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9  
10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
11 IN AND FOR THE COUNTY OF MARICOPA

12 In the Matter of:

13 **THE CELIA H. LANDRY TRUST,**  
14 **DATED JUNE 12, 2015.**

No. PB2022-004837

**AMENDED PETITION FOR  
MODIFICATION OF IRREVOCABLE  
TRUST AND FOR APPOINTMENT  
OF SUCCESSOR TRUSTEE**

(Honorable Christian J. Bell)

(Hearing set for:  
January 19, 2023 10:30 a.m.)

21 Petitioner CELIA H. LANDRY ("Celia" or "Petitioner"), Settlor and primary  
22 beneficiary of the Celia H. Landry Trust, dated June 12, 2015 (the "Trust"), petitions this  
23 Court for appointment of Successor Trustee under A.R.S. § 14-10706(D), and for  
24 modification of the Trust as to the appointment of successor trustees under A.R.S. §§14-  
25 10410(B), 14-10411, 14-10412, and 14-10416.

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1           Petitioner further petitions this Court for an award of reasonable attorney fees and  
2 costs against DARREN SCHNAIBLE (“Schnaible”) under A.R.S. §§ 14-1105(A) and 14-  
3 11004(B) for unreasonable conduct and unnecessary delays in this matter.

4           Petitioner states as follows:

5           1. This Court has jurisdiction under A.R.S. §§14-10201, 14-10202 and 14-10203  
6 because the Trust was established in Maricopa County, all assets of the Trust are located  
7 here, the principal place of administration of the Trust with respect to all beneficiaries is  
8 in this state, and Petitioner, as Settlor and primary beneficiary, and the Trustee of the  
9 Trust, have submitted themselves to this jurisdiction.

10           2. Venue is proper in this county under A.R.S. §14-10204 because the Trust was  
11 established in Maricopa County, all assets of the Trust are located here, the principal  
12 place of administration of the Trust with respect to all beneficiaries is in this county, and  
13 Petitioner, as Settlor and primary beneficiary, and Carol Hyman (“Carol” or “Trustee”)  
14 as Trustee of the Trust have consented to this venue.<sup>1</sup>

15           3. On June 12, 2015, Celia as Settlor and Carol as Trustee established the Celia  
16 H. Landry Trust, with Celia as the primary beneficiary. A copy of the Trust Agreement  
17 was attached as Exhibit A to the “Petition for Approval of Modification of Irrevocable  
18 Trust, Pursuant to A.R.S. § 14-10410(B), § 14-10411, § 14-10412, and § 14-10416, and  
19 Other Requested Relief” (the “Petition”), and is incorporated herein by this reference.

20           4. The Trust Agreement provides: “In exercising discretion to make  
21 distributions . . . the trustee shall give primary consideration to the needs of settlor and  
22 the needs of any other beneficiary shall be secondary.” Trust at Article IV.

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27 <sup>1</sup> Carol passed away in November, shortly before the November 16 initial hearing.  
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1           5. In accordance with A.R.S. §14-10410(B), §14-10411 (modification by  
2 consent of beneficiaries), §14-10412 (modification for unanticipated circumstances),  
3 §14-10416 (modification to achieve Trustor's tax planning objectives), and §14-10706  
4 (removal of trustee), the Trust should be modified to remove Schnaible as the named  
5 successor Trustee in favor of STEVEN SEINFELD CPA ("Seinfeld"), and to allow the  
6 Trustee to designate his successor.  
7

8 **I. SCHNAIBLE IS UNFIT TO SERVE AS TRUSTEE.**

9           6. A.R.S. §14-10706(D) specifically provides: "On petition of a beneficiary  
10 who is also a settlor of a trust . . . the court shall substitute a trustee and appoint a  
11 successor if the substitution is in the best interest of the beneficiary." This provision  
12 also specifically provides that "the court may appoint an individual nominated by the  
13 beneficiary," and Petitioner, as Settlor and primary beneficiary, has nominated Seinfeld  
14 as Successor Trustee.  
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16           7. Attached as Exhibits B-2, B-3 and B-4 to the Petition, and incorporated  
17 herein by this reference, are the sworn statements of Celia, Carol, and Carol's legal  
18 counsel, respectively, providing details of the reasons why Schnaible is not fit to act as a  
19 successor fiduciary for the Trust.

