

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

FILED

2020 JUN 11 P 3:31

COUNTY OF ORANGE

19-CVS-1579

NORTH CAROLINA DIVISION SONS OF
CONFEDERATE VETERANS, INC.,

Plaintiff,

v.

THE UNIVERSITY OF NORTH
CAROLINA and THE UNIVERSITY OF
NORTH CAROLINA BOARD OF
GOVERNORS,

Defendants.

MOTION FOR STAY PENDING APPEAL

[N.C. Rule of Civ. Proc. 62(d)
N.C. Gen. Stat. § 1-294
N.C. R. App. Proc. 8(a)]

COME NOW Alyassa Boyd, De'Ivyion Drew, Elisabeth Jones, Michelle Robinson, Gina Balamucki, William Holland and Liliya Oliferuk, (collectively, "Movants") and respectfully ask the Court to stay all further proceedings in this case pursuant to Rule 62(d) of the North Carolina Rules of Civil Procedure, N.C. Gen. Stat. § 1-294, and North Carolina Rule of Appellate Procedure 8(a), pending resolution of Movants' appeal of the order denying their Motion to Intervene. Movants also seek a stay of execution of the Consent Order and of the transfer of any money from the Monument Trust created by that Consent Order pending appeal. In support of this motion for stay, Movants state as follows:

1. On November 27, 2019, with no prior notice to the public, the Verified Complaint, Answer and Consent Order were all filed in this case. On the same day, Defendants transferred

ownership of the Confederate monument known as “Silent Sam” (hereinafter, “the monument”) to the Sons of Confederate Veterans (“Plaintiff” or “SCV”) and 2.5 million dollars to Matthew S. McGonagle, the trustee of the charitable trust established under the Consent Order. See attached Exhibit 1 and Consent Order at 17.

2. Several days later, a letter from the SCV’s “Division Commander” Kevin Stone announcing the Consent Judgment to SCV’s membership was made public. See Stone letter, Ex. 1 at 6-9, attached to Movant’s Motion to Intervene. In the letter, Stone states that Plaintiff knew it lacked standing and that its claims were meritless at the time it filed the Verified Complaint (*Id.* at 6); that before any SCV complaint existed, the Defendant UNC Board of Governors (“BOG”) Chair had approached SCV’s attorney “want[ing] to open negotiations” regarding disposition of the monument (*Id.*); and that since then, the SCV had been “working directly with [the BOG].” *Id.* at 8. The letter concludes that “[t]his judicial settlement not only will insure the future of Silent Sam, but also the legal and financial support for [the SCV’s] continued and very strong actions in the future.” *Id.* at 9.

3. SCV is an organization explicitly dedicated to “instill[ing] devotion to and reverence for the principles represented by the Confederate States of America.” Verified Complaint ¶2.

4. Within days of publication of the SCV letter, Movants sought to intervene in this case and to stay execution of the judgment. Movants attached to their motion a Rule 6o(b) Motion for Relief from Judgment and Motion to Dismiss for lack of standing and failure to state a claim.

5. This Court heard the Motion to Intervene on December 20, 2019. At the hearing, only counsel for Movant-Intervenors and Defendants argued, and only Defendants submitted a brief in opposition to the motion to intervene. Counsel for Plaintiff's only comments during the hearing were that he agreed with everything Defendants' counsel had offered in opposition to the motion.

6. Defendants' counsel also stated at the hearing that Defendants "did not want to win this case," that it involved only a "negotiated settlement," and therefore "factual and legal allegations are not scrutinized" as part of the Court's approval of the Consent Judgment.¹

7. The Court denied Movants' motion, but then ordered the parties to brief the issue of Plaintiff's standing and the Court's subject matter jurisdiction. The Court allowed the parties additional time to brief the issue and allowed Movants to submit an amicus brief.

8. Initial briefs are due on January 29, reply briefs are due on February 5, and the Court will hold a hearing on the matter on February 12. Only Plaintiff and Defendants, who agree that the Plaintiff has standing, will present argument. Movants will not be permitted to participate in the hearing.

9. The Court entered the order denying the Motion to Intervene on January 10, 2020. Movants filed a Notice of Appeal pursuant to N.C. Gen. Stat. § 1-277 and N.C. Rule of Civ. Proc. 3 contemporaneously with this Motion, and are proceeding to perfect the appeal as required under the appellate rules.

