

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

Mary Ann Jensen, Trustee	)	Case No.
5465 Jessalee Circle	)	
East Lansing, Michigan 48823	)	Judge
And	)	<b>Verified Complaint</b>
	)	<b>Jury Demand Endorsed Hereon</b>
Mary Ann Jensen	)	
5465 Jessalee Circle	)	
East Lansing, Michigan 48823	)	
Plaintiffs,	)	
vs.	)	
Runser & Putman, LLC	)	
111 East Main Street, Suite 105	)	
Van Wert, Ohio 45891	)	
And	)	
Charles Allan Runser, a/k/a	)	
C. Allan Runser	)	
111 East Main Street, Suite 105	)	
Van Wert, Ohio 45891	)	
And	)	
Shaun A. Putman	)	
5731 Harrison Center Rd.	)	
Van Wert, Ohio 45891	)	
And	)	

C J A & M, LTD.  
C/O C. Allan Runser, Statutory Agent )  
111 East Main Street, Suite 105 )  
Van Wert, Ohio 45891 )  
  
Defendants. )

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**THE PARTIES**

1. Mary Ann Jensen, is the trustee of the Barbara Mary Shackley Trust, dated March 31st, 1992 (the "Trust"). A copy of the Trust is attached hereto as Exhibit 1.

2. Mary Ann Jensen is a resident of the State of Michigan. Citizenship of the Trust is based on citizenship of the Trustee; thus, the Trust is a citizen of the State of Michigan.

3. Runser & Putman, LLC ("Runser & Putman") is an Ohio limited liability company with its principal place of business in Van Wert, Ohio.

4. Runser & Putman is a law firm and performed legal services for the Trust.

5. Mr. Runser is an attorney and was admitted to the practice of law in the State of Ohio on October 27, 1967; his Supreme Court Registration Number is 0017988. Mr. Runser performed legal services for the Trust.

6. Based upon information and belief, Charles Allan Runser, a/k/a C. Allan Runser, is a resident of Van Wert County, Ohio, is a member of Runser & Putman, and at all times relevant hereto, was acting as an agent of Runser & Putman.

7. C J A & M, LTD ("CJA&M") is an Ohio limited liability company with its principal place of business in Van Wert, Ohio. Mr. Runser is the statutory agent for CJA&M.

8. Based upon information and belief, Shaun A. Putman, is a resident of Van Wert County, Ohio, is a member of Runser & Putman, and at all times relevant hereto, was acting as an agent of Runser & Putman.

9. Mr. Putman is an attorney and was admitted to the practice of law in the State of Ohio on November 18, 2002; his Supreme Court Registration Number is 0075226.

#### **JURISDICTION AND VENUE**

10. This Court has jurisdiction pursuant to Title 28 of the United States Code, Section 1332 as the suit involves citizens of different states and the amount in controversy exceeds \$75,000.

11. Venue is proper in this judicial district under 28 U.S.C. § 1391(a), as it is the district in which the conduct complained of arose and it is the district in which Runser & Putman and CJA&M have their principal places of business and in which both Mr. Runser and Mr. Putman reside.

#### **GENERAL FACTS**

12. The grantor of the Trust was Barbara Mary Shackley, the mother of Mary Ann Jensen.

13. Pursuant to the terms of the Trust, Mary Ann Jensen is a beneficiary of the Trust pursuant to Ohio Revised Code §5801.01.

14. Mr. Runser became the trustee of the Trust upon its execution by Barbara Mary Shackley on March 31, 1992.

15. Pursuant to the terms of the Trust, Mr. Runser was the trustee of the Trust and was a trustee pursuant to Ohio Revised Code §5801.01.

16. Originally there were two other trustees of the Trust along with Mr. Runser.

17. Upon information and belief, by January 1, 2011, Mr. Runser was the sole trustee of the Trust.

18. Ms. Shackley died on February 3, 2001 and the Trust became irrevocable.

19. At all times relevant hereto, Mr. Runser and Runser & Putman were attorneys for the Trust.

20. At the time of Barbara Mary Shackley's death, or shortly thereafter, the Trust assets consisted of the following:

- a. 400 shares of stock of the Bristol-Myers Squibb Company
- b. 640 shares of stock of the Exxon Corporation
- c. 566 Shares of the General Public Utilities Corporation
- d. 3,168 shares of Helmerich & Payne, Inc.
- e. 2,468 shares of Wells Fargo
- f. \$50,000 Treasury Direct Note
- g. \$70,000 Treasury Direct Note
- h. \$20,000 certificate of deposit with Van Wert Federal Savings Bank
- i. \$100,000 certificate of deposit with First Federal Savings and Loan Association
- j. \$96,480.47 in a savings account with First Federal Savings and Loan Association

21. Beginning in 2011, despite his duty under Ohio Revised Code §5808.13(C) to provide annual reports of the Trust's property, liabilities, receipts, and distributions, Mr. Runser failed to provide this information to Mary Ann Jensen, who was entitled to annual reports as a beneficiary.

22. Mary Ann Jensen made specific requests of Mr. Runser to provide this information and despite his duty to do so under Ohio Revised Code §5808.13(A), Mr. Runser failed to provide this information to Mary Ann Jensen.

23. In a letter dated April 29, 2014, A. Thomas Christensen, of the law firm of Marshall & Melhorn, LLC, wrote to Mr. Runser on behalf of Mary Ann Jensen and demanded that he provide an immediate accounting of the Trust's assets, liabilities, receipts, and disbursements. The letter constituted another demand for information under Ohio Revised Code §5808.13(A). A copy of the letter is attached hereto as Exhibit 2.

24. Mr. Runser responded in a letter dated May 9, 2014, wherein he admitted he had not provided the accountings required by Ohio Revised Code §5808.13 and had "not done a good job in handling the Trust activity during the last several years." A copy of the letter is attached hereto as Exhibit 3.

25. On July 17, 2014 Mr. Runser appointed Mary Ann Jensen as an Additional Trustee of the Trust pursuant to Section 6.10 of the Trust. A copy of the Appointment of Additional Trustee is attached hereto as Exhibit 4.

26. On July 17, 2014, subsequent to his appointment of Mary Ann Jensen as an Additional Trustee of the Trust, Mr. Runser resigned as a trustee of the Trust. Mary Ann Jensen, as trustee of the Trust, accepted Mr. Runser's resignation on July 23, 2014. A copy of the Trustee Resignation and Acceptance of Trustee Resignation is attached hereto as Exhibit 5.

27. As of July 17, 2014, Mr. Runser had yet to provide the accounting for 2011, 2012, and 2013 or to respond to Mary Ann Jensen's requests for information as required by Ohio Revised Code §5808.13.

28. On July 23, 2014 Mr. Runser called Mr. Christensen and stated and admitted that he had "inappropriately borrowed funds from the Trust."

29. On July 23, 2014 Mr. Runser turned over records of the Trust to the law firm of Marshall & Melhorn, counsel for Mary Ann Jensen, individually and as trustee of the Trust.

30. On July 24, 2014 Mr. Christensen undertook an initial review of the records of the Trust.

31. The Trust records show that in June 2010, Mr. Runser, as trustee of the Trust, opened a brokerage account for the Trust with LPL Financial (the "LPL Account") and deposited certain assets of the Trust into the LPL Account.

32. The balance of the LPL Account on June 30, 2010 was \$493,078.26.

33. The LPL Account consisted of various securities but did not include the Bristol-Myers Squibb stock or the Wells Fargo stock which were held as electronic stock certificates.

34. On March 31, 2011, the value of the LPL Account was \$802,788.86; thus, the value of the Trust, consisting of the LPL Account, Bristol-Myers Squibb and Wells Fargo stock, and other unknown accounts, exceeded this amount.

