

**NOTICE AND ORDER
FOR HEARING
PURSUANT TO MINN.
STAT. § 501C.0203**

STATE OF MINNESOTA
COUNTY OF HENNEPIN
FOURTH JUDICIAL DISTRICT
DISTRICT COURT
PROBATE DIVISION

Court File No. 27-TR-CV-18-102

In the Matter of the McCarthy Family Residence Trust Agreement Created under the Agreement By and Between Mary L. McCarthy, Trustor, and U.S. Bank National Association, Trustee, dated January 13, 2004 for Timothy M. McCarthy, Michael E. McCarthy, Kathleen M. Reichert and Patrick L. McCarthy, Beneficiaries.

IT IS ORDERED AND NOTICE IS GIVEN that a Petition to Remove U.S. Bank National Association as Trustee and for Appointment Of Successor Trustees, and for Modification of the McCarthy Family Residence Trust Agreement, signed by Timothy M. McCarthy and Michael E. McCarthy dated September 10, 2018, has been filed with the Court. The Petition requests an order for the following relief:

1. Removing U.S. Bank, National Association as Trustee and discharging U.S. Bank, National Association from any and all liability in connection with the administration of the Trust. Such action shall be effective upon the filing with this Court of an acknowledgment of receipt of the assets of the Trust by TIMOTHY M. McCARTHY and MICHAEL E. McCARTHY.

2. Appointing TIMOTHY M. McCARTHY and MICHAEL E. McCARTHY, and if not TIMOTHY M. McCARTHY and MICHAEL E. McCARTHY, then TIMOTHY M. McCARTHY or MICHAEL E. McCARTHY as the Successor Trustees of the Trust. In the event that neither TIMOTHY M. McCARTHY nor MICHAEL E. McCARTHY is willing or able to serve as the Successor Trustee, then appoint KATHLEEN M. REICHERT, PATRICK L. McCARTHY as the Successor Co-Trustees of the Trust.

3. Determining that this Trust is not subject to continuing jurisdiction of the Court pursuant to Minn. Stat. § 501B.0205.

4. Modifying Article X, Paragraph 1, sub-Paragraph a. to read, "Net Income and Principal. The trustee may pay to or apply directly for the benefit of the Trustor's children, or any one or more of them, such sums from the net income and principal as the trustee deems necessary or advisable for the Trustor's children's health, education, maintenance, and support. Such payments need not be for the equal benefit of said children. Net income not distributed shall be accumulated and added to principal."

5. Modifying Article X, Paragraph 1, sub-Paragraph e. to read, "Liquidation of Real Estate. Upon the determination of the trustee or the Trustor's children, as provided herein, to sell such real estate, the trustee shall cause to be prepared independent professional appraisals of any interest in real estate owned by the trust. After said appraisals have been prepared, the trustee shall provide copies of said appraisals to, and invite written offers to purchase the real estate from among, the group of potential buyers which is limited to the Trustor's then-living adult descendants, giving each a reasonable opportunity to prepare a written offer. The trustee shall have authority and discretion to sell each real property interest to the respective bidders from among said group who make the highest and best offers, provided the offer for such interest at least equals the appraised amount, and shall have authority and discretion to reject all offers. Thereafter any remaining interest in real estate owned by the trust, if any, shall be offered for sale to the general public, and shall be sold by the trustee in due course as the trustee in the trustee's discretion deems advisable, provided however, before accepting any written offer from a non-descendant of the Trustor, the trustee shall give the adult descendants of the Trustor a reasonable opportunity in writing to match or exceed any such offer. Thirty days or more shall be deemed reasonable for this purpose. Upon closing of the sale of the real estate three percent (3%) of the net proceeds of sale of any such real estate shall be distributed to the trustee as compensation for overseeing such sale and the remaining net proceeds of sale of any such real estate shall be administered and distributed as provided in the following paragraphs of this agreement.

It is expressly intended by the foregoing provisions to require the trustee to liquidate all interests in real estate after the death of the Trustor and the Trustor's spouse and to not confer upon any trust beneficiary the right to demand or receive a distribution of his or her trust distributive share of any interest in real estate "in kind," regardless of any statutory provisions or general provision of this trust agreement to the contrary. In addition, no provision of this trust shall give the spouse of any trust beneficiary the right to demand or receive a distribution of his or her spouse's trust distributive share of any interest in real estate, regardless of any statutory provisions or general provisions of this trust agreement to the contrary."