¹ These quotes, taken from the WRAL video recording of the hearing (available at <https://www.wral.com/judge-hears-challenge-to-silent-sam-deal/18845516/>) at time-stamps 48:15 and 50:34 respectively, will be cited to the hearing transcript as soon as it is available.

10. Movants now seek a stay of these proceedings and a stay of execution of the Consent Order and of the transfer of any money from the Monument Trust created by that Consent Order to preserve the status quo pending appeal.

11. With respect to a stay of proceedings, N.C. Gen. Stat. § 1-294 provides: “[w]hen an appeal is perfected as provided by this Article it stays all further proceedings in the court below upon the judgment appealed from, or upon the matter embraced therein, unless otherwise provided by the Rules of Appellate Procedure; but the court below may proceed upon any other matter included in the action and not affected by the judgment appealed from.”

12. With respect to a stay of execution of the judgment, Rule 62(d) of the North Carolina Rules of Civil Procedure provides: “When an appeal is taken, the appellant may obtain a stay of execution, subject to the exceptions contained in section (a), by proceeding in accordance with and subject to the conditions of G.S. 1-289, G.S. 1-290, G.S. 1-291, G.S. 1-292, G.S. 1-293, G.S. 1-294, and G.S. 1-295.”

13. N.C. R. App. P. 8(a) provides: “When appeal is taken in a civil action from a judgment, order, or other determination of a trial court, stay of execution or enforcement thereof pending disposition of the appeal must ordinarily first be sought by . . . application to the trial court After a stay order or entry has been denied or vacated by a trial court, an appellant may apply to the appropriate appellate court for a temporary stay and a writ of supersedeas in accordance with Rule 23.”

14. At the December 20 hearing, this Court expressed its interest in getting this case right. However, the Court will only be able to do so with Movants’ participation as full parties in this case. While Movants appreciate their opportunity to brief the question of Plaintiff’s standing

as amicus curiae, they are not allowed to participate in the February 12 hearing or adequately protect their interests while this matter is pending on appeal.

15. The need for Movants' participation as full parties is underscored by the complete alignment of interests between Plaintiff and Defendants. It was Defendants who approached Plaintiff about instituting this action, and they have been in complete agreement on all factual and legal issues throughout. The Plaintiff filed no brief or offered any substantive argument on the Motion to Intervene. The parties have not and cannot provide the fundamental adversarial presentation the Court needs to ensure the proper adjudication of these issues, "because only one with a genuine grievance, one personally injured. . . can be trusted to battle the issue." *Willomere Community Association v. City of Charlotte*, 370 N.C. 553, 557, 809 S.E.2d 558, 561 (2018)(internal citations omitted).²

16. The adversary process plays a "critical role" in our system of justice where "debate between adversaries is often essential to the truth-seeking function" *Lankford v. Idaho*, 500 U.S. 110, 127 (1991). "The system assumes that adversarial testing will ultimately advance the public interest in truth and fairness." *Polk County v. Dodson*, 454 U.S. 312, 318, 102 S. Ct. 445, 450, 70 L.Ed.2d 509 (1981). As the Supreme Court has recognized, where "the adversary process is not

² The parties' complete alignment of interests also means that this Court has never had jurisdiction over this matter because "[j]urisdiction in North Carolina depends on the existence of a justiciable case or controversy." *Prop. Rights Advocacy Grp. ex rel. Its Members v. Town of Long Beach*, 173 N.C. App. 180, 182, 617 S.E.2d 715, 717 (2005), *aff'd sub nom. Prop. Rights Advocacy Grp. v. Town of Long Beach*, 360 N.C. 474, 628 S.E.2d 768 (2006). Even if there had been a genuine threat of a lawsuit by the Sons of Confederate Veterans, "[m]ere apprehension or the mere threat of an action or suit is not enough;" rather, a North Carolina court can have jurisdiction only where "litigation appears unavoidable." *Id.* As it was Defendants who approached Plaintiffs about instituting this matter (and in light of further information revealed in the Stone letter), litigation certainly was not unavoidable.

permitted to function properly, **there is an increased chance of error . . .**” *Lankford*, 500 U.S. at 127 (emphasis added).