35. Beginning on March 2, 2011, Mr. Runser began to inappropriately withdraw funds from the Trust, specifically from the LPL Account, by writing checks drawn from the LPL Account payable to the following:

- a. C. Allen Runser (\$142,500)
- b. C. Allen Runser, Trustee (\$69,500)
- c. Runser & Putman, LLC (\$184,480)
- d. C J A & M, LTD (\$20,000)
- e. Runser & Putman, Trustee (\$54,900)

36. Between March 2, 2011 and September 13, 2013, Mr. Runser wrote over fifty checks drawn on the LPL account for a total of \$471,350. Copies of the LPL checks are attached hereto as Exhibit 6.

37. Based upon an initial review of the Trust records, from March 2, 2011 through September 13, 2013 Mr. Runser inappropriately withdrew the follow from the LPL Account:

Date	Payee	Amount
March 2, 2011	Runser & Putman, LLC	\$6,000.00
March 9, 2011	Runser & Putman, LLC	\$2,000.00
March 14, 2011	Runser & Putman, LLC	\$200.00
April 7, 2011	Runser & Putman, LLC	\$10,000.00
April 18, 2011	Runser & Putman, LLC	\$250.00
April 19, 2011	Runser & Putman, LLC	\$2,000.00
April 22, 2011	Runser & Putman, LLC	\$2,000.00
April 27, 2011	Runser & Putman, LLC	\$1,500.00
April 28, 2011	Runser & Putman, LLC	\$500.00
April 29, 2011	Runser & Putman, LLC	\$1,500.00
May 2, 2011	Runser & Putman, LLC	\$6,000.00
June 30, 2011	Runser & Putman, LLC	\$47,500.00
June 30, 2011	Runser & Putman, LLC	\$750.00
July 6, 2011	Runser & Putman, LLC	\$1,700.00
August 1, 2011	Runser & Putman, LLC	\$800.00
August 4, 2011	C. Allan Runser, Trustee	\$40,000.00
September 1, 2011	Runser & Putman, LLC	\$5,000.00
September 1, 2011	Runser & Putman, LLC	\$3,500.00
September 22, 2011	Runser & Putman, LLC	\$20,000.00
September 30, 2011	C. Allan Runser, Trustee	\$20,000.00
October 19, 2011	Runser & Putman, LLC	\$2,000.00
October 24, 2011	Runser & Putman, LLC	\$16,000.00
October 25, 2011	C. Allan Runser, Trustee	\$1,500.00
November 14, 2011	Runser & Putman, LLC	\$5,000.00
November 15, 2011	C. Allan Runser, Trustee	\$3,000.00
November 16, 2011	C J A & M, Ltd.	\$20,000.00
November 29, 2011	Runser & Putman, LLC	\$5,000.00
December 1, 2011	C. Allan Runser	\$5,000.00
December 2, 2011	C. Allan Runser	\$5,000.00
December 6, 2011	Runser & Putman, LLC	\$7,750.00
December 29, 2011	C. Allan Runser, Trustee	\$5,000.00
January 3, 2012	Runser & Putman, LLC, Trustee	\$14,900.00
January 6, 2012	C. Allan Runser	\$50,000.00
January 26, 2012	C. Allan Runser	\$35,000.00
February 7, 2012	Runser & Putman, LLC	\$5,000.00
February 10, 2012	C. Allan Runser	\$5,000.00
March 6, 2012	Runser & Putman, LLC	\$20,000.00
March 23, 2012	C. Allan Runser	\$6,000.00

April 9, 2012	C. Allan Runser	\$1,000.00
April 9, 2012	C. Allan Runser	\$5,000.00
April 20, 2012	C. Allan Runser	\$10,000.00
April 30, 2012	C. Allan Runser	\$5,000.00
May 9, 2012	C. Allan Runser	\$2,500.00
May 11, 2012	Runser & Putman, LLC	\$1,500.00
May 16, 2012	Runser & Putman, LLC	\$3,000.00
May 18, 2012	C. Allan Runser	\$10,000.00
May 29, 2012	C. Allan Runser	\$3,000.00
August 14, 2013	Runser & Putman, LLC	\$2,500.00
August 19, 2013	Runser & Putman, LLC	\$2,500.00
August 23, 2013	Runser & Putman, LLC	\$500.00
August 28, 2013	Runser & Putman, LLC	\$1,000.00
August 30, 2013	Runser & Putman, LLC	\$1,500.00
September 13, 2013	Runser & Putman, LLC, Trustee	\$40,000.00
	<b>Total</b>	<b>\$471,350.00</b>

38. The payments listed above were not authorized by Mary Ann Jensen and were not used for the benefit of the Trust. Rather, the payments constitute the diversion of funds from the Trust by Mr. Runser that Mr. Runser characterized as his “inappropriate borrowing of Trust funds.”

39. Mary Ann Jensen did not authorize Mr. Runser or Runser & Putman to “borrow” funds from the Trust.

40. The sum of the payments listed above were not for legitimate trust or legal services performed by Mr. Runser or Runser & Putman on behalf of the Trust. The 2011, 2012, and 2013 tax returns for the Trust and the sum of the payments listed above to Mr. Runser or Runser & Putman do not appear to be for legal or trustee services performed by Mr. Runser or Runser & Putman on behalf of the Trust. Copies of the first page of the 2011, 2012, and 2013 federal tax returns for the Trust are attached as Exhibit 8.



41. There are no documents in the Trust records supporting Mr. Runser's characterization of his diversion of Trust funds to himself, Runser & Putman, or any other entity as a loan; regardless, the Ohio Trust Code and Ohio common law prohibit a trustee from engaging in self-dealing. The Trust does not give the trustee of the Trust the power to self-deal.

**Count One  
Breach of Fiduciary Duty**

42. Plaintiffs re-allege and incorporate by reference the allegations set forth above.

43. At all time relevant to this action, Mr. Runser was the Trustee of the Trust and had a fiduciary relationship with the Trust and Mary Ann Jensen.

44. Based on his fiduciary relationship with the Trust and Mary Ann Jensen, Mr. Runser owed a fiduciary duty to the Trust and Mary Ann Jensen.

45. Mr. Runser's fiduciary duties included, but were not limited to, the duty to act in good faith and in accordance with the purposes of the trust.

46. By his failure to comply with the requirements of R.C. §5808.13, his improper withdraw of Trust assets, his diversion of Trust assets to himself, Runser & Putman, and CJA&M and others, Mr. Runser breached his fiduciary duty to the Trust.

47. As a direct and proximate result of Mr. Runser's negligence and breach of his fiduciary duties to the Trust, the Trust and Mary Ann Jensen suffered damages in an amount in excess of \$470,000.

48. In performing the acts alleged herein, Mr. Runser also acted fraudulently, maliciously, and oppressively, thereby justifying an award of punitive damages.

**Count Two  
Breach of R.C. §2109.44**

49. Plaintiffs re-allege and incorporate by reference the allegations set forth above.

50. R.C. §2109.44 prohibits a trustee from having self-dealings with a trust over which they are a trustee.

51. Mr. Runser, by his own admission, had inappropriate self-dealings with the Trust in violation of R.C. §2109.44.

52. As a direct and proximate result of Mr. Runser's violation of R.C. §2109.44, the Trust and Mary Ann Jensen suffered damages in an amount in excess of \$470,000.

53. In performing the acts alleged herein, Mr. Runser also acted fraudulently, maliciously, and oppressively, thereby justifying an award of punitive damages.

**Count Three  
Constructive Fraud**

54. Plaintiffs re-allege and incorporate by reference the allegations set forth above.

55. At all times relevant to this action, a fiduciary relationship existed between Mr. Runser, Mr. Putman, and Runser & Putman and the Trust and Mary Ann Jensen upon which the Trust and Mary Ann Jensen justifiably relied to their detriment.

56. By virtue of the relationship between Mr. Runser, Mr. Putman, and Runser & Putman and the Trust and Mary Ann Jensen, a fiduciary duty existed between Mr. Runser, Mr. Putman, and Runser & Putman and the Trust and Mary Ann Jensen.

