

**IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR  
LEE COUNTY, FLORIDA CIVIL ACTION**

ROGER S. FINLAW,

Case Number: 17-CA-

Plaintiff,

v.

JEFFREY S. FINLAW, as the Personal Representative  
of the ESTATE of TWILA FINLAW, deceased,

Defendant.

---

**COMPLAINT**

COMES NOW, Plaintiff, ROGER S. FINLAW, by and through his undersigned counsel, hereby sues Defendant, JEFFREY S. FINLAW, as the Personal Representative of the ESTATE OF TWILA FINLAW, and alleges as follows:

**A. PARTIES, JURISDICTION, AND VENUE**

1. This is an action for declaratory judgment pursuant to F.S. 86.011 and F.S. 86.041.
2. Plaintiff is and at all times herein, a resident of Lee County, Florida and who is a creditor of the Estate of Twila Finlaw (Case No. 16-CP-2896, Lee County, Florida).
3. Defendant is and at all times herein, a court appointed personal representative of the Estate of Twila Finlaw (Case No. 16-CP-2896).
4. Venue is proper in Lee County, Florida because the subject of this action involves a claim filed by Plaintiff against the Estate of Twila Finlaw, a decedent whose estate is administered in Lee County, Florida (Case No. 16-CP-2896).
5. Plaintiff has performed all conditions precedent to the filing of this action, or such conditions have been satisfied or waived.

6. Plaintiff has retained the law firm of Patrone & Kemp, P.A., and has agreed to pay said firm a reasonable fee for its services and costs incurred.

### **B. GENERAL ALLEGATIONS**

7. On December 12, 2012, Twila Finlaw ("Decedent") executed a Last Will and Testament. A copy of the Last Will and Testament dated December 12, 2012 is attached hereto as Exhibit "A".

8. On December 23, 2014, the decedent allegedly executed a Last Will and Testament. A copy of the Last Will and Testament dated December 23, 2014 is attached hereto as Exhibit "B".

9. Article III of the decedent's Last Will and Testament December 23, 2014, states:

#### "ARTICLE III

I do give, devise and bequeath all the rest, residue, and remainder of my property and estate, real, personal and mixed, of which I may die seized and possessed, wheresoever situated and located as follows:

- A. I give and devise any reimbursement of funds paid on my residence located at Gulf Coast Village that are to be paid after my death by Gulf Coast Village to my son, Roger S. Finlaw, per stirpes.
  - B. I give and devise all of the remainder of my estate to my grandson, Jeffrey S. Finlaw, per stirpes.
  - C. If at the time of my death my son, Roger S. Finlaw, shall owe money to me, then and in such event said money that was owed to me shall be cancelled and is not to be repaid to my estate."
10. On November 17, 1986, Roy E. Palmer, Constance F. Palmer, R.I. Finlaw, and Twila E. Finlaw, entered into a Partnership Agreement concerning or relating to Palmer-Finlaw Associates ("Partnership"). A copy of the Partnership Agreement is attached hereto as Exhibit "C".

11. R.I. Finlaw and decedent are the natural parents of Plaintiff.
12. R.I. Finlaw is deceased and upon his death, R.I. Finlaw devised his interest in the partnership to decedent pursuant to paragraph XIX of the Partnership Agreement.
13. The decedent died on December 14, 2016.
14. Respondent, JEFFREY S. FINLAW, was appointed to serve as personal representative of the estate and the decedent's Last Will and Testament dated December 23, 2014, was admitted to probate by Order of the Probate Court, in Lee County, Florida, on February 20, 2017.
15. Letters of Administration were issued to JEFFREY S. FINLAW on March 23, 2017. A copy of the Order Admitting Will to Probate and Appointing Personal Representative and the Letters of Administration are attached hereto as Composite Exhibit "D".
16. Pursuant to paragraph XIX of the Palmer-Finlaw Associates Partnership Agreement, "each partner who shall ultimately become a surviving spouse, further agrees to have prepared and to execute a Last Will and Testament so as to vest his or her interest in this partnership in his or her children (lineal descendants)."
17. Plaintiff filed a Statement of Claim in the ESTATE OF TWILA FINLAW, for the relief requested herein, on November 15, 2017. A copy of the Claim is attached hereto as Exhibit "E".
18. Respondent, filed an Objection to the Statement of Claim on November 30, 2017. A copy of the Objection to Claim is attached hereto as Exhibit "F".
19. Plaintiff is seeking an Order of the Court to determine Plaintiff to be the sole beneficiary of the interest in the Palmer-Finlaw Associates Partnership Agreement.