17. That chance of error is heightened where, as here, a decisionmaker is early on presented with a theory of the case, untested by adversarial presentation. Quickly, that “theory” becomes “a fixed conclusion, as all that confirms the diagnosis makes a strong imprint on the mind, while all that runs counter to it is received with diverted attention.” John Thibaut *et. al.*, *Adversary Presentation and Bias in Legal Decisionmaking*, 86 Harv. L. Rev. 386, 390 (1972) (quoting Lon L. Fuller, *The Adversary System*, in Talks on American Law 43 (H. Berman ed. 1971)). Crucially, “[a]n adversary presentation seems the only effective means for combating this natural human tendency to judge too swiftly in terms of the familiar that which is not yet fully known.” *Id.* Indeed, researchers at the University of North Carolina conducted an empirical study to test the effectiveness of adversarial presentation and found that “an adversary presentation significantly counteracts decisionmaker bias.” *Id.* at 397.

18. The United States Supreme Court faced similar circumstances in *Unites States v. Windsor*. There, the Executive branch agreed with the plaintiff’s legal argument challenging the constitutionality of the Defense of Marriage Act. *See* 570 U.S. 744, 759 (2013). The Court observed that the defendant Executive’s agreement with the plaintiff’s legal argument “raise[d] the risk that instead of a real, earnest and vital controversy, the Court faces a friendly, non-adversarial, proceeding,” and that “prudential considerations demand that the Court insist upon that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.” *Id.* at 759-60 (internal quotation marks and citations omitted). The Court concluded that it could decide the questions only

because a congressional group **had intervened as defendants** and its “sharp adversarial presentation of the issues satisfie[d] the prudential concerns that otherwise might counsel against hearing an appeal from a decision with which the principal parties agree.” *Id.* at 761.

19. As in *Windsor*, the principal parties’ complete alignment in this matter has deprived the Court of the adversarial presentation needed to get it right on the question of whether the Court lacks jurisdiction over this matter.

20. Even if this case had involved the typical adversarial process and were in the pleadings and Rule 12(b) motions stage, Movant’s appeal triggers the *functus officio* doctrine removing this Court’s jurisdiction. *See, e.g.,* Scherer & Leerberg, North Carolina Appellate Practice and Procedure, § 6.02 (2019); *Dep’t of Transportation v. Hutchinsons, LLC*, 828 S.E.2d 552, 555–56 (N.C. Ct. App.), *appeal dismissed*, 832 S.E.2d 725 (2019) (“Any order entered by the trial judge after a valid appeal from an interlocutory order affecting a substantive right has been properly noticed is generally treated as void for want of jurisdiction.”).

21. Although the Court denied Movants’ motion to intervene and refused to consider their Rule 60(b) motion, it did *sua sponte* commence a quasi-Rule 60(b) inquiry into Plaintiff’s standing prior to Movants filing their Notice of Appeal. Thus, the Court could retain jurisdiction and proceed with its standing/subject matter jurisdiction consideration. However, it is advisable in light of the totality of the circumstances for the Court to exercise its discretion to stay all further proceedings related to that inquiry pending the Court of Appeals’ determination of whether Movants should be allowed to intervene.

22. Movants therefore ask the Court to stay the proceedings on the question of its jurisdiction until the Court of Appeals rules on Movants' appeal of the order denying their motion to intervene.

23. Movants' motion to intervene necessarily embraces the question of the Court's lack of jurisdiction and the Plaintiff's lack of standing, and those questions are the legal issues that Movants sought to raise with the Court in their Rule 60 and Rule 12 motions through their intervention. Further, if Movants prevail in their appeal, they will become a defendant in this action, and will be able to participate fully in the proceedings concerning Plaintiff's standing and the Court's jurisdiction. Such proceedings therefore will be affected by the matter on appeal.

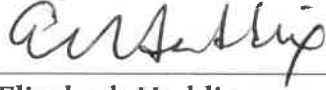
24. Movants also ask that the Court exercise its discretion to stay any further execution of the Consent Judgment and the transfer of any money from the Monument Trust created by that Consent Order in the case pending resolution of Movants' appeal. This is the only way Movants can be assured that their issues and the status quo are meaningfully preserved for appeal.

WHEREFORE, Movants respectfully request that the Court 1) stay any further proceedings, and 2) any further operation or execution of the judgment.

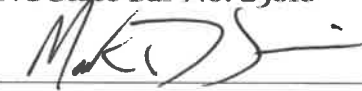
A proposed Order is attached.

Respectfully submitted, this the 19th day of January, 2020.

Lawyers' Committee for Civil Rights Under Law



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*-admission *Pro Hac Vice* pending

MONUMENT TRUST

THIS AGREEMENT (the "Agreement"), is made the 27th day of November, 2019, and executed in duplicate, between THE UNIVERSITY OF NORTH CAROLINA, a nonprofit business corporation, as Grantor, and Matthew S. McGonigle, as Trustee (the "Trustee").