6. Modifying Article XVII, Paragraph 1 to read, "Succession of Trustees. Upon the termination of the Qualified Personal Residence Trust term, MICHAEL E. McCARTHY and TIMOTHY M. McCARTHY, if willing and able to serve are hereby nominated to serve as successor co-trustees. If either MICHAEL E. McCARTHY or TIMOTHY M. McCARTHY is unwilling or unable to serve as co-trustee, then the other shall serve alone. If both, MICHAEL E. McCARTHY and TIMOTHY M. McCARTHY, are unwilling or unable to serve as trustee, then KATHLEEN M. REICHERT and PATRICK L. McCARTHY, if willing and able to serve, are hereby nominated to serve as successor co-trustees."

7. Modifying Article XVII, Paragraph 3 to read, "Addition, Removal or Replacement of Trustees. The trustees, if any, shall have the power, at any time, in writing, to add, remove, or replace any trustee then serving by majority vote. If any trustee so added or replaced by the individual trustee or trustees is a corporate trustee, the successor corporate trustee appointed shall be a national banking association having trust powers subject to state or federal banking supervision."

8. Modifying Article XIV, Paragraph 3 to read,

3. Definitions.

a. "Child" as used herein, includes only the children of the Trustors as named above.

b. "Issue" of a person, as used herein, means all persons who are descended from the person referred to, either by legitimate birth to or legal adoption by such person or any of such person's legitimately born or legally adopted descendants. An issue in gestation at the time of an event who is later born alive is "living" or "surviving" at the time of such event.

c. "Generation-skipping tax" means any tax imposed under Chapter 13 of the U.S. Internal Revenue Code of 1986, including the GST, and any applicable state statute.

d. "Independent Trustee" as used herein, means any trustee other than (i) a transferor of property to the trust, including a person whose qualified disclaimer resulted in property passing to the trust; or (ii) a beneficiary of the trust who is, or in the future may be, eligible to receive income or principal pursuant to the terms of the trust; or (iii) a person who is a related or subordinate party under Internal Revenue Code section 672(c) as to any person described under (i) or (ii) above. A person is described in (ii) of this Paragraph even if he or she has a remote contingent interest in the trust but is not described in (ii) of this Paragraph if the person's only interest is as a potential appointee under a non-fiduciary power of appointment held by another person, the exercise of which will take effect only in the future, such as a testamentary power held by a living person.

9. Renumbering Articles XIII through XVIII pursuant to Exhibit B attached to the Petition.

10. Inserting Article XVII into the Trust, appended to the Petition as Exhibit A.

11. Establishing that all actions of the Co-Trustees with respect to investments including the retention, exchange, disposition, or change in form of trust assets during the period from the Trust's creation to the date of the court's order. The Trustees are authorized and instructed to retain as assets of the Trust all properties, or any part thereof, held as assets so long as the retention appears desirable and for and in the best interests of the Trust and the beneficiaries thereof, with no other or further duties than would apply to other trust investments.

12. Authorizing U.S. Bank, National Association to transfer custody of the trust assets to TIMOTHY M. McCARTHY and MICHAEL E. McCARTHY as Co-Trustees for the benefit of TIMOTHY M. McCARTHY, MICHAEL E. McCARTHY, KATHLEEN M. REICHERT, and PATRICK L. McCARTHY, and

13. Granting such other relief as may be proper.

14. Any objections to the Petition must be filed with the Court prior to or at the hearing. If no objections are filed the Petition may be granted.

The Court represents all persons in interest who are minors or incapacitated, or unborn, unascertained or whose identity or address is unknown and not reasonably ascertainable, and has determined that all other persons with an interest in the Trust are represented under sections 501C.0301 to 501C.0304.

IT IS ORDERED, that the Petition will be heard on December 12, 2018, at 1:15 PM by this Court at 300 South 6th Street, C-400 Government Center, Minneapolis, Minnesota 55487.

1. Notice shall be given to all persons named in the Petition as having or as claiming an interest in the Trust.

2. Notice shall be given by:

a. In Rem Jurisdiction:

Mailing a copy of this Notice and Order for Hearing to all persons named in the Petition as having or who may claim to have an interest in the Trust, at their last known addresses by U.S. Postal Service at least 15 days prior to the hearing date, and Publishing this Notice and Order for Hearing one time at least 20 days prior to the hearing date in a legal newspaper of Hennepin County, Minnesota.

Dated: September 17, 2018

BY THE COURT

Elizabeth Cutter

Judge of District Court

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