

STATE OF NEW YORK
SURROGATE'S COURT: COUNTY OF KINGS

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In the matter of the trust created for the benefit of :
Laura E. Sweeney and others under article : File No.
FOURTH, 8., of a declaration of trust made as of :
January 18, 2002 by : SETTLEMENT
: AGREEMENT
ETHEL M. SWEENEY, :
:
Deceased. :
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KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, by a declaration of trust dated the 18th day of January, 2002, by Ethel M. Sweeney (the “decedent”), as grantor, and Ethel M. Sweeney, Laura E. Sweeney and Rebecca E. Brown, as trustees, the decedent created a revocable trust for the benefit of herself and others, providing for the disposition of a substantial portion of her property upon her death (hereinafter sometimes referred to as the “Ethel M. Sweeney Living Trust”); and

WHEREAS, the decedent died on January 25, 2006, a resident of Brooklyn, Kings County, New York, survived by, *inter alia*, Laura E. Sweeney and Rebecca E. Brown who continue to act as trustees of such trust; and

WHEREAS, Article FOURTH, 1. through 7., of such declaration directs that five percent (5%) of the trust estate remaining (hereinafter sometimes referred to as the “trust residue”) be distributed to each of seven beneficiaries; and

WHEREAS, Article FOURTH, 8., of such declaration directs the establishment of a continuing trust for the benefit of Laura E. Sweeney consisting of one-half of the balance of the trust residue, to provide, *inter alia*, for her benefit in a manner for which government benefits are not provided so as not to interfere with her eligibility for government benefits (a “supplemental needs trust”), providing, in pertinent part, as follows:

8. The Trustee shall divide the balance of the trust estate into two equal shares and shall hold each such share IN TRUST, for the benefit of the Grantors' sisters. Dorothy Brown and Laura E. Sweeney (hereinafter referred to as the "beneficiary") under the following terms:
 - a. The Trustee shall hold, manage, invest and reinvest the trust assets, shall collect the income therefrom and, after deducting all charges and expenses properly attributable thereto, shall apply for the benefit of the beneficiary, at any time and from time to time, any part or all of the net income and/or principal of this trust as the Trustee shall deem advisable, in the absolute discretion of the Trustee, subject to the limitations set forth below. Any income not so paid or applied shall be accumulated and added to the principal of this trust at least annually.
 - b. It is the intent of the Grantor to create a supplemental needs trust which conforms to the provisions of Section 7-1.12 of the New York Estates, Powers and Trusts Law. The Grantor intends that the trust assets be used to supplement, not supplant, impair or diminish, any benefits or assistance of any Federal, state, county, city or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving. Consistent with that intent, it is the desire of the Grantor that, before expending any amounts from the net income and/or principal of this trust, the Trustee shall consider the availability of all benefits or assistance governmental or private assistance programs for which the beneficiary may be eligible and that, where appropriate and to the extent possible, the Trustee shall endeavor to maximize the collection of such benefits or assistance for the benefit of the beneficiary.
 - c. None of the income or principal of this trust shall be applied in such manner as to supplant, impair or diminish benefits or assistance of any Federal, state, county, city or other governmental entity for which the beneficiary may otherwise be eligible or which the beneficiary may be receiving,. The Trustee shall not make any distribution to or for the benefit of the beneficiary if such distribution would reduce or eliminate any governmental entitlement or payment which the beneficiary would otherwise receive.
 - d. No judge or court shall have the power to order the invasion of principal in contravention of the provisions of paragraphs (b) and (c) above. This provision is intended to negate and eliminate any discretion grant by Section 7-1.6 of the New York Estates, Powers and Trusts law.
 - e. Notwithstanding the provisions of paragraphs (b) and (c) above, the Trustee may make distributions to meet the beneficiary's need for food, clothing, shelter or health care even if such distributions may result in an impairment of diminution of the beneficiary's receipt or eligibility for governmental benefits or assistance but only if the Trustee determines that (i) the beneficiary's needs will be better met if such distributions are made, and (ii) it is in the

beneficiary's best interests to suffer the consequent effect, if any, on the beneficiary's eligibility for or receipt of governmental benefits or assistance; provided, however, that if the mere existence of the authority of the Trustee to make distributions pursuant to this paragraph shall result in the beneficiary's loss of governmental benefits of assistance, regardless of whether such authority is actually exercised, this paragraph shall be null and void and the authority of the Trustee to make such distributions shall cease and shall be limited as provided in paragraphs (b) and (c) above, without exception.