57. Pursuant to this duty, Mr. Runser, Mr. Putman, and Runser & Putman owed the Trust and Mary Ann Jensen the utmost good faith and fairness in all matters pertaining to the conduct of Mr. Runser, Mr. Putman, and Runser & Putman with respect to the property of the Trust and Mary Ann Jensen.

58. Mr. Runser, Mr. Putman, and Runser & Putman accepted the reliance of the Trust and Mary Ann Jensen on the fiduciary relationship.

59. Mr. Runser, Mr. Putman, and Runser & Putman breached their fiduciary duties as alleged herein, and took undue advantage of the fiduciary relationship, and in doing so gained an inappropriate advantage over the Trust and Mary Ann Jensen.

60. As a direct and proximate result the actions of Mr. Runser, Mr. Putman, and Runser & Putman, the Trust and Mary Ann Jensen suffered damages in an amount in excess of \$470,000.

61. In performing the acts alleged herein, Mr. Runser, Mr. Putman, and Runser & Putman also acted fraudulently, maliciously, and oppressively, thereby justifying an award of punitive damages.

**Count Four  
Conversion**

62. Plaintiffs re-allege and incorporate by reference the allegations set forth above.

63. The Trust and Mary Ann Jensen had an ownership interest in the assets of the Trust.

64. For their own use, Mr. Runser, Mr. Putman, and Runser & Putman converted assets of the Trust and Mary Ann Jensen.

65. As a direct and proximate result of the conversion of Mr. Runser, Mr. Putman, and Runser & Putman, the Trust and Mary Ann Jensen suffered damages in an amount in excess of \$470,000.

**Count Four  
Fraudulent Conversion**

66. Plaintiffs re-allege and incorporate by reference the allegations set forth above.

67. The Trust and Mary Ann Jensen had an ownership interest in the assets of the Trust.

68. For their own use, Mr. Runser, Mr. Putman, and Runser & Putman fraudulently converted assets of the Trust and Mary Ann Jensen.

69. As a direct and proximate result of the fraudulent conversion of Mr. Runser, Mr. Putman, and Runser & Putman, the Trust and Mary Ann Jensen suffered damages in an amount in excess of \$470,000

70. The taking of the property of the Trust and Mary Ann Jensen was done willfully and maliciously, thereby justifying an award of punitive damages.

**Count Six  
Unjust Enrichment**

71. Plaintiffs re-allege and incorporate by reference the allegations set forth above.

72. As a result of the conduct described above, Defendants have been unjustly enriched at the expense of Plaintiffs in an amount in excess of \$470,000.

**Count Seven  
Legal Malpractice**

73. Plaintiffs re-allege and incorporate by reference the allegations set forth above.

74. By virtue of the attorney-client relationship that existed between Mr. Runser and Runser & Putman and the Trust and its beneficiary, Mary Ann Jensen, Mr. Runser and Runser & Putman owed duties to the Trust and Mary Ann Jensen.

75. Their duties included, but were not limited to, protecting and preserving funds of the Trust, advancing the objectives of the Trust, and adhering to the standards of care in their representation of the Trust and Mary Ann Jensen.

76. Mr. Runser and Runser & Putman breached their duties to the Trust and failed to conform to the standards required by law.

77. As a direct and proximate result the breaches of duties owed by Mr. Runser, as an attorney, and Runser & Putnam as alleged above, the Trust and Mary Ann Jensen suffered damages in an amount in excess of \$470,000.

**Count Eight  
Breach of Fiduciary Duty**

78. Plaintiffs re-allege and incorporate by reference the allegations set forth above.

79. By virtue of the attorney-client relationship that existed between Mr. Runser and Runser & Putman and the Trust, and by virtue of the Trust having placed confidence in the fidelity and integrity of Mr. Runser and Runser & Putman and in trusting Mr. Runser and Runser & Putman, there existed at all times herein a fiduciary relationship between Mr. Runser and Runser & Putman and the Trust and Mary Ann Jensen.

80. Based on the attorney-client relationship, Mr. Runser and Runser & Putman owed a fiduciary duty to the Trust and Mary Ann Jensen.

81. By the activities alleged above, including improperly taking, accepting, or retaining assets of the Trust, Mr. Runser and Runser & Putman breached their duty to the Trust and Mary Ann Jensen.

82. As a direct and proximate result the breach by Runser & Putnam, the Trust and Mary Ann Jensen suffered damages in an amount in excess of \$470,000.

**Count Nine  
Negligent Supervision of Attorney Business and Trust Accounts**

83. Plaintiffs re-allege and incorporate by reference the allegations set forth above.

84. Mr. Putman, as an attorney, and Runser & Putman, as a law firm, owed the Trust and Mary Ann Jensen a duty to supervise Runser & Putman's business and trust accounts and the activities of Mr. Runser.

85. By improperly accepting funds from the Trust into both Runser & Putman's general business account and trust account, Mr. Putman and Runser & Putman breached their duty to the Trust and Mary Ann Jensen.

86. As a direct and proximate result the breaches by Mr. Putman and Runser & Putnam, the Trust and Mary Ann Jensen suffered damages in an amount in excess of \$470,000.

**Count Ten  
Negligent Supervision**

87. Plaintiffs re-allege and incorporate by reference the allegations set forth above.

88. As an attorney and a law firm, Mr. Putman and Runser & Putman, respectively, owed a duty, among others, to be aware of, monitor, and supervise the activities of Mr. Runser and to be aware of and supervise and properly maintain all accounts and books of Runser & Putman.

89. Mr. Putman and Runser & Putman accepted funds from the Trust to which they were not entitled and otherwise failed to be aware of, monitor, or supervise the activities of Mr. Runser.

90. Mr. Runser's acts or omissions caused damages to the Trust and Mary Ann Jensen, as did the acts or omissions of Mr. Putman and Runser & Putman.

91. As a direct and proximate result of Mr. Putman and Runser & Putman's negligence, the Trust and Mary Ann Jensen suffered damages in an amount in excess of \$470,000.

**Count Eleven  
Constructive Trust**

92. Plaintiffs re-allege and incorporate by reference the allegations set forth above.

93. Defendants should be required to disgorge all monies, profit, and gains which they have obtained or will unjustly obtain in the future at the expense of the Trust and Mary Ann Jensen, and a constructive trust should be imposed thereon on all assets of all Defendants for the benefit of the Trust and Mary Ann Jensen.

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- A. For an award of compensatory damages against all Defendants in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00);
- B. For an award of punitive damages against all Defendants in an amount sufficient to punish Defendants for their wrongful conduct;
- C. For an order requiring Defendants to render an accounting for and return to the Trust all funds and assets acquired by Defendants by any act or practice found by this Court to be inappropriate, unlawful, or fraudulent;
- D. For any statutory damages authorized by Ohio law;
- E. For an order imposing a constructive trust upon all assets of the Defendants;
- F. For injunctive relief as the Court deems appropriate, including a temporary restraining order and a preliminary injunction restraining Defendants from:
  - a. taking any action on behalf of Plaintiffs as a fiduciary, trustee, or attorney;
  - b. directly or indirectly disposing of, transferring, liquidating, encumbering, pledging, or assigning any of their assets or property, save for the payment of normal living expenses, unless allowed by order of the Court pending a final determination of the merits of this action; and
  - c. using any of their assets to pay their attorney fees in this action;

G. For an order requiring Defendants to disclose all assets owned by them to the Court and Plaintiffs within five days of the order;

H. For an order of prejudgment attachment of Defendants' assets pursuant to Rule 64 of the Federal Rules of Civil Procedure and Ohio Revised Code §2715.03;

I. For pre-judgment and post-judgment interest and for costs, expenses, and attorney fees incurred in this action; and

J. For such further relief as may be deemed appropriate by this Court.

Respectfully Submitted,

/s/ John A. Borell, Jr.