20           8. These reasons include his claim that he was the Trustee and his improper  
21 notification to the investment manager for the Trust at Morgan Stanley that Carol was  
22 no longer able to serve as Trustee, even though (1) the requirements for a successor  
23 trustee at Article V(A)(2) of the Trust had not been satisfied; (2) Schnaible had not even  
24 attempted to learn if those requirements, which include letters from two specialized  
25 attending physicians, had been satisfied; and (3) Carol continued to properly perform  
26 her duties as Trustee until her recent passing.  
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9. Furthermore, the relationship between Celia, Carol, and Schnaible – including false statements from Schnaible concerning the relationship between Celia and Carol – had deteriorated to such an extent that Celia and Carol no longer trusted him, and he was removed as trustee from all other trusts involving them.

10. Notwithstanding all of this, and despite numerous requests over the past year by counsel for Celia and Carol as Trustee, Schnaible has refused to execute a Declination To Serve As Successor Trustee And Appointment Of Successor Trustee (the “Declination”), attached to the Petition as Exhibit C, as authorized under the Trust Agreement.

11. On November 14, 2022, after the filing of the Petition and two days before the initial hearing, Schnaible’s counsel contacted Petitioner’s counsel. He stated that Schnaible did not object to the Petition, but requested the opportunity to review and revise the language of the Declination.

12. Petitioner’s counsel reported this to the Court at the December 16, 2022 hearing, and the Court rescheduled the hearing for January 19, 2023, to give Petitioner time to amend the Petition to include the signed Declination and remove references to Erin Landry, who appeared at the hearing and requested those changes.

13. Petitioner’s counsel and Schnaible’s counsel then made mutually acceptable revisions to the Declination, including modifications to a full release and indemnification of Schnaible.

14. Despite the best efforts of Petitioner’s counsel, which even included an offer to pay Schnaible’s attorney fees, Schnaible reneged on the tentative agreement and refused to sign the Declination.

15. This refusal, and Schnaible’s prior refusal to sign, has in turn forced Petitioner to incur time, fees, and expenses to prepare and file both the Petition and this Amended Petition, to the detriment of the Trust and its beneficiaries.

1 16. The facts set forth above demonstrate the need for modification of the Trust  
2 as to the appointment of successor trustees, regarding "unanticipated circumstances"  
3 and the future "inability to administer the Trust effectively" if Schnaible were to  
4 become Trustee, pursuant to A.R.S. §14-10412.

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6 17. In contrast, Seinfeld has served as the family's primary accountant for 40  
7 years, and has the skills and prudence to act as Successor Trustee.

8 18. The appointment of Seinfeld will have no deleterious effect on the interests  
9 of any contingent remainder beneficiary.

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11 19. The appointment of Seinfeld is in the best interests of the Trust and  
12 Petitioner as Settlor and primary beneficiary.

13 20. Because of his refusal to act in good faith to resolve this matter without  
14 litigation, and the delays and expenses due solely to his conduct, this Court should  
15 award reasonable fees and costs against Schnaible under A.R.S. §§ 14-1105(A) and 14-  
16 11004(B).

17 **II. THE TRUST SHOULD BE MODIFIED FOR TAX REASONS.**

18 21. Furthermore, in order to achieve and carry out Settlor's tax planning  
19 objectives under A.R.S. §14-10416 and avoid the high tax rates for Trust income in  
20 California, the modification of the Trust regarding successor trustees must allow the  
21 Successor Trustee to appoint his own successor.

22 22. This unnecessary taxation occurs when the trustee of a trust resides in  
23 California, even if all assets and beneficiaries are in Arizona. Carol resided, and  
24 Seinfeld and Schnaible both reside, in California. The drafter of the Trust likely was  
25 unaware of California tax law on this issue, and he failed to provide the ability for a  
26 trustee to appoint his or her chosen successor Trustee to take into account changing  
27 circumstances and tax planning.

1           23. Modification of Article V of the Trust Agreement in the manner set forth in  
2 Exhibit 1, which removes Schnaible as named Successor Trustee and replaces him with  
3 Seinfeld, and provides a trustee with the power to appoint his or her successor, is  
4 necessary and permissible under A.R.S. §14-10412 for unanticipated circumstances and  
5 inability to administer the Trust effectively, and under A.R.S. §14-10416 to achieve  
6 Settlor's tax objectives.  
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8           24. The proposed modification is in the best interests of both Petitioner as Settlor  
9 and primary beneficiary and of any contingent remainder beneficiaries, because the  
10 **modification will result in a substantial tax saving for the Trust.** *How?*  
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12           25. For the foregoing reasons and because the requested modifications are  
13 neither inconsistent with a material purpose of the Trust nor contrary to Settlor's intent,  
14 the Court is therefore authorized to make the requested modifications to Article V of the  
15 Trust Agreement as set forth in Exhibit 1 attached hereto, which is beneficial for the  
16 beneficiaries, in accordance with A.R.S. §14-10410(B), §14-10411, §14-10412 and  
17 §14-10416.