All assets which shall hereafter become subject to the trust shall constitute the trust principal. The Trustee shall hold, administer and distribute the trust principal, in trust, upon the following terms and conditions:

**ARTICLE I
PREAMBLE**

This trust shall be known and designated as the "Monument Trust" and it shall be sufficient that it be referred to as such in any deed, assignment or other instrument of transfer.

The Grantor has irrevocably transferred and delivered to the Trustee the assets listed on the attached Schedule A, which Schedule is incorporated herein by reference, to establish a trust for charitable, scientific, or educational purposes (the "charitable purposes") as defined in section 501(c)(3) of the Internal Revenue Code of 1986 and the regulations thereunder, as provided in this Agreement (the "Trust").

**ARTICLE II
PURPOSES OF THE TRUST**

(A) Purpose. The purposes of the Trust are exclusively charitable within the meaning of Sections 501(c)(3) and 170(c)(2) of the Code. The primary purpose of the Trust shall be the maintenance, display, and preservation of the bronze statue of the confederate soldier by Canadian sculptor John A. Wilson, formerly located on the historic McCorkle Place of the University of North Carolina at Chapel Hill campus, together with the pedestal base and accompanying inscription tablets (collectively, the "Monument") by the North Carolina Sons of Confederate Veterans, Inc, a North Carolina nonprofit corporation (the "Beneficiary").

(B) Limitations. No part of the assets or net earnings of the Trust shall inure at any time to the benefit of any private shareholder or individual, and no substantial part of the activities of the Trust shall consist of carrying on propaganda or otherwise attempting to influence legislation. No part of the activities of the Trust shall consist of participating in, or intervening in (including, but not limited to, the publication or distribution of statements), political campaigns on behalf of or in opposition to any candidate for public office. The Trustees shall not conduct or carry on (i) any activities not permitted to be conducted or carried on by an organization described in Sections 501(c)(3), 2055(a) and 2522(a) of the Code or (ii) any activities not permitted to be conducted or carried on by an organization contributions to which are deductible under Section 170(c)(2) of the Code.

ARTICLE III
MANAGEMENT AND DISTRIBUTION OF TRUST ASSETS

(A) Distributions. The Trustee may make distributions of income or principal on a schedule to be determined in the sole discretion of the Trustee to fulfill the stated purpose of the Trust. The Trustee may also make distributions to pay the taxes and expenses of the Trust and the Trustee, in the Trustee's discretion. Any net income not paid or applied shall be added to and become a part of the principal of the trust at least annually. By way of example, but without intending to limit the discretionary authority of the Trustee hereunder, distributions for the following needs are assumed to be appropriate, taking into consideration the value and type of the assets of the Trust and assuming the surrounding circumstances justify such distributions:

(1) Real property acquisition and development for the purpose of displaying the Monument and/or construction costs to build a facility and maintain grounds to house the Monument or a facility for use by the Beneficiary at the site of the Monument, (including, without limitation, real estate brokerage, legal and professional fees associated with the acquisition, development and construction) (collectively the "Facility");

(2) Utilities, taxes, maintenance, repair, refurbishment, renovation and insurance of the Facility and Monument;

(3) Transportation expenses related to the refurbishment or repair of the Monument;

(4) Security costs, including hardware, software, and monitoring services associated with the Facility and Monument;

(5) Professional fees (including legal and financial) associated with the Facility and Monument, including, without limitation, the costs associated with any legal action associated with the acquisition or location of the Monument; and

(6) Such other reasonably necessary and appropriate costs and expenses as may arise from and/or relate to the foregoing activities.

(B) Location of Monument. The foregoing notwithstanding, no distribution shall be made and this Trust will terminate if the Monument is located, whether temporarily or permanently (including during transport), within the boundaries of any of the following North Carolina counties where the University of North Carolina System currently maintains a campus: Buncombe, Cumberland, Durham, Forsyth, Guilford, Jackson, Mecklenburg, New Hanover, Pasquotank, Pitt, Robeson, Orange, Wake or Watauga.