John A. Borell, Jr. (0068716)

Meghan Anderson Roth (0082165)

Marshall & Melhorn, LLC

Four SeaGate, 8<sup>th</sup> Floor

Toledo, Ohio 43604

Phone: (419) 249-7100

FAX: (419) 249-7151

[borell@marshall-melhorn.com](mailto:borell@marshall-melhorn.com)

[roth@marshall-melhorn.com](mailto:roth@marshall-melhorn.com)

Counsel for Plaintiffs



**JURY DEMAND**

Plaintiffs hereby demand a trial by jury of all claims, defenses, issues, and matters in dispute in this action that may be tried to a jury.

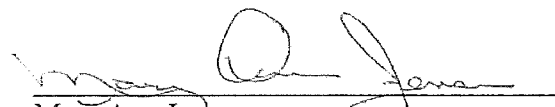
/s/ John A. Borell, Jr.  
John A. Borell, Jr. (0068716)  
Meghan Anderson Roth (0082165)  
Marshall & Melhorn, LLC  
Four SeaGate, 8<sup>th</sup> Floor  
Toledo, Ohio 43604  
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[borell@marshall-melhorn.com](mailto:borell@marshall-melhorn.com)  
[roth@marshall-melhorn.com](mailto:roth@marshall-melhorn.com)  
Counsel for Plaintiffs

VERIFICATION

State of Michigan )  
County of Ingham)

ss:

Mary Ann Jensen, being duly sworn, deposes and says that she is the Trustee of the Barbara Mary Shackley Trust, dated March 31st, 1992, that she has read the foregoing Verified Complaint, and that the statements contained therein are true and correct, to the best of her knowledge, information and belief. So far as upon information and belief, she further states that she believes the information to be true.

  
\_\_\_\_\_  
Mary Ann Jensen

Sworn to and signed before me this 28<sup>th</sup> day of July, 2014.

  
\_\_\_\_\_  
Notary Public

BENJAMIN C. DYER  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF INGHAM  
MY COMMISSION EXPIRES May 26, 2019  
ACTING IN COUNTY OF Ingham

MARSHALL & MELHORN, LLC

TRUST AGREEMENT

This AGREEMENT executed this 31st day of March, 1992, in two counterparts, each of which shall be regarded as an original though constituting but one Agreement, by and between BARBARA MARY SHACKLEY, of the City of Van Wert, Ohio, the GRANTOR, and GAYLORD E. LESLIE, BARBARA MARY SHACKLEY, and C. ALLAN RUNSER of the City of Van Wert, Ohio, the TRUSTEE:

WITNESSETH: THAT

WHEREAS, the GRANTOR is presently the owner of certain property which is more particularly described in Schedule A attached hereto and made a part hereof; and,

WHEREAS, the GRANTOR desires to place the said property in trust with the TRUSTEE for the uses and purposes hereinafter set forth; and,

WHEREAS, the TRUSTEE is ready, willing and able to accept the said property and to hold and manage the same in trust nevertheless, and ultimately distribute the proceeds thereof, all as hereinafter provided; and,

WHEREAS, the Trust herein created shall be known as the "BARBARA MARY SHACKLEY TRUST".

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, the GRANTOR and the TRUSTEE hereby covenant and agree as follows:

ARTICLE I

TRUSTEE'S RECEIPT OF PROPERTY

1.1 The TRUSTEE hereby acknowledges receipt from the GRANTOR of the property listed on Schedule A hereof, to be held, managed, and ultimately distributed by the TRUSTEE in trust, together with any other property of any kind which may be transferred to the TRUSTEE by the GRANTOR, GRANTOR'S Executor or Administrator, or any other person, for the uses and purposes hereinafter set forth.

1.2 The TRUSTEE assumes no responsibility in respect to the payment of any indebtedness, nor sums that may be due or may become due or payable on any of the property so transferred to it, nor does it assume the responsibility of doing anything else that may be required in order to keep said property free, clear, and unencumbered. It shall, after receiving notice of the death of GRANTOR, prepare, serve, and file notices and proofs of death, and take such action as in its discretion may be necessary to collect the amounts due it from time to time upon such property. It shall have full authority to receive any and all amounts as may be payable to it, and its receipt therefor shall be a full and complete release to the payer, who shall be under no obligation to see to the proper application of the funds.

1.3 In case of any dispute concerning the amount which the TRUSTEE shall be entitled to receive under the terms of any policy of insurance held by it hereunder, the TRUSTEE is hereby authorized, in its absolute and uncontrolled discretion, to compromise and effect a settlement with the insurer, and any settlement so effected by the TRUSTEE in good faith shall be binding and conclusive upon all persons interested hereunder.

ARTICLE II

RIGHTS RESERVED BY THE GRANTOR

The GRANTOR reserves the following rights:

2.1 At any time or times during GRANTOR'S life to revoke or modify this Agreement, in whole or in part, in any respect whatsoever. Any such revocation or modification, however, shall be by written instrument, signed by the GRANTOR, and delivered to the TRUSTEE. Upon any such modification or revocation, the TRUSTEE shall thereupon transfer to the GRANTOR or to any person or persons designated by GRANTOR, such part or all of the Trust Estate then held by it hereunder as may be the subject of such modification or revocation.

2.2 At any time or times during GRANTOR'S life, by written instrument, or upon or after GRANTOR'S death, by testamentary disposition, to transfer to the TRUSTEE additional property of any nature whatsoever, to be held, managed, administered, and ultimately distributed according to the terms and provisions of this Agreement. Any other person shall also have this same right, provided the TRUSTEE consents to accept the property, which consent shall not be unreasonably withheld.

2.3 At any time or times during GRANTOR'S life, to direct and advise the TRUSTEE in its management and administration of the Trust Estate including, without in any manner limiting the generality of the foregoing, the right to control sales, purchases, leases, borrowings, pledges, loans, investments, reinvestments, or any other transaction affecting any property in the Trust Estate.

2.4 At any time or times during GRANTOR'S life, to have the TRUSTEE pay over or deliver to GRANTOR or to any person, partnership, corporation, association, or other organization designated by GRANTOR, any part or all of the Trust Estate or the income therefrom at such times and on such terms and conditions as the GRANTOR may specify. Any such payment or delivery, however, shall be made only after the the GRANTOR shall have delivered to the TRUSTEE a written instrument, signed by GRANTOR, directing such payment or delivery and all the terms and conditions thereof.

2.5 To change the beneficiaries of any insurance policies on the GRANTOR'S life, and to take any other action with respect to such policies which the GRANTOR may desire, whether such policies have already been issued or are hereafter issued.

ARTICLE III

DISPOSITION OF THE TRUST ESTATE

3.1 During the life of the GRANTOR, the TRUSTEE shall pay over to GRANTOR, or to GRANTOR'S account or to GRANTOR'S order, such amounts of the net income there is from the Trust Estate as the TRUSTEE shall, in its sole discretion, deem advisable, in periodic installments, at least quarterly. The TRUSTEE may also, in its sole discretion, pay or deliver to the GRANTOR for GRANTOR'S use or benefit such sums or property from the Trust Estate as it may deem advisable for GRANTOR'S comfort, care, support, or any other purpose.