### C. ACTION FOR DECLARATORY JUDGMENT

20. This is an action for declaratory judgment pursuant to F.S. 86.011 and F.S. 86.041.
21. Plaintiff re-alleges and asserts the allegations in paragraphs 1- 19 above as if the same were set forth herein.
22. The decedent became a surviving spouse upon the death of R.I. Finlaw.
23. The decedent owned an interest in Palmer-Finlaw Associates Partnership and upon the death of her spouse, R.I. Finlaw, the decedent inherited the partnership interest of R.I. Finlaw.
24. Plaintiff is the only child of the decedent.
25. The decedent executed a Last Will and Testament on December 12, 2012, a subsequent will on December 23, 2014, and neither will is executed pursuant to the requirements of paragraph XIX of the Palmer-Finlaw Associates Partnership Agreement, dated November 17, 1986.
26. Plaintiff and the Defendant named herein have an actual, present and adverse interest in the subject matter described herein.
27. There is a bona fide, actual, present practical need for a declaration.
28. Plaintiff, as a creditor of the decedent's estate, requests that the court construe and ascertain Paragraph XIX of the Palmer-Finlaw Associates Partnership Agreement, dated November 17, 1986, and determine Plaintiff as the sole beneficiary of the decedent's interest in the partnership and, that the decedent failed to execute a Last Will and Testament consistent with the terms and conditions of Paragraph XIX of the Palmer-Finlaw Associates Partnership Agreement, dated November 17, 1986.

WHEREFORE, Plaintiff, pursuant to F.S. 86.011 and F.S. 86.041, requests that this Honorable Court:

1. Construe and ascertain Paragraph XIX of the Palmer-Finlaw Associates Partnership Agreement, dated November 17, 1986, and determine Plaintiff as the sole beneficiary of the decedent's interest in the partnership;
2. Determine that the decedent failed to execute a Last Will and Testament consistent with the terms and conditions of Paragraph XIX of the Palmer-Finlaw Associates Partnership Agreement, dated November 17, 1986;
3. Award reasonable attorney's fees and costs; and
4. Award such other relief as the Court deems just and proper.

EXECUTED this 15<sup>th</sup> day of December, 2017.

  
\_\_\_\_\_  
Kenneth E. Kemp II, Esquire  
Attorney for Plaintiff  
Florida Bar No. 0607401  
PATRONE & KEMP, P.A.  
12685 New Brittany Boulevard  
Fort Myers, FL 33907  
239-278-1800  
[Kenneth@apatronelaw.com](mailto:Kenneth@apatronelaw.com)  
[Holly@apatronelaw.com](mailto:Holly@apatronelaw.com)

**LAST WILL AND TESTAMENT  
OF**

**Twila Finlaw**

I, **Twila Finlaw**, a resident of the State of Florida, do make, publish and declare this to be my Last Will and Testament, hereby revoking all wills and codicils heretofore made by me.

**ARTICLE I**

I desire and direct that all my legal debts be paid, including any estate, transfer, inheritance or succession taxes that may be due, without unnecessary delay by my personal representative hereinafter named and appointed.

**ARTICLE II**

I may leave a written statement or list disposing of certain items of my tangible personal property. Any such statement or list in existence at the time of my death shall be determinative with respect to all items devised therein. If no written statement or list is found and property identified by my Personal Representative within thirty (30) days after the probate of my Will, it shall be presumed that there is no such list and any subsequently discovered statement or list shall be ignored.

**ARTICLE III**

I do give, devise and bequeath all the rest, residue and remainder of my property and estate, real, personal and mixed, of which I may die seized and possessed, wheresoever situated and located as follows:

A. I give and devise the sum of **FIFTY THOUSAND DOLLARS (\$50,000.00)** to each of my grandchildren who shall be living at the time of my death. Said sum of money shall be held **IN TRUST** and administered in accordance with **ARTICLE V** below.

B. The remainder of my property and estate shall be distributed as follows:

1. Fifty Percent (50%) of said estate to my son, **Roger S. Finlaw**, if he shall survive me. If my son, **Roger S. Finlaw** does not survive me, then and in such event said fifty percent share is to be distributed to my grandson, **Jeffrey S. Finlaw, per stirpes**.