- f. It is the desire of the Grantor that the beneficiary enjoy the therapeutic benefits of education, vocational training, hobbies, vacations, modes of transportation, equipment, visitation with family and friends, and other needs and/or luxuries the beneficiary may have to enjoy life to the fullest. The Grantor also appreciates that the procurement and maintenance of life, disability, liability and other types of insurance can provide financial security and other benefits for the beneficiary. Subject to the restrictions and limitations set forth in the preceding paragraphs of this Article, the Trustee may use the principal and income of this trust for these types of purposes and such other purposes as the Trustee may deem appropriate.
- g. The beneficiary shall not have any right or power to assign, encumber, direct, distribute or authorize distribution from this trust.
- h. With the consent of the Trustee, any person may add property to this trust, by assignment, gift, transfer, deed or will, and any property so added shall be held, administered and distributed under the terms of this trust.
- i. The Trustee from time to time may consult with an attorney with appropriate expertise in the area of public benefits and trust law to review applicable legislation, regulations and requirements so that the public benefits eligibility of the beneficiary is not jeopardized by the actions of the Trustee. The cost of such attorney shall be paid by the Trustee from the trust assets.
- j. Subject to the restrictions and limitations set forth in the preceding paragraphs of this Article, upon the death of the beneficiary the Trustee may pay all or part of the funeral expenses of the beneficiary and expenses relating to the distribution of the remaining trust assets as the Trustee shall deem advisable, in the absolute discretion of the Trustee. The Trustee may consider whether other satisfactory provisions have not been made for such expenses.
- k. The concern of the Grantor is to provide for the beneficiary, not the preservation of assets for the remainder men of this trust.

Upon the death of the beneficiary, or, if the beneficiary has predeceased the Grantor, upon the death of the Grantor, the Trustee shall pay and distribute forty percent (40%) of the remaining principal and income of such trust in equal shares to the Grantor's nephews Robert Russell Brown and Richard Armstead Brown, by representation and

sixty percent (60%) of the remaining principal and income of such trust in equal shares to the Grantor's grandnieces, Rebecca E. Brown, Cara Lauren Brown and Kirsten D. Brown, by representation.

; and

WHEREAS, Article ELEVENTH of such declaration directs, *inter alia*, that Laura E. Sweeney shall not serve as a trustee of the supplemental needs trust for her benefit and therefore, in effect, that Rebecca E. Brown (or her successor, as specified therein) shall serve as the sole trustee of said supplemental needs trust and also provides for the appointment of named successor trustees and the resignation of trustees, specifically providing, in pertinent part, as follows:

ARTICLE ELEVENTH

Appointment of Trustees

The Grantor appoints herself, Laura E. Sweeney and Rebecca E. Brown as Trustees hereunder. In the event of the death or disability of the Grantor, Laura E. Sweeney and Rebecca E. Brown shall serve as Trustees. The Grantor hereby appoints Robert Russell Brown, having an address at 503 N. Roosevelt Boulevard, Apt. 124, Falls Church, Virginia 22044, as successor Trustee hereunder in the event all Trustees for any reason shall fail or cease to act as Trustee. If Robert Russell Brown for any reason shall fail or cease to act as Trustee, the Grantor hereby appoints Richard Armstead Brown, having an address at 28 Howard Road, Maynard, Massachusetts 01754, as successor Trustee hereunder.

Notwithstanding the foregoing, in no event shall Laura E. Sweeney be appointed Trustee of any trust created for the benefit of Dorothy Brown, Laura E. Sweeney or Kirsten D. Brown.