(C) Termination. In addition to the provisions of the immediately preceding Paragraph, the Trust shall terminate upon the date of the first to occur of the following: (i) the corpus of the Trust is exhausted; (ii) the Monument is transferred by the Beneficiary (provided, however, that no such transfer shall be deemed to occur if the Beneficiary merges with another tax-exempt organization or otherwise changes its name or corporate form) or the charitable purpose of the Trust otherwise fails; or (iii) the Trust is otherwise terminated by the Trustee or under North Carolina law. Upon termination of the Trust, any remaining assets of the Trust shall

be distributed to or among such charitable organizations, in such amounts and for such purposes, as the Trustee determines in the Trustee's sole discretion to be used exclusively for charitable purposes within the meaning of Sections 501(c)(3) and 170(c)(2) of the Code.

ARTICLE IV OFFICE OF TRUSTEE

(A) Requirement. If Matthew S. McGonigle dies, resigns, is removed, becomes incompetent or fails to serve for any reason, there shall at all times thereafter be a corporate Trustee.

(B) Vacancy. A vacancy shall be deemed to occur if a Trustee dies, resigns, is removed, becomes incompetent or fails to serve for any reason, and either:

- (1) no other Trustee is then serving, or
- (2) the provisions of section (A) are violated.

Any vacancy must be filled within 60 days by the proper exercise of the powers conferred under this Article.

(A) Power to Appoint Additional and Successor Trustees. Matthew S. McGonigle has the power from time to time to appoint one or more additional or successor individual or corporate Trustees and to negotiate and contract for Trustee compensation, provided that such appointments comply with any restrictions imposed under this Article. After Matthew S. McGonigle has appointed a successor corporate Trustee, his power to appoint additional successor Trustees under this Paragraph shall terminate and the Clerk of Superior Court for the County in which the Monument is then-located shall have the sole power from time to time to appoint one or more additional or successor individual or corporate Trustees.

(1) Procedure. Matthew S. McGonigle, or the Clerk of Superior Court, as the case may be, shall execute a written instrument of appointment or order which must be delivered to the then serving Trustee, if any, and to the Beneficiary. Any appointment may be revoked or amended in writing by the appointing party at any time before the appointee begins serving. If a corporate Trustee is appointed, the appointing party shall send a written acceptance of appointment to the appointee, and the appointment only becomes effective upon the receipt and execution of the acceptance of appointment by the corporate Trustee.

(2) Conditions and restrictions. The instrument of appointment shall set forth any applicable conditions governing the appointment and may limit the powers, duties and liabilities of the appointee; provided that in no event may the restrictions imposed on fiduciaries under the applicable North Carolina law be removed.

(B) Removal and Replacement of Trustee. The Beneficiary has the power to remove any Trustee under this Agreement; provided that if the removal of the Trustee creates a vacancy as defined in this Article, the removal becomes effective only upon the acceptance of the trust by a successor Trustee qualified to fill the vacancy, appointed as provided in the preceding section of this Article. The Beneficiary shall deliver a written instrument of removal and a copy

of the successor Trustee's written acceptance of appointment, if applicable, to the outgoing Trustee, with notice to any individual Trustee(s).

(C) Renunciation and Resignation. Each Trustee has the rights to renounce and to resign as Trustee by giving written notice to the Grantor, to any then serving Trustee, to the successor Trustee, if any. Each Trustee is hereby expressly authorized to renounce or resign without filing any petition or accounting in any court or with any public official, and without obtaining any approval from any court or public official. However, a renunciation or resignation that would create a vacancy in the office of Trustee shall become effective only upon written acceptance of the trust by a successor Trustee appointed as provided in this Agreement.

(D) Trustee Succession. Each successor Trustee is authorized to assume the duties of Trustee without obtaining approval from any court. No successor Trustee shall be required to review or audit the accounts and transactions or otherwise to inquire into any act or omission of any predecessor Trustee or to assert any claim against any such predecessor or his or her estate. No successor Trustee shall be liable for any acts or omissions of any predecessor Trustee.

(E) Power to Act Individually and to Delegate Authority. If more than one Trustee is serving at any time, the Trustees may at any time, by written instrument, delegate to any of the Trustees, acting alone, the authority to open and close trust accounts, to draw checks upon and make deposits to trust accounts, to endorse on behalf of the trust any check made payable to the trust or the Trustees, to execute documents and forms in the name of the trust, and to bind the trust in any transaction relating to the trust assets. In addition, the Trustees may provide by written instrument that any one or more of them may exercise any and all powers, duties and discretions granted to them under this Agreement, either for a fixed period of time or indefinitely. Any person dealing with any Trustee appointed hereunder shall be entitled to rely upon the written representations of such Trustee with respect to such Trustee's authority to act on behalf of the trust, and no such third party shall be required to inquire into the propriety of any Trustee's actions under this section. During any time that an instrument of delegation is in effect, the delegating Trustee or Trustees shall be relieved of liability for actions taken by the delegee.