2. Fifty Percent (50%) of said estate to my grandson, **Jeffrey S. Finlaw, per stirpes**.

## ARTICLE IV

I nominate, constitute and appoint my grandson, **Jeffrey S. Finlaw**, as personal representative of this my Last Will and Testament. Should **Jeffrey S. Finlaw** be unwilling or unable to act, then I appoint my son, **Roger S. Finlaw**, as alternate personal representative of this my Last Will and Testament.

I direct that **Jeffrey S. Finlaw** shall act as the Trustee of any trust created under this will for such minor.

## ARTICLE V Trust for Minors

Notwithstanding any other provisions of this Trust or my Will, except for gifts of tangible personal property, no distribution of any property shall be distributed to any person who has not yet attained his or her **twenty-fifth (25th)** birthday. This birthday shall be referred to as the "age of distribution." His or her share shall be held in trust under this trust instrument by the Trustee, who shall be the same person as the nominated personal representative in this will or any codicil, or any successor Trustee, who shall manage the gifts made and shall distribute the income and principal of the trust in the following manner:

1. As used herein the term "beneficiary" includes any beneficiary who is entitled to present enjoyment of trust assets.

2. The trust shall be for the benefit of my beneficiaries who have not yet reached their age of distribution

3. Each beneficiaries' share, subject to this paragraph, shall be vested subject to limitations and reverts as stated herein and shall be segregated from other trust assets. The income and principal of the beneficiary's share shall be distributed to or for the benefit of the beneficiary, from time to time and in such amounts as in the discretion of the Trustees is necessary or desirable for reasonable support, maintenance, and education of the beneficiaries in good health, taking into consideration the standard of living to which they are accustomed at the time of the Grantor's death. The trustee may withhold payment if in the trustee's sole discretion the beneficiary suffers from a drug, alcohol, gambling or other problem which would cause a disbursement from the trust to not be in the best interest of the beneficiary. The income and principal may be used also in the discretion of the Trustee to provide college and professional or technical training to the extent permitted by the trust estate. Undistributed income shall be added to principal.

4. After a beneficiary attains his or her age of distribution, he or she will receive full distribution of the remaining share. The trustee may continue this trust and withhold payment for any period of time if in the trustee's sole discretion the beneficiary suffers from a drug, alcohol, gambling or other problem which would cause a disbursement from this trust to not be in the best interest of the beneficiary.

5. If, at any time, in the judgment of the Trustees the value of the principal held in this trust does not warrant the continuance of the trust under the circumstances then existing, the Trustees in their discretion are authorized to terminate the trust and to distribute to each beneficiary his or her share of the assets of the trust regardless of age. A distribution to a beneficiary who is a minor at the time of distribution shall be made to the custodian for the minor under the Florida Gifts to Minors Act. If there is none, the custodian shall be appointed by the Trustee, and the Trustee may appoint himself or herself as custodian.

6. The trustee is granted all powers enumerated in Florida statutes chapter 736. Should there be no person able or willing to act as Trustee, a parent of the beneficiary shall become Trustee, and in the absence of a parent an uncle or aunt shall act as Trustee.

7. Should any beneficiary die prior to his or her age of distribution without leaving legal issue his or her share shall be distributed in accordance with the dispositive provisions of this trust as if he or she had predeceased the maker of this Trust. Should any beneficiary die prior to his or her age of distribution leaving legal issue his or her share shall be distributed, per stirpes, subject to this Trust for Minors.

8. This is a spendthrift trust. Except for the right to disclaim, (and except as specifically provided by powers of appointment) no principal or income distributable from any trust created under this instrument shall be subject, either voluntarily or involuntarily, to anticipation, assignment, mortgage or pledge in any manner by any beneficiary, or to the interference or control of any creditor of a beneficiary, and shall not be reached by any legal or equitable or other process, including bankruptcy proceedings, in satisfaction of any debt or liability of a beneficiary.

#### ARTICLE VI

I hereby authorize and empower my personal representative herein above named to sell, mortgage, pledge, transfer, rent or convey any personal or real property that I may own at my death and to give full or partial satisfaction of mortgage in order to pay debts and legacies and administer my Estate; this power may be exercised either at public or private sale, and upon such terms and conditions as such personal representative, in its discretion, deem best, without any order of court. I authorize said personal representative to make good and sufficient conveyance to any purchaser and to hold the proceeds of sale to the same uses as hereinbefore declared in the several items of this my Will.