3.2 If, upon GRANTOR'S death, there should not be sufficient cash or other assets in GRANTOR'S Estate to pay all estate, gift, income, personal property taxes or assessments payable by GRANTOR'S Executor or Administrator and all inheritance or succession taxes payable by GRANTOR'S Executor or Administrator or by any beneficiary of GRANTOR'S Estate or hereunder, and/or to discharge all debts of GRANTOR'S Estate allowed by such Executor or Administrator and/or the expenses of administration of GRANTOR'S Estate, then the TRUSTEE shall, on written demand of GRANTOR'S Executor or Administrator, pay out of the Trust to GRANTOR'S Executor or Administrator such additional amounts as are necessary therefor, or the TRUSTEE may discharge any such obligations direct, as it may in its discretion determine. All sums paid by the TRUSTEE under the provisions of this Paragraph shall be free from this Trust, and in making any such payments, the TRUSTEE may rely and act upon evidence and information which it believes to be correct, and any action taken by TRUSTEE in reliance thereon shall be binding and conclusive upon all beneficiaries hereunder. Despite the above provisions, if any United States Treasury Bonds, redeemable at par for payment of Federal Estate Taxes, are included in the GRANTOR'S Gross Estate for Federal Estate Tax purposes, such taxes shall be paid first out of the proceeds of redemption of any of such Bonds in the GRANTOR'S Probate Estate to the extent possible, and next out of the proceeds of redemption of any such Bonds owned by the TRUSTEE at the GRANTOR'S death to the extent possible before other assets, either owned by the GRANTOR'S Probate Estate or assets held by the TRUSTEE, are applied toward such purpose. The TRUSTEE may rely conclusively on a certification by the Executor or Administrator of the GRANTOR'S Probate Estate as to the amount of Federal Estate Taxes payable pursuant to the GRANTOR'S Last Will and Testament out of the proceeds of redemption of such Bonds owned by the GRANTOR at death. All payments of such death taxes pursuant to the above provisions of this Paragraph shall be charged against the principal of the Trust Property without apportionment or proration, irrespective of any tax apportionment or similar law of any jurisdiction otherwise applicable, and the TRUSTEE shall not seek recovery of any such payments.

3.3 Upon the death of the GRANTOR, the TRUSTEE shall make proper proofs of death and collect the net proceeds of policies of insurance on the life of the GRANTOR which are then payable to the TRUSTEE and administer such insurance proceeds and all other property which may be in or added to this Trust by GRANTOR'S Will or otherwise, in accordance with the provisions hereinafter set forth. If any policies insuring the life of the GRANTOR have been pledged as collateral for a loan to the GRANTOR, the TRUSTEE shall receive only the net proceeds of said policies after said loan or loans have been deducted by the lender, and the TRUSTEE shall not seek reimbursement from the

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Executor or Administrator of the GRANTOR'S Estate for such loans which have been repaid out of said insurance proceeds.

3.4 At the death of the GRANTOR, the TRUSTEE shall pay and distributed the following special bequests from the principal of the Trust:

- 3.4(a) The sum of Five Thousand and No/100 (\$5,000.00) Dollars to the **FIRST PRESBYTERIAN CHURCH**, 110 West Crawford Street, Van Wert, Ohio. It is requested that said funds be deposited in the Memorial Endowment Fund as a memorial to Mr. and Mrs. W. Earl Shackley;
- 3.4(b) The sum of Five Thousand and No/100 (\$5,000.00) Dollars to be set apart to be held and distributed as follows:
- (1) So much of the income therefrom shall be expended by the TRUSTEE, as said TRUSTEE shall find and deem necessary, to maintain the cemetery plots of the GRANTOR, GRANTOR'S Husband, Mr. and Mrs. John D. Graven, Mr. and Mrs. John P. Graven, and Mr. and Mrs. Oscar S. Longworth located at Woodland Cemetery, Van Wert, Ohio.
  - (2) Any remaining income not paid out and expended for the purposes of maintaining said cemetery plots as aforesaid shall be distributed in accordance with the provisions of Paragraph 3.6 herein for the benefit of GRANTOR'S Daughter and Granddaughter.

3.5 At the death of the GRANTOR, the TRUSTEE shall divide the then remaining principal and all accumulated income therefrom (after the provision for the payment of taxes and expenses of administration and the special bequests as hereinbefore set forth) into Two (2) equal shares, each to be held, managed, and distributed as follows:

- 3.5(a) One of such shares to held, managed, and distributed as set forth in Paragraphs 3.6 and 3.7 hereof for the benefit of GRANTOR'S Daughter, MARY ANN JENSEN, and Granddaughter, ERIKA STEPHANIE JENSEN and,
- 3.5(b) The remaining share to be distributed as follows:
- (1) To **THE PEOPLES BANK AND TRUST COMPANY OF VAN WERT, OHIO**, and its successors, as Trustee of the Van Wert County Hospital Memorial Endowment Fund, a Charitable Trust established pursuant to a Declaration of Trust dated June 24, 1974, and as amended, a sum which, when considering Bequests from GRANTOR'S Last Will and Testament, will bring the funds of the Mr. and Mrs. W. Earl Shackley Memorial, to the total of One Hundred Thousand and No/100 (\$100,000.00) Dollars.

- (2) The remainder of said share to the VAN WERT COUNTY FOUNDATION OF VAN WERT, OHIO, and its successors, a Charitable Foundation, as a permanent endowment, the income only therefrom to be used for general scholarship in education beyond high school, in accordance with the principals and practices of the said FOUNDATION. It is requested that said funds be designated on the records of said FOUNDATION as a Memorial to Mr. and Mrs. W. Earl Shackley.
- (3) It is GRANTOR'S intention to augment and add to the assets in said Endowment, and to that end, the TRUSTEE shall deliver the said portions of this share of the Trust to the Trustees of said Endowment and the TRUSTEE'S receipt therefor shall fully discharge the TRUSTEE from any further accountability therefore.

3.6 In the event GRANTOR'S Daughter, MARY ANN JENSEN, is living, and for so long as she so lives, the net income and principal of the share so set apart in trust for said Daughter, shall be held and distributed as follows:

3.6(a) Until the death of GRANTOR'S said Daughter, all of the net income therefrom shall be paid to or applied to the use and benefit of GRANTOR'S said Daughter, at least annually. In addition thereto, the TRUSTEE may, from time to time, in its sole discretion, pay to said Daughter, or apply to her use and benefit, such part of the principal as it deems necessary, advisable or expedient for the care, comfort, support or best interest of said Daughter.

3.7 Upon the death of GRANTOR'S said Daughter, or upon the death of GRANTOR should said Daughter predecease GRANTOR, and in the further event that GRANTOR'S said Granddaughter, ERIKA STEPHANIE JENSEN, is then living, and for so long as she lives, the net income and principal of the share so set apart in trust for said Daughter and Granddaughter, shall be held and distributed as follows:

3.7(a) Until such Granddaughter attains the age of Twenty-one (21) years, the TRUSTEE may, from time to time, pay to or for the use and benefit of such Granddaughter such part of the income and/or principal as it may, in its sole discretion, deem necessary, advisable or expedient for the care, comfort, support, education or best interests of such Granddaughter. Undistributed income shall be accumulated and added to principal.

3.7(b) After such Granddaughter attains the age of Twenty-one (21) years, and until the death of such Granddaughter, the TRUSTEE shall pay all of the income to or for the use and benefit of such Granddaughter at least annually. In addition thereto, the TRUSTEE may, from time to time, in its sole discretion, pay to such Granddaughter, or apply to the use and benefit of such Granddaughter, such part of the principal as it deems necessary, advisable or expedient for the care, comfort, support or best interest of such Granddaughter.



3.7(c) Upon the death of such Granddaughter, the share so held in trust for such Granddaughter shall immediately be paid over to the VAN WERT COUNTY FOUNDATION OF VAN WERT, OHIO, and its successors, a Charitable Foundation, to be added to the permanent endowment created herein by GRANTOR and known as a Memorial to Mr. and Mrs. W. Earl Shackley.

3.8 With respect to the administration of any such share, or part thereof, during the period of retention, the TRUSTEE shall have full power and authority to exercise any and all of the rights, powers and discretion of management and administration or trust assets herein conferred upon it and to pay to such beneficiary, or apply to the use and benefit of such beneficiary, such part of the income and/or principal of such beneficiary's share, or part thereof, as the TRUSTEE may deem necessary, advisable or expedient, in its sole discretion, for the care, comfort, support, well-being and education of such beneficiary. Any income not so paid or applied shall be accumulated and added to the principal of the share, or part thereof, from which it is derived.