(F) Compensation. Any Trustee serving under this Agreement shall be entitled to compensation as follows:

(1) The corporate Trustee shall be entitled to receive the commissions stipulated in its regularly adopted schedule of compensation in effect and applicable at the time of the performance of such services, provided that the corporate Trustee shall not be entitled to any termination, transfer or comparable fee if the corporate Trustee resigns or is removed or the trust terminates.

(2) If any practicing attorney or CPA serves as a Trustee under this Agreement, such practicing professional (or his or her professional firm) will receive his or her regular hourly compensation for similar services. I specifically authorize any Trustee who is a practicing attorney or CPA to perform professional services for the trust, or to hire other members of his or her firm to perform such services, and to be compensated at regular rates, whether computed hourly or on any other reasonable basis.

(3) If any other individual Trustee is serving (other than a practicing attorney or CPA), then the individual Trustee shall be entitled to receive reimbursement for all reasonable costs and expenses actually incurred and paid by the individual Trustee in the performance of services under this Agreement, but shall not be entitled to any compensation for such services.

ARTICLE V ADDITIONS, AMENDMENTS, AND TERMINATION

(A) Additions to Principal. Any person, entity or fiduciary may at any time, with the express consent of the Trustee, contribute assets of any kind to any trust created under this Agreement.

(B) Amendment or Termination by Trustee. Future laws may make it impossible or impracticable to give full effect to the intention of the Grantor as prescribed by this Agreement. Therefore the Trustee, in its sole discretion and without order of court, shall have the right to amend this Agreement and execute such instruments as it shall deem, from time to time, necessary or appropriate to make it possible to continue this Trust in accordance with the provisions of such laws and the purposes of this Trust, or, if desirable, to curtail the operations of the Trust, or terminate the Trust wholly or partly, and in either case to make distributions of the assets of the Trust to tax exempt entities as provided in ARTICLE III of this Agreement. The Trustees shall deliver a copy of any amendment to the Grantor. If the Trustees desire to seek the advice and instruction of a court or courts before taking action under this section, they shall have the right to do so.

ARTICLE VI GOVERNING LAW

The Agreement shall be construed in accordance with, and the administration of properties held in trust under the Agreement shall be determined by, the laws of the State of North Carolina.

ARTICLE VII TRUST SITUS

(A) Definition of Trust Situs. The situs of the Trust shall be the principal place of administration of the trust. The principal place of administration of the trust is the usual place where the business of the trust is conducted (as agreed upon by the Trustees if there are two or more Trustees serving). In the absence of an agreement by the Trustees, then the principal place of administration of the Trust is one of the following: (i) the usual place where the physical records pertaining to the trust are kept, or (ii) the location or residence of the Trustee or any one of the Trustees.

(B) Jurisdiction. Any action or proceeding relating to any matter involving the Trust shall be brought and enforced in any state court of competent jurisdiction in the State where the situs of the trust is located and the Trustee(s) and beneficiary of the Trust shall be subject to jurisdiction in such State.

ARTICLE VIII
ADMINISTRATIVE PROVISIONS

(A) Accounts. No Trustee is required to file any report in any court. The Trustee is specifically relieved of any and all duty imposed under N.C. Gen. Stat. § 36C-8-813 to provide information or reports to any party. Instead, the Trustee shall be required to make available to the Grantor or the Attorney General of the State of North Carolina, following receipt of a written request: (i) reasonably complete and accurate information as to the nature and amount of the Trust property, (ii) reasonable inspections of the subject matter of the Trust and the accounts and other documents relating to the Trust; and (iii) a copy of the portions of this Agreement which contain the terms of the Trust. In no event shall this provision be interpreted to require the Trustee to provide any information to the foregoing in the absence of a written request.

(B) Waiver of Bond. No Trustee hereunder is required to give or file any bond or other security in any jurisdiction.

(C) General Fiduciary Powers. I hereby authorize the Trustee without an order of court to do all things and to perform all acts that seem requisite or desirable in the businesslike administration of the Trust. Without in any way limiting the generality of the foregoing, the Trustees shall have all of the powers set forth and described in Chapter 36C, of the General Statutes of North Carolina, relating to powers of trustees, as they shall exist at the time of this Agreement, which powers are incorporated in this Agreement as if fully set forth herein. The Trustees shall have discretion to determine whether items should be charged or credited to income or principal. The Trustees shall exercise this discretion in such manner as the Trustees may reasonably deem equitable and just under all the circumstances, without regard to the provisions of Articles 4 and 5 of Chapter 37A of the North Carolina General Statutes or any comparable statute applicable to the trust.