18           26. In addition, if in the unlikely event it is determined that Schnaible is now  
19 serving as Trustee, which Petitioner strongly believes is not the case, he must be  
20 removed as named Successor Trustee, under A.R.S. §14-10706(D), and replaced by  
21 Seinfeld as successor trustee. As the family's long-time and trusted CPA and advisor,  
22 Seinfeld is capable of managing the Trust and its assets and is willing to appoint as soon  
23 as possible an Arizona Successor Trustee, to achieve Settlor's tax objectives and avoid  
24 the onerous California income taxation of Trust income.

25           27. As noted above, A.R.S. §14-10706(D) specifically provides that "On petition  
26 of a beneficiary who is also a settlor of a trust . . . the court shall substitute a trustee  
27 and appoint a successor if the substitution is in the best interest of the beneficiary."  
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1 This provision also specifically provides that "the court may appoint an individual  
2 nominated by the beneficiary," and Petitioner has nominated Seinfeld as Successor  
3 Trustee.  
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5 28. To accomplish the goals and objectives of the Trustee, to properly address  
6 the changes in facts and circumstances for the beneficiaries, and pursuant to A.R.S. §14-  
7 10410(B), §14-10411 (regarding modification by consent of beneficiaries), §14-10412  
8 (regarding modification for unanticipated circumstances), and §14-10416 (to achieve  
9 settlor's tax objectives), Petitioner respectfully requests approval for the modification of  
10 the Trust Agreement by replacing Article V, Section A, paragraph 1., as set forth in  
11 **Exhibit 1.**

12 WHEREFORE, Petitioner respectfully requests that after proper notice and  
13 hearing, this Court enter an Order:

14 A. Approving the requested modification of the Trust to replace Article V,  
15 with a new Article V, as set forth in Exhibit 1 attached hereto;

16 B. Appointing STEVEN SEINFELD, CPA, as Successor Trustee of the Trust,  
17 in accordance with A.R.S. §14-10706(D);

18 C. Awarding Petitioner her reasonable attorneys' fees and costs incurred in  
19 preparing, filing, noticing and prosecuting the Petition and Amended Petition against  
20 Darren Schnaible, subject to a Rule 33 Statement;

21 D. Awarding Petitioner her attorneys' fees and costs incurred in preparing,  
22 filing, noticing and prosecuting the Petition and Amended Petition against any objecting  
23 party subject to a Rule 33 Statement; and  
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25 E. Granting such other relief as the Court deems appropriate.  
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1 DATED this 09th day of December, 2022.

2  
3 TIFFANY & BOSCO, P.A.

4  
5 By: 

6 David L. Case

7 James A. Fassold

8 Esplanade II

9 2525 East Camelback Road, 7th Floor

10 Phoenix, Arizona 85016

11 *Attorneys for Petitioner*



VERIFICATION

STATE OF <sup>Louisiana</sup> ~~ARIZONA~~ )  
 ) ss.  
County of <sup>Jefferson</sup> ~~Maricopa~~ )

Celia H. Landry, being duly sworn, states as follows:

I am the Petitioner in the foregoing Petition for Approval of Modification of Irrevocable Trust, and that the statements in the Petition are accurate and complete to the best of my knowledge, information and belief.



CELIA H. LANDRY

SUBSCRIBED AND SWORN TO before me this 27 day of December, 2022, by Celia H. Landry.