#### ARTICLE VII

I direct that any gift of real or personal property which is transferred as a specific bequest or devise shall bear all costs related to such property and shall be transferred without reimbursement or payment from other assets of the estate, and such property shall fully bear the burden of mortgages, liens, taxes, assessments, and maintenance charges related directly to such property; provided however, that this provision shall not apply if such property becomes part of the residuary property of the estate and is transferred as part of the residuary property rather than as a specific bequest or devise.

#### ARTICLE VIII


##### Mediation of Disputes

In the interest of reducing litigation and administrative time and expense, any interested person may request the mediation of any dispute between or among the beneficiaries and a fiduciary or any combination of such persons. A request to mediate may be accepted or rejected without prejudice to any person. If the request to mediate is rejected it will be without prejudice to any person. The mediator shall be a person mutually acceptable to all parties and the mediation shall be held at a time and place mutually agreed to by all parties. The person requesting the mediation shall be solely responsible for the mediator's fee unless otherwise agreed. If a fiduciary requests the mediation the

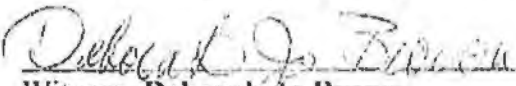



mediator's fee shall be paid from the estate assets as an expense of administration. Mediation is non-binding unless an agreement is reached by the parties. Any agreement reached at the mediation must be in writing and signed by all affected parties and may be enforced in a court of law. Mediation is not available when the validity of all or part of a will or trust is in dispute. Mediation shall not toll any time requirements to file documents or statute of limitations unless agreed to in writing by the affected parties.

IN WITNESS WHEREOF, I have declared this instrument to be my will and hereunto set my hand and seal at Cape Coral, Florida, on December 12, 2012.

  
Twila Finlaw


The foregoing instrument was signed, sealed and declared and published by Twila Finlaw as her Last Will and Testament in the presence of us, the undersigned, who at her instance and request, do sign and attest the same as witnesses, after said Maker signed her name thereto, and in the presence of each other, on the day and year last written above.

  
Witness- Deborah Jo Brown  
1714 Cape Coral Parkway  
Cape Coral, FL 33904

  
Witness- Edie Purdy  
1714 Cape Coral Parkway  
Cape Coral, FL 33904

STATE OF FLORIDA  
COUNTY OF LEE

We, Twila Finlaw, Deborah Jo Brown and Edie Purdy, Maker of this will and the witnesses respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned officer that the Maker signed this instrument as her last will and that each of the witnesses in the presence of the Maker and in the presence of each other signed the will as a witness.

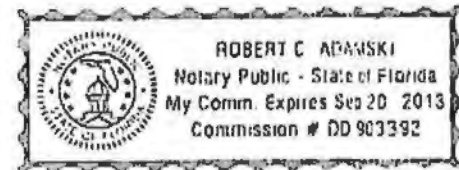
  
Twila Finlaw

  
Witness- Deborah Jo Brown

  
Witness- Edie Purdy

Acknowledged and subscribed before me by the testator, Twila Finlaw, who is personally known to me or provided \_\_\_\_\_ as identification, and sworn to and subscribed before me by the witnesses, Deborah Jo Brown and Edie Purdy, who are personally known to me, and subscribed by me in the presence of the testator and the subscribing witnesses on December 12, 2012.

  
Robert C. Adamski, Notary Public.  
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**Personal Property Disposition**

I, **Twila Finlaw**, have prepared the following list of personal property to my Last Will executed at Cape Coral, Florida.

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**Twila Finlaw**

LAST WILL AND TESTAMENT  
OF

16 - CP - 002896  
Probate: McHugh, Michael T

**Twila Finlaw**

I, **Twila Finlaw**, a resident of the State of Florida, do make, publish and declare this to be my Last Will and Testament, hereby revoking all wills and codicils heretofore made by me.

ARTICLE I

I desire and direct that all my legal debts be paid, including any estate, transfer, inheritance or succession taxes that may be due, without unnecessary delay by my personal representative hereinafter named and appointed.

ARTICLE II

I may leave a written statement or list disposing of certain items of my tangible personal property. Any such statement or list in existence at the time of my death shall be determinative with respect to all items devised therein. If no written statement or list is found and property identified by my Personal Representative within thirty (30) days after the probate of my Will, it shall be presumed that there is no such list and any subsequently discovered statement or list shall be ignored.

ARTICLE III

I do give, devise and bequeath all the rest, residue and remainder of my property and estate, real, personal and mixed, of which I may die seized and possessed, wheresoever situated and located as follows:

- A. I give and devise any reimbursement of funds paid on my