(D) Investments by the Trustees. No provision of this Agreement shall be construed as restricting the Trustees' ability to invest and reinvest the assets of the Trust in a manner which could result in the annual realization of a reasonable amount of income or gain from the sale or disposition of the assets of the Trust. The Trustees shall have the power, exercisable in the discretion of the Trustees, to hire one or more professional investment advisors or money managers, to delegate responsibility for trades, sales and purchases to such advisors, and to rely on the advice received from such advisors. So long as the Trustees act in good faith and exercise ordinary care and reasonable diligence when selecting and supervising the advisors, the Trustees shall not be liable for any loss or decrease in value of the trust principal, or in any specific asset thereof, caused by acting in accordance with the provisions of this section.

ARTICLE IX
CONSTRUCTION

(A) Captions. Titles and headings contained in this Agreement shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of its provisions.

(B) Gender and Number. As used in this Agreement, the masculine, feminine and neuter gender, and the singular and plural numbers, whenever the context requires or permits, shall each be deemed to include the other genders or numbers respectively.

(C) Notice. Any notice requirement under this Agreement may be met by (a) personal delivery; (b) delivery to the recipient's last known address by a nationally recognized courier service or first class, registered or certified U.S. mail with appropriate proof of delivery; or (c) a properly directed electronic message. Any notice requirement may be waived in writing.

(D) The Code and Treasury Regulations. References to "the Code" mean the Internal Revenue Code of 1986, as amended from time to time. Each reference to a provision of the Code or to a specific Treasury Regulation shall include any successor thereto.

IN WITNESS WHEREOF, THE UNIVERSITY OF NORTH CAROLINA signs this Agreement, and does hereby declare to the undersigned authority by affirmation that it signs and executes this Agreement as the Monument Trust Agreement, that the statements contained therein are true and correct, that it signs the Agreement willingly and executes the Agreement freely and voluntarily for the purposes therein expressed, and that its representative-signatory is eighteen years of age or older, of sound mind and under no constraint or undue influence, and FIRST-CITIZENS BANK AND TRUST COMPANY, in acceptance of the trust hereby created, has caused the Agreement to be signed on the date and at the time first above written.

Signature Pages Follow

THE UNIVERSITY OF NORTH CAROLINA, Grantor

By: _____
William L. Roper
Interim President
The University of North Carolina

By: _____
Randy Ramsey
Chair
The University of North Carolina Board of Governors



Matthew S. McGonigle, Trustee
McGonigle

STATE OF NORTH CAROLINA, _____ COUNTY

I certify that William L. Roper personally came before me this day and acknowledged that he is Interim President of THE UNIVERSITY OF NORTH CAROLINA, the Grantor of the foregoing Agreement, and that he, as, being authorized to do so, executed the foregoing on behalf of THE UNIVERSITY OF NORTH CAROLINA.

Date: _____

(official signature of Notary)

_____, Notary Public
(Notary's printed or typed name)

(Official Seal)

My commission expires: _____

* * * * *

STATE OF NORTH CAROLINA, _____ COUNTY

I certify that Randy Ramsey personally came before me this day and acknowledged that he is Chair of the Board of Governors of THE UNIVERSITY OF NORTH CAROLINA, the Grantor of the foregoing Agreement, and that he, as, being authorized to do so, executed the foregoing on behalf of THE UNIVERSITY OF NORTH CAROLINA.

Date: _____

(official signature of Notary)

_____, Notary Public
(Notary's printed or typed name)

(Official Seal)

My commission expires: _____

* * * * *

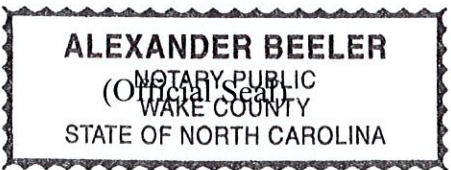
STATE OF NORTH CAROLINA, Wake COUNTY

I certify that Matthew S. ^{McGinley} ~~McGinley~~, Trustee, personally came before me this day and acknowledged to me that he signed the foregoing document for the purpose stated therein and in the capacity indicated.

