transferred that property to the Unitrust.
- III. The Trial Court erred in holding that the Unitrust Deed, executed by Duncan solely in his individual capacity, was effective to convey title to the Property to the Trustee of the Unitrust.
- IV. The Trial Court erred in premising its holding regarding revocation of the conveyance to the Living Trust upon the "intent" evidenced in the Unitrust Deed and the execution of the Unitrust Agreement itself.
- V. The Trial Court erred in declaring the Unitrust Agreement and the Unitrust Deed to be valid and enforceable and the controlling documents regarding ownership of the Property at issue.
- VI. The Trial Court erred in holding that the purchase contract between the Unitrust and Nationwide CH LLC is a valid and enforceable contract.
- VII. The Trial Court erred in appointing D. Brian Costello as Trustee of the Unitrust to complete the terms of the purchase contract and distribute the sales proceeds according to the Unitrust.