Notary Public

#66212



1 EXHIBIT 1

2  
3 **ARTICLE V**  
4 **APPOINTMENT OF TRUSTEES**

5 The following provisions shall apply with regard to any Trustee serving  
6 hereunder:

7 A. **In General.** The term "the Trustee" as used in this Trust Agreement shall  
8 include Co-Trustees where applicable, any successor Trustee named in this Article or  
9 appointed pursuant to the following provisions, and any successor to the business of any  
10 corporate trustee whether by reorganization or otherwise. Each successor Trustee shall  
11 have all the rights, privileges and powers herein granted to the original Trustee, and  
12 shall have all of the duties and obligations imposed upon the original Trustee. No  
13 significance is to be attached to the use of the singular or plural designation in this Trust  
14 Agreement, and each designation shall be construed to include the other where  
15 appropriate.  
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18 B. **Appointment.** Any individual, bank or financial institution serving  
19 hereunder as Trustee or Co-Trustee shall not be required to post bond unless requested  
20 in writing by the Settlor. CAROL HYMAN shall serve as Trustee of all trusts created  
21 by the terms of this Trust Agreement. Upon the relinquishment of the duties of Trustee  
22 by CAROL HYMAN, as set forth below, STEVEN SEINFELD, CPA shall serve as  
23 successor Trustee of such trusts. Notwithstanding the foregoing, while either CAROL  
24 HYMAN or STEVEN SEINFELD is serving as Trustee and is not under disability she  
25 or he, as the case may be, shall have the power and authority to appoint by a written  
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1 instrument signed by such Trustee and delivered to the currently serving Trustee(s), one  
2 or more persons and/or any bank or other financial institution having capital and surplus  
3 of not less than Fifty Million Dollars (\$50,000,000.00), or any wholly-owned subsidiary  
4 of such an institution, or any affiliate of such an institution with such capital and  
5 surplus, as a Co-Trustee to serve with her or him, or as the named successor Trustee or  
6 Trustees, and in such event the successor Trustee(s) so appointed by the currently  
7 serving Trustee shall replace any successor Trustee named herein. In addition, and  
8 notwithstanding the foregoing, during the lifetime of CAROL HYMAN while she is not  
9 under disability, whether or not she is serving as Trustee, she shall have the power and  
10 authority to remove any current Trustee and replace it with one or more persons and/or  
11 any bank or other financial institution having capital and surplus of not less than Fifty  
12 Million Dollars (\$50,000,000.00), or any wholly-owned subsidiary of such an  
13 institution, or any affiliate of such an institution with such capital and surplus, or to add  
14 one or more of such persons or institutions as a Co-Trustee to serve with the then  
15 serving Trustee, or as the named successor Trustee or Trustees, and in such event the  
16 successor Trustee(s) so appointed shall replace any successor Trustee otherwise named  
17 herein or under the foregoing provisions. Any individual serving as Trustee shall be  
18 deemed to have relinquished the duties of Trustee upon the occurrence of any of the  
19 following events:  
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25           1.       Receipt by the Co-Trustee or successor Trustee, as the case may be,  
26 of written notice from the individual then serving as Trustee directing the Co-Trustee or  
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1 successor Trustee, as the case may be, to assume the duties of Trustee of the Trust  
2 Estate.

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4 2. Receipt by the Co-Trustee or successor Trustee, as the case may be,  
5 of written notice of the death of the individual then serving as Trustee.

6 3. Receipt by the Co-Trustee or successor Trustee, as the case may be,  
7 of a certified copy of an order from a court appointing a Guardian for the individual  
8 then serving as Trustee or a Conservator for his or her estate.

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10 4. Receipt by the Co-Trustee or successor Trustee, as the case may be,  
11 of written notice signed by two physicians licensed to practice neurology or psychiatry  
12 who certify that they have examined the Trustee and have concluded that, by reason of  
13 accident, physical or mental illness or disability, progressive or intermittent physical or  
14 mental deterioration, or other similar cause, that the Trustee is unable to discharge the  
15 powers and duties of the office of trustee. When in the process of determining a  
16 Trustee's incapacity and ability to serve as Trustee, all health information and medical  
17 records and other relevant medical history may be released to the person who is  
18 nominated as successor Trustee, including any written opinion relating to the such  
19 incapacity, that the person so nominated may reasonably request. This release authority  
20 applies to any information governed by the Health Insurance Portability and  
21 Accountability Act of 1996 (a.k.a. HIPAA), 42 USC 1320d and 45 CFR 160-164.  
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25 C. **Resignation.** Any Trustee serving hereunder shall have the right to resign  
26 at any time by giving thirty (30) days prior written notice to the beneficiary or  
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1 beneficiaries then entitled or authorized to receive income from any trusts created  
2 hereunder.

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4 D. **Removal Of Corporate Trustee.** Anything hereinabove to the contrary  
5 notwithstanding, the Settlor, while she is living and not under disability, shall have the  
6 right to (1) remove or cause the resignation of any corporate Trustee serving hereunder,  
7 or change a named corporate Trustee prior to its acceptance of duties, and (2) in its  
8 place, name any bank or other financial institution as successor Trustee; provided,  
9 however, any bank or other financial institution serving as Trustee hereunder must be a  
10 bank or financial institution having capital and surplus of not less than Fifty Million  
11 Dollars (\$50,000,000.00), or any wholly-owned subsidiary of such an institution, or an  
12 affiliate of such an institution with such capital and surplus.  
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