Date: 11/27/2019

Alexander Beeler
(official signature of Notary)

Alexander Beeler, Notary Public
(Notary's printed or typed name)



My commission expires: 10/22/2020

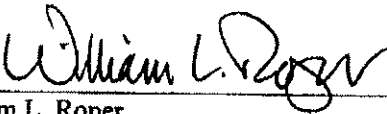
SCHEDULE A

I, Matthew S. McGonigle, the Trustee, hereby acknowledge receipt of the following described properties which are to be held by the Trustee in trust for the purposes set forth in the foregoing Trust Agreement, of which this schedule is specifically made a part:

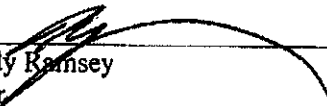
\$2,500,000

This, the 27th day of November, 2019.

THE UNIVERSITY OF NORTH CAROLINA, Grantor

By: 

William L. Roper
Interim President
The University of North Carolina

By: 

Randy Ramsey
Chair
The University of North Carolina Board of Governors

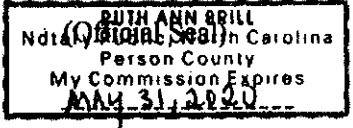
Matthew S. McGonigle, Trustee

STATE OF NORTH CAROLINA, Orange COUNTY

I certify that William L. Roper personally came before me this day and acknowledged that he is Interim President of THE UNIVERSITY OF NORTH CAROLINA, the Grantor of the foregoing Agreement, and that he, as, being authorized to do so, executed the foregoing on behalf of THE UNIVERSITY OF NORTH CAROLINA.

Date: 11-26-19

Ruth Ann Brill
(official signature of Notary)
Ruth Ann Brill, Notary Public
(Notary's printed or typed name)



My commission expires: May 31, 2020

STATE OF NORTH CAROLINA, Wake COUNTY

I certify that Randy Ramsey personally came before me this day and acknowledged that he is Chair of the Board of Governors of THE UNIVERSITY OF NORTH CAROLINA, the Grantor of the foregoing Agreement, and that he, as, being authorized to do so, executed the foregoing on behalf of THE UNIVERSITY OF NORTH CAROLINA.

Date: 11-22-19

Marian L. Leonard
(official signature of Notary)
Marian L. Leonard, Notary Public
(Notary's printed or typed name)



My commission expires: 10-28-24

STATE OF NORTH CAROLINA, _____ COUNTY

I certify that Matthew S. McGonigle, Trustee, personally came before me this day and acknowledged to me that he signed the foregoing document for the purpose stated therein and in the capacity indicated.

Date: _____

(official signature of Notary)
_____, Notary Public
(Notary's printed or typed name)

(Official Seal)

My commission expires: _____

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing MOTION FOR STAY and proposed order has been served on all parties and/or counsel by U.S. Postal Service, first-class delivery, with a courtesy copy by direct transmission to the electronic mailing addresses shown below:

Ripley Rand
Womble Bond Dickinson
555 Fayetteville Street
Suite 1100
Raleigh, NC 27601
Ripley.rand@wbd-us.com

C. Boyd Sturges III
Davis, Sturges & Tomlinson
101 Church St.
PO Drawer 708
Louisburg, NC
bsturges@dstattys.com

This the 14th day of January, 2020.



STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

ORANGE COUNTY

19-CVS-1579

NORTH CAROLINA DIVISION SONS OF
CONFEDERATE VETERANS, INC.,

Plaintiff,

v.

THE UNIVERSITY OF NORTH
CAROLINA and THE UNIVERSITY OF
NORTH CAROLINA BOARD OF
GOVERNORS,

Defendants.

ORDER

NOW COMES the Undersigned, upon the Motion for Stay filed in this matter by Alyassa Boyd, De'Ivyion Drew, Elisabeth Jones, Michelle Robinson, Gina Balamucki, William Holland, and Liliya Oliferuk, (hereinafter "Movants"). Having reviewed the Motion and the arguments of counsel, this Court concludes that both execution of the judgment as well as the Court's own Rule 60(b) proceeding should be stayed pending resolution of Movants' appeal of the denial of their Rule 24(a) motion to intervene. Therefore, it is hereby ORDERED that, pursuant to Rule 62 (d) of the N.C. Rules of Civil Procedure and N.C. Gen. Stat. § 1-294, any further execution of the November 27, 2019 Consent Judgment and Order is hereby STAYED, as are any further trial court proceedings in this case.

This the _____ day of _____, 2020.

Superior Court Judge