3.9 When any payments of income or principal of the Trusts become payable or may be paid to any person who is at such time a minor, or who, in the sole judgment of the TRUSTEE, is mentally or physically incapacitated for any reason, then such payments may be made by the TRUSTEE to such person or for such person's comfort, support, maintenance, education or well-being, or to the guardian or custodian of such minor or incompetent, if there be such guardian or custodian, or to a parent of such minor or incompetent, in the sole and continuing discretion of the TRUSTEE, and the receipt of any person to whom payment is so made shall be a sufficient receipt and acquittance to the TRUSTEE.

3.10 Any Trust Funds set aside for the payment of taxes, debts, expenses and cash bequests which are remaining after the payment of said taxes, debts, expenses and cash bequests shall be divided and distributed as set forth in this Article III.

3.11 If at any time or times after the death of GRANTOR the TRUSTEE, in its sole discretion, deems the net income payable under the provisions of the Trust to be insufficient for the proper support, maintenance, and education of any beneficiary of the Trust for whom the TRUSTEE is then holding a share of such Trust, it may pay to such beneficiary so much of the principal of his or her respective share as the TRUSTEE deems necessary and proper for any such purpose. The TRUSTEE is also authorized at any time and from time to time after GRANTOR'S death, to turn over to any beneficiary of the Trust such part of the principal of the share of such beneficiary as the TRUSTEE may deem necessary or advisable to enable such beneficiary to marry, purchase a home, enter into a trade or business, or for any similar purpose in and to the extent that the TRUSTEE may, in its sole discretion, deem such distribution to be in the best interest of such beneficiary. The determination of the TRUSTEE as to the amount or amounts necessary therefor shall be final, binding, and conclusive upon all persons whomsoever.

*final + binding*

## ARTICLE IV

### DEFINITIONS

4.1 The term "Trust Estate", as used in this Agreement, shall mean the entire amount of property held by the TRUSTEE at any particular time under the terms and conditions of this Agreement, regardless of the number of separate trusts into which it may have been divided.

4.2 The word "Beneficiary", as used in this Agreement, shall include, as the context may require, each person entitled or eligible to receive payments of principal, accumulated income, or current income of the Trust Estate or of any of the trusts which may be a part of it.

4.3 The word "Descendant", as used in this Agreement, shall mean a lawful lineal descendant and shall also include any person who has been lawfully adopted by any descendant of the GRANTOR and the lawful lineal descendants or lawfully adopted children of any such lawfully adopted person.

4.4 The words "Child", "Children", and "Issue", as used in this Agreement, shall be construed to include a child or children lawfully adopted by any of the GRANTOR'S descendants.

4.5 Whenever the context hereof so requires, the masculine gender of any noun or pronoun shall be construed to mean the feminine or neuter; the feminine, the masculine or neuter; and the neuter, the feminine or masculine; and the singular number of any noun or pronoun shall be construed to mean the plural, and the plural the singular.

4.6 The term "TRUSTEE", as used in this Agreement, shall mean any and all Co-Trustees as may be originally appointed, succeeding or additionally appointed under the terms of this Trust.

ARTICLE V

RIGHTS AND POWERS OF THE TRUSTEE

5.1 Subject to and consistent with the other provisions of this Trust Agreement, the TRUSTEE and its successors shall have the powers conferred by the Common Law and Statutes of the State of Ohio affecting each of the Trusts and Trust Estate subject thereto, and in any event the following, which shall be construed broadly and which may be exercised by the TRUSTEE in its discretion:

1. To retain for as long as they may deem advisable any investments or other real or personal property of the Trust or which may become an asset of the Trust, whether or not the same may be or become nonincome producing; and further, to retain such property without regard to the proportion such property or similar property bears to the entire Trust; to hold the corpus of two or more Trusts created hereunder in one or more consolidated funds in which the separate shares shall have undivided interests.

2. To sell, exchange, grant options for the purchase of all or any portion, including undivided interests, of any property, whether real, personal or mixed, which may be an asset of the Trust, at public or private sale, for other property, for cash or on such terms as they shall deem advisable; and any person named Trustee may be a purchaser at any such public or private sale or exchange, regardless of any provision or law to the contrary, and without complying with any formalities or procedures required by Statute relating to purchase by fiduciaries; to borrow money or other property and to mortgage, pledge or encumber any real estate or personal property as security therefore, and in no event shall any purchaser or mortgagee be under any obligation to see to the application of the purchase or mortgage money; to lease any real estate on such terms as they shall deem advisable and for any period or periods beyond the termination or probable termination of any Trust herein created; to foreclose, by entry or otherwise, and to extend, assign, or give partial releases from and to discharge mortgages on real estate; to collect income, dividends, interest and rent; to carry out any contract for the sale or purchase of any real estate or personal property, to grant or take options for the sale, purchase or exchange of any property.

3. To exercise all voting, conversion, subscription and other rights of whatsoever nature appertaining to securities or other property owned by the Trust; to cause any securities held by them to be registered in the name of a nominee, in "street name", or their own names without disclosing the fiduciary capacity, without liability in so doing.

4. To vote in person, or by proxy, upon all stocks or other securities held in Trust; to participate in and consent to any plan of reorganization, including consolidation, merger or combination; to deposit any property under any such plan of reorganization with any protective reorganization committee or similar committee, and to delegate to such committee discretionary powers with relation thereto, and to pay a proportionate part of the expense of such committee and any assessments accruing under any such plan and to accept and retain new securities received in pursuance of such plan.

5. To hold, invest, reinvest, and retain any funds or property held hereunder, including accumulations of income for beneficiaries, in all types of real, personal and mixed properties, including, but not limited to, leaseholds, mortgages, certificates of deposit, notes, savings accounts, trust shares, debentures, stocks of any kind, bonds, and other securities or

obligations of any person or of any private corporation, trust or fund or of any government, including foreign governments, state, county or municipal obligations; and to make such investment without regard to any restrictions of law on investments by Trustees; and to change the form of any or all investments. The power herein contained shall include the power to hold, invest, and reinvest in one or more common trust funds, and the Trustees shall have the power to purchase stock and other securities of itself.

6. To apportion stock and extraordinary dividends or other receipts between principal and income, and to determine any question which may arise as to what constitutes principal or income payments, receipts, distributions or expenditures, and the decision of the Trustees shall be conclusive and binding upon all persons interested hereunder.

7. To make any payments, distributions or division of any Trust created hereunder, in cash or in kind, or partly in cash and partly in kind, and for this purpose to use and allot any property then constituting assets of the Trust, such uses and allocations to be conclusive and binding against all persons interested hereunder.

8. To make payments or any distributions to any beneficiary under disability, including minority, by making such payments or distributions to the parent or guardian of such minor or disabled person, or by applying such payments or distributions for his or her benefit, and the receipt of the parent or guardian or evidence of the expenditure of such payments or distributions for his or her benefit shall fully discharge them with respect thereto.

9. To execute, acknowledge and deliver and otherwise complete all proper and necessary conveyances and instruments carrying out the authority herein given or otherwise conferred without regard for any Laws restricting the powers of fiduciaries and to do all acts herein authorized without obtaining any leave of order of court; to retain and secure the services of accountants and attorneys or other persons and to pay for such services.

10. Generally to do all acts, take such proceedings and to exercise for the benefit of any Trust created hereunder, all rights, powers and privileges which might or could be exercised by one owning such property absolutely and in his own right.

11. To arrange for the sale and/or redemption of Treasury Bonds issued by the United States Treasury and to apply such Bonds, principal and interest as may be eligible towards the payment of Federal Estate Taxes at the greatest available redemption price. Authorizing and granting unto the said TRUSTEE the same powers in this regard as would be available to the GRANTOR'S Executor or Administrator in effecting this transaction.

*Spendthrift*  
5.2 The TRUSTEE shall not be bound by any assignment of the income or corpus of the foregoing Trusts or any part thereof by any beneficiary hereunder, nor shall the share of any beneficiary be subject to encumbrance, commutation, anticipation, or court process and the TRUSTEE shall have full power, at any time when in the exercise of its sound discretion, and upon a showing satisfactory to the TRUSTEE to the effect that any such assignment has been made, or that there is danger of any levy or attachment on the part of the creditors of any beneficiary against the income or corpus of the foregoing trusts, or that any beneficiary is or is about to become insolvent or bankrupt, to withhold any and all payments of income and/or principal provided for such beneficiary, and either accumulate the same, in whole or in part, and/or expend the whole or any part thereof for the care and comfort of any such beneficiary as in its sole discretion it may deem best for the interest of said beneficiary.