* * * *

The Trustees shall have the right to resign . . . at any time after the death of the Grantor by giving written notice to the then income beneficiaries of each trust created hereby, or if none of the income beneficiaries of a trust are sui juris who would be entitled to a share of the principal of such trust if it were then to terminate.

* * * *

; and

WHEREAS, Rebecca E. Brown has resigned as trustee of the Laura E. Sweeney supplemental needs trust and Robert Russell Brown has succeeded her and now serves as trustee thereof; and

WHEREAS, Laura E. Sweeney has presented to the trustee, in support of proposed beneficial distributions for her benefit from her supplemental needs trust, a schedule of personal expenses which she has incurred or which are anticipated that she will incur, which personal expenses are expected to consume substantial amounts of her supplemental needs trust, even to the extent of the whole thereof, but no mutually acceptable method of distribution has been agreed upon between Laura Sweeney and the trustee; and

WHEREAS, a substantial asset of the trust estate is a cooperative apartment, #27-A located at 75 Henry Street, Brooklyn, New York (the “cooperative apartment”); and

WHEREAS, each of the seven beneficiaries of dispositions of five percent (5%) of the trust residue has executed a qualified disclaimer of all his or her right, title and interest in and to said cooperative apartment pursuant to Section 2518 of the Internal Revenue Code and Section 2-1.11 of the Estates, Powers and Trusts Law of the State of New York; and

WHEREAS, the proposed account of proceedings of Rebecca E. Brown and Laura E. Sweeney, as trustees of the Ethel M. Sweeney Living Trust, for the period from January 25, 2006, through August 31, 2006, a copy of which is annexed hereto as Exhibit A, has been prepared and provides a basis for determining the net assets to be distributed to the Laura E. Sweeney supplemental needs trust, subject to fluctuations in market value of securities held in the trust and a reserve for additional unpaid administration expenses not reflected in said account, not to exceed in the aggregate seven thousand, five hundred dollars (\$7,500), and subject also to potential estate tax liability of an indeterminate amount as of the execution of this agreement, the apportionment of which the parties wish hereby to address; and

WHEREAS, it has been agreed, in consideration of the representations and premises hereof, that any and all right, title and interest in and to said cooperative apartment which might pass to the supplemental needs trust for the benefit of Laura E. Sweeney be distributed outright to her by the trustee of said supplemental needs trust and that she immediately thereupon transfer any and all right, title and interest in and to said cooperative apartment which she may have or to which she may thereby become entitled to Rebecca E. Brown by virtue of, *inter alia*, the Stock Power and Affidavit of Certification and Indemnity copies of which are annexed hereto as Exhibit B; and

WHEREAS, Robert Russell Brown has agreed, in consideration of the premises hereof, to exercise his power pursuant to Section 10-6.6 of the Estates, Powers and Trusts Law of the State of New York to appoint the principal of the Laura E. Sweeney supplemental needs trust in favor of First Advisors (also known as The First, N.A., a national banking association having trustee powers with an office in Damariscotta, Maine) as trustee of another trust on the terms consistent with those governing the Laura E. Sweeney supplemental needs trust, created under a Declaration of Trust by and between Rebecca E. Brown, as grantor, and First Advisors, as trustee, a copy of which is annexed hereto as Exhibit C; and

WHEREAS, the undersigned Laura E. Sweeney, Rebecca E. Brown and Robert Russell Brown wish to provide for the delivery of the documents necessary to accomplish the transactions hereby contemplated while ensuring the reservation of each of their rights unless and until all of such transactions have been accomplished in a manner consistent with the terms hereof, and Lawrence Berwitz, an attorney-at-law admitted to practice in the State of New York, has agreed to act (and is hereinafter sometimes referred to) as escrow agent for such purposes;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the undersigned Laura E. Sweeney, Rebecca E. Brown and Robert Russell Brown (hereinafter referred to sometimes as the “undersigned parties”) and, to the extent of the provisions hereof applicable to the escrow agent, the undersigned Lawrence Berwitz hereby undertake, represent and agree as follows:

1. The undersigned Laura E. Sweeney undertakes and agrees, promptly upon the execution of this agreement by all of the undersigned parties, to cause the Stock Power and Affidavit of Certification and Indemnity, copies of which are annexed hereto as Exhibit B, executed by her to be delivered to the escrow agent, to be held in escrow.