ARTICLE VI

REGARDING THE TRUSTEE

6.1 There shall always be Three (3) Co-Trustees serving as the TRUSTEE in the administration of this Trust. Provided, however, should such become unadvisable, inefficient or burdensome, the remaining Co-Trustee or Co-Trustees shall have the right and power to reduce the number of such Trustees.

6.2 Any of such Co-Trustees shall have the right, at any time, to resign as TRUSTEE on mailing written notice of its intention to resign to the remaining Trustees, or if there be no remaining Trustees, to the adult beneficiaries, at least Fifteen (15) days before resignation; to the last known addresses thereof. In case of such resignation, the remaining Trustees, or the adult beneficiaries, as the case may be, shall have the right to appoint a Successor Trustee or Trustees, by writing delivered to the resigning Trustee. If no Successor Trustee is so designated within Fifteen (15) days after written notice of intention to resign, as aforesaid, has been sent, or if there be no adult beneficiary entitled to notice as aforesaid, then, without notice or other formality, the resigning Trustee may appoint a Successor Trustee who may be willing to accept this Trust. The remaining Trustees, adult beneficiaries or the resigning Trustee shall first consider MAXINE AMERMAN and then MICHAEL C. CROSS, to be the successor Trustee. The Successor Trustee so appointed by the resigning Trustee, if other than the Two (2) herein named individuals, shall always be a financial institution, with Trust powers, having a capital and surplus of at least Seven Million and No/100 (\$7,000,000.00) Dollars according to the last Statement published by it prior to its appointment.

must have Corp Trustee

who are they?

6.3 In the event of the death or incapacity of any Trustee, the remaining Trustees shall have the right to appoint a Successor Trustee, or if there be no remaining Trustees, the adult beneficiaries, by a majority acting, shall have such right. The individuals named in Paragraph 6.3 herein shall first be considered as such successor Trustee.

6.4 In the event the TRUSTEE appoints a financial institution to service as TRUSTEE hereunder, such shall always be a financial institution, with Trust powers, having a capital and surplus of at least Seven Million and No/100 (\$7,000,000.00) Dollars according to the last Statement published by it prior to its appointment.

6.5 GRANTOR shall be empowered, in her sole discretion, to remove any Trustee or any Successor Trustee hereunder and to appoint a Successor Trustee in its place or to appoint a Successor Trustee in the place of any Trustee removed by death, incapacity or otherwise.

6.6 Upon appointment of a Successor Trustee and the assignment, transfer, and conveyance of the Trust Estate to such Successor Trustee, and obtaining receipt therefor, the resigning or removed Trustee shall be released and discharged from any and all claims and demands, duties, and obligations arising out of this Trust Agreement and its management of the Trust Estate hereunder, excepting only claims based upon the Trustee's dereliction of duty.

6.7 No Successor Trustee shall be chargeable with or responsible for any of the acts or omissions of any Predecessor Trustee; and each Successor Trustee shall be fully protected in assuming the accounts and acts of each Predecessor Trustee to be correct; and the balance in each Predecessor's principal and income accounts to be correct.

6.8 The GRANTOR directs that no Bond shall at any time be required of any

6.8 The GRANTOR directs that no Bond shall at any time be required of any TRUSTEE, Original or Successor, serving under the terms hereof, and no TRUSTEE shall be under any duty to require a Judicial Accounting upon resignation, change, or at any other time.

6.9 The TRUSTEE shall receive for its services, under the terms hereof, such reasonable compensation during the GRANTOR'S lifetime as may be agreed upon by and between the GRANTOR and the TRUSTEE, and after the GRANTOR'S death, such reasonable compensation as the TRUSTEE shall deem proper, but in no event to exceed the amounts received by Trustees for its services as Trustee under Living Trusts then administered by it.

*www*

6.10 The TRUSTEE may, at any time and in its sole discretion, appoint an Additional Trustee to serve in accordance with this Trust.

*www*

ARTICLE VII

EXPRESSION OF GRANTOR

7.1 Because GRANTOR has long lived in the City of Van Wert, Ohio and has developed an affection for the area, its citizens and her special friends, she so desires to let the following be known by the TRUSTEE, her family and others that may be concerned, with the hope that her wishes will be honored:

1. She desires to remaining living in the City of Van Wert or its immediate vicinity;
2. Should she become ill, incapacitated, blind or otherwise unable to care for her personal needs, she first desires to be cared for in her own personal home, regardless of the personal expense of such care; and,
3. Should it become absolutely necessary for her to be cared for in a custodial or skilled nursing home, she desires to reside in the VanCrest Nursing Home in Van Wert County, Ohio.

IN WITNESS WHEREOF, BARBARA MARY SHACKLEY, the GRANTOR, has hereunto set her hand, and GAYLORD E. LESLIE, BARBARA MARY SHACKLEY, and C. ALLAN RUNSER, as TRUSTEE and not otherwise, have caused their names to be hereunto subscribed, thereunto duly authorized, on the date first above written.

WITNESSES:

*[Signature]*

*Barbara Mary Shackley*  
BARBARA MARY SHACKLEY

GRANTOR

*[Signature]*

*Barbara Mary Shackley*  
BARBARA MARY SHACKLEY

*Gaylord E. Leslie*  
GAYLORD E. LESLIE

*[Signature]*  
C. ALLAN RUNSER

TRUSTEE

STATE OF OHIO, COUNTY OF VAN WERT, ss:

On this 31st day of March, 1992, before me, a Notary Public in and for said County, personally came BARBARA MARY SHACKLEY, GAYLORD E. LESLIE, and C. ALLAN RUNSER, to me known and known to me to be the individuals described in, and who executed the foregoing Instrument, who acknowledged to me that they executed the same for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Van Wert, Ohio, Van Wert County, on the date last above written.

*[Signature]*  
NOTARY PUBLIC

KATHIE B. JOHNSON  
Notary Public - State of Ohio  
My Commission Expires August 19, 1994



COPY

LAW OFFICES OF  
MARSHALL & MELHORN, LLC

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EDWIN J. MARSHALL (1873-1946)  
DONALD F. MELHORN (1889-1974)

COUNSEL

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JILL K. BIGLER  
MARK M. HAMILTON\*\*\*  
STEPHEN D. NITSCHKE\*  
JOSHUA D. DIDION  
KEEFE A. SNYDER  
JEANETTE M. KUHN\*\*\*  
JONATHAN M. HANNA\*

\*\*\*ADMITTED BEFORE THE PATENT AND TRADEMARK OFFICE  
\*\*ALSO ADMITTED IN MICHIGAN AND FLORIDA  
\*ALSO ADMITTED IN MICHIGAN

April 29, 2014

CERTIFIED MAIL 7008 0150 0001 3557 9926

C. Allan Runser  
111 East Main Street, Suite 105  
Van Wert, Ohio 45891

Re: Barbara Mary Shackley Trust

Dear Mr. Runser:

Our firm has been retained by Mary Ann Jensen and Erika Jensen, as beneficiaries of the Barbara Mary Shackley Trust, dated 3/31/92 (the "Trust"), to explore and safeguard their interests as beneficiaries. It is my understanding that you are the sole current Trustee of the Trust, and as the Trustee, my clients and I request your immediate attention to the following items.

I understand that upon several occasions you failed to provide Mary Ann and Erika with certain requested trust information. Under ORC § 5808.13(A), "a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust." Moreover, every trustee has a fiduciary duty under ORC § 5808.13(C) to "send to the current beneficiaries, and to other beneficiaries who require it, *at least annually*, and at the termination of the trust, a report of the trust property, liabilities, receipts, and disbursements, including the source and amount of the trustee's compensation, a listing of the trust assets, and if feasible, the trust assets' respective market values." To Mary Ann and Erika's knowledge, neither has ever received a trust report nor any of the information required under ORC § 5808.13(C). It is also my understanding that you failed to provide the beneficiaries with the needed IRS Form K-1s for the Trust income in a timely manner, and that they have not received copies of the prior and current year Trust 1041 tax returns despite multiple requests.

For the aforementioned reasons, we request you immediately send the following for each year of the Trust's existence:

1. List of Trust assets, with their respective market values;
2. List of Trust liabilities;

3. Itemized Trust receipts and disbursements, including the source and amount of, and any changes in, the trustee's compensation; and
4. Copies of Trust 1041 income tax returns

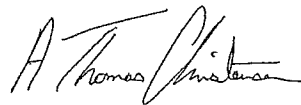
Finally, Mary Ann and Erika have requested that you exercise your authority to appoint both of them as Co-Trustees. Since they are the current and initial contingent beneficiaries of the Trust, it appears more than reasonable to appoint them as Co-Trustees. Such appointment also seems in line with the settlor's intent, as under Section 6.1 of the Trust, "[t]here shall always be Three (3) Co-Trustees serving as the Trustee in the administration of this Trust." Under Section 6.3 of the Trust, upon the death or incapacity of any Trustee, the remaining Trustees have the right to appoint successor Trustees. Accordingly, because you are the only remaining Trustee, the beneficiaries request you exercise such power and appoint them as successor Co-Trustees.

Mary Ann and Erika hope to avoid the need to take additional legal action. Accordingly, please send the requested items to my attention at Marshall & Melhorn, LLC, Four Seagate, 8<sup>th</sup> Floor, Toledo, Ohio 43604, and if you have any questions, feel free to call me directly at (419) 249-7141.

Very truly yours,

MARSHALL & MELHORN, LLC

By:



A. Thomas Christensen

ATC:mm

cc: Josh Didion, Esq.  
Mary Ann Jensen  
Erika Jensen

LAW OFFICES OF  
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May 9, 2014

A. Thomas Christensen, Esq.  
MARSHALL & MELHORN, LLC  
Four Seagate, Eight Floor  
Toledo, Ohio 43604

Re: Barbara Mary Shackley Trust

Dear Mr. Christensen:

I am in receipt of your letter of April 29, regarding the Shackley Trust. I am aware that I have not provided the required accountings of this Trust to Mary Ann and Erika. I have not done a good job in handling the Trust activity during the last several years.

Your clients are correct when they say that I have not responded to all their requests. I have procrastinated because of the anticipated time involved in creating reports. I got behind in my work as a result of some personal matters and have just not put the time toward cleaning up this matter. This week, we hired a new attorney to share the load. I have a few other matters to complete and then intend to devote much of my time to this Trust.

My intention is to do past annual accountings to the present date and to correct any discrepancies to Mary Ann's satisfaction. I will appoint Mary Ann and Erika as co-trustees and I will resign. I see no reason for the Trust to continue, but I will leave that decision to them. There is certainly no reason for me to continue to be involved.

I will provide past annual accounts to Mary Ann as they are completed, and cover you with copies.

I am truly sorry for, and embarrassed by, my past performance. Mary Ann has been a friend since childhood and I regret breaching her trust.

I assume you would like something from me to assure you that I am proceeding as planned on a timely basis. Please share your thoughts on that matter.

Very truly yours,

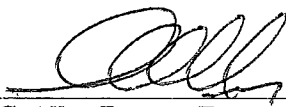
C. Allan Runser  
Attorney at Law

CAR;jnl

APPOINTMENT OF ADDITIONAL TRUSTEE

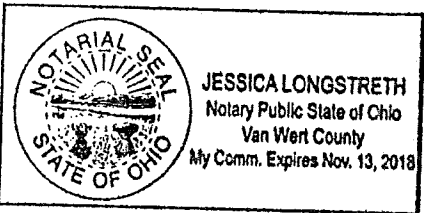
I, **C. Allen Runser**, Trustee of the **Barbara Mary Shackley Trust Agreement**, dated March 31<sup>st</sup>, 1992 (the "Trust"), hereby appoint **Mary Ann Jensen** as an Additional Trustee of the Trust pursuant to Section 6.10 of the Trust.

I have signed this Appointment of Additional Trustee and it shall be effective on the date set forth below.

  
\_\_\_\_\_  
C. Allen Runser, Trustee  
Date: July 17, 2014

STATE OF OHIO                    )  
  )        SS.  
COUNTY OF VAN WERT        )

The foregoing instrument was acknowledged before me on July 17, 2014, by **C. Allen Runser**, Trustee of the **Barbara Mary Shackley Trust Agreement**, dated March 31<sup>st</sup>, 1992.

(SEAL) 

  
\_\_\_\_\_  
Notary Public  
My Commission Expires Nov. 13, 2018

THIS INSTRUMENT PREPARED BY:  
A. Thomas Christensen  
Marshall & Melhorn, LLC  
Four Seagate, 8<sup>th</sup> Floor  
Toledo, OH 43604  
419.249.1700

PLAINTIFF'S  
EXHIBIT  
**5**

**TRUSTEE RESIGNATION**

I, C. Allen Runser, Trustee of the Barbara Mary Shackley Trust Agreement, dated March 31<sup>st</sup>, 1992 (the "Trust"), intend to resign as Trustee of the Trust pursuant to Section 6.2 of the Trust, and hereby irrevocably offer my resignation to the remaining Trustee of the Trust, Mary Ann Jensen.

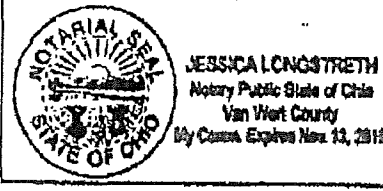

I have signed this Trustee Resignation on the date set forth below and it shall be effective upon acceptance by Mary Ann Jensen, as the sole remaining Trustee of the Trust.

  
\_\_\_\_\_  
C. Allen Runser, Trustee

Date: July 17, 2014

STATE OF OHIO                    )  
  )        SS.  
COUNTY OF VAN WERT        )


The foregoing instrument was acknowledged before me on July 17, 2014, by C. Allen Runser, Trustee of the Barbara Mary Shackley Trust Agreement, dated March 31<sup>st</sup>, 1992.

(SEAL)    
Notary Public  
My Commission Expires Nov. 13, 2018

**ACCEPTANCE OF TRUSTEE RESIGNATION**

I, Mary Ann Jensen, Trustee of the Barbara Mary Shackley Trust Agreement, dated March 31<sup>st</sup>, 1992 (the "Trust"), hereby accept the resignation of C. Allen Runser as Trustee of the Trust.

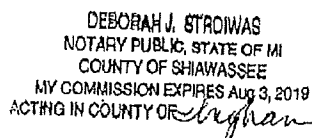
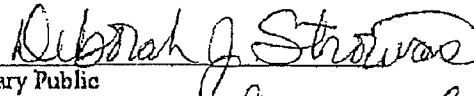
I have signed this Acceptance of Trustee Resignation on the date set forth below and it shall be effective upon my signature.

  
\_\_\_\_\_  
Mary Ann Jensen, Trustee

Date: 7/23/14

STATE OF MICHIGAN            )  
  )        SS.  
COUNTY OF Wayne            )

The foregoing instrument was acknowledged before me on July 23, 2014, by Mary Ann Jensen, Trustee of the Barbara Mary Shackley Trust Agreement, dated March 31<sup>st</sup>, 1992.

(SEAL)    
Notary Public  
My Commission Expires Aug 3, 2019

**THIS INSTRUMENT PREPARED BY:**  
A. Thomas Christensen  
Marshall & Melhorn, LLC  
Four Seagats, 8<sup>th</sup> Floor  
Toledo, OH 43604  
419.249.1700