2. The undersigned Rebecca E. Brown hereby undertakes and agrees, promptly upon the execution of this agreement by all of the undersigned parties, to execute a Declaration of Trust by and between herself, as grantor, and First Advisors, as trustee, a copy of which is annexed hereto as Exhibit C, for the creation of another trust on the terms consistent with those governing the Laura E. Sweeney supplemental needs trust and to deliver the same or cause the same to be delivered to the escrow agent, to be held in escrow.

3. Robert Russell Brown hereby undertakes and agrees, promptly upon the execution of this agreement by all of the undersigned parties and the execution of the Declaration of Trust referred to in paragraph 2 of this agreement by and between Rebecca E. Brown, as grantor, and First Advisors, as trustee, to execute an instrument exercising his power pursuant to Section 10-6.6 of the Estates, Powers and Trusts Law of the State of New York to appoint all of the principal of the Laura E. Sweeney supplemental needs trust (which, for all purposes of this agreement, shall be deemed to include all property which such trust shall be entitled to receive from any source including, without limitation, the Ethel M. Sweeney Living Trust) in favor of First Advisors as trustee of the trust created under said

Declaration of Trust and to deliver said instrument or cause the same to be delivered to the escrow agent, to be held in escrow.

4. The undersigned parties hereby agree that the balance of the net assets to be distributed to the Laura E. Sweeney supplemental needs trust shall be determined in accordance with and by reference to the terms of the Ethel M. Sweeney Living Trust and the proposed account of proceedings of Rebecca E. Brown and Laura E. Sweeney, as trustees of the Ethel M. Sweeney Living Trust, for the period from January 25, 2006, through August 31, 2006, a copy of which is annexed hereto as Exhibit A, giving effect to such qualified disclaimers and the consequent exclusion of the value of said cooperative apartment from the value of the trust residue, and subject to fluctuations in market value of securities held in the trust and a reserve for additional unpaid administration expenses of the Ethel M. Sweeney Living Trust not reflected in said account, not to exceed in the aggregate seven thousand, five hundred dollars (\$7,500), and subject also to potential estate tax liability of an indeterminate amount as of the execution of this agreement.

5. The undersigned Rebecca E. Brown hereby undertakes and agrees to pay a proportionate share of any estate tax liability properly chargeable to the Ethel M. Sweeney Living Trust, which share of such estate tax liability shall be determined according to the proportion that the value of said cooperative apartment bears to the value of the entire trust residue (including the value of said cooperative apartment), all such values as determined for estate tax purposes.

6. The undersigned parties hereby agree that, upon the due execution and delivery to the escrow agent of this agreement by the undersigned parties; the due execution and filing of the qualified disclaimer by each of the seven beneficiaries of dispositions of five percent (5%) of the trust residue of all his or her right, title and interest in and to said cooperative

apartment in the Kings County Surrogate's Court and other technical compliance with Section 2518 of the Internal Revenue Code and Section 2-1.11 of the Estates, Powers and Trusts Law of the State of New York with respect to said disclaimers; the due execution by the undersigned Laura E. Sweeney and delivery to the escrow agent of the Stock Power and Affidavit of Certification and Indemnity copies of which are annexed hereto as Exhibit B; the due execution by the undersigned Rebecca E. Brown and by First Advisors and delivery to the escrow agent of the Declaration of Trust by and between Rebecca E. Brown, as grantor, and First Advisors, as trustee, a copy of which is annexed hereto as Exhibit C; and the due execution by the undersigned Robert Russell Brown and delivery to the escrow agent of the instrument exercising his power pursuant to Section 10-6.6 of the Estates, Powers and Trusts Law of the State of New York to appoint all of the principal of the Laura E. Sweeney supplemental needs trust in favor of First Advisors as trustee of the trust created under said Declaration of Trust (which "delivery," in the case of Robert Russell Brown, shall be deemed to be accomplished by the delivery of facsimiles of the executed documents together with his sending the original executed documents by mail or other reputable delivery service and his representation to the escrow agent that he has done the same); the escrow shall be released, and:

- a. The undersigned escrow agent shall deliver such documents or cause the same to be delivered as follows: to the cooperative corporation for said cooperative apartment or its managing agent, the Stock Power and Affidavit of Certification and Indemnity copies of which are annexed hereto as Exhibit B; to First Advisors, the Declaration of Trust a copy of which is annexed hereto as Exhibit C and the instrument exercising Robert Russell Brown's power to appoint all of the principal of the Laura E. Sweeney supplemental needs trust in favor of First Advisors as trustee of the trust created under said Declaration of Trust;
- b. Robert Russell Brown shall as promptly as practicable deliver or cause to be delivered to First Advisors as trustee of the trust created under said

Declaration of Trust all property on hand in the Laura E. Sweeney supplemental needs trust; and

- c. Rebecca E. Brown and Laura E. Sweeney shall thereafter make any distributions from the Ethel M. Sweeney Living Trust to which the Laura E. Sweeney supplemental needs trust shall be entitled to First Advisors as trustee of the trust created under said Declaration of Trust.

7. In the event the conditions of paragraph 6 of this agreement for the release of escrow shall not have been satisfied thirty (30) days after the date of this agreement, unless otherwise agreed to in writing by all of the undersigned parties and the escrow agent, the escrow agent shall return each such original document which shall have been delivered to him pursuant to the provisions of this agreement to the person who shall have executed the same and, in the case of the Declaration of Trust a copy of which is annexed hereto as Exhibit C, to Rebecca E. Brown. Upon the delivery of all such documents as aforesaid, the undersigned escrow agent shall be relieved and discharged of all further responsibility under this agreement. In the event of any dispute as to the proper action to be taken by the undersigned escrow agent pursuant to this agreement, he shall have all rights and remedies provided by law.

8. The undersigned parties undertake and agree to cooperate in the execution and delivery of all administrative documents reasonably required to effectuate the technical purposes of this agreement.

9. It is understood by and between the undersigned parties that this agreement represents the settlement of a controversy that may exist or might have arisen between them in their various capacities as trustees and beneficiaries, but that it shall not affect any other rights or responsibilities, powers or duties of the undersigned parties in any capacity whatsoever except as specified in this agreement.

10. The undersigned Lawrence Berwitz, as escrow agent, hereby accepts delivery of the documents described herein and agrees to hold them in escrow upon the terms herein expressed.

11. These presents may be executed by the respective parties hereto in two or more counterparts, each of which shall be considered to be an original document.

IN WITNESS WHEREOF, these presents have been executed as of the _____ day of October, 2006.

LAURA E. SWEENEY

By: _____
Laura E. Sweeney, by Andrew L. Tansey,
Attorney in Fact

Rebecca E. Brown

Robert Russell Brown

Lawrence Berwitz, as escrow agent

_____ OF TURKEY)
CITY OF ISTANBUL)
)
: SS.:
CONSULATE GENERAL OF THE)
UNITED STATES OF AMERICA)

On this _____ day of October, 2006, before me the Consul of the United States, resident in the City of Istanbul, Turkey, personally appeared ROBERT RUSSELL BROWN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signatures on the instrument, the individual, and the person upon behalf of which the individual acted, executed the instrument, and that such individual made such appearance before the undersigned in _____

_____ (*Insert city or political subdivision and state or country or other place acknowledgment taken*).

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said United States Consulate in said City of Istanbul, the day and year last aforesaid.

Consul

(Seal)

STATE OF NEW YORK)
: ss.:
COUNTY OF)

On the _____ day of October, in the year 2006, before me, the undersigned, a notary public in and for said state, personally appeared LAWRENCE BERWITZ, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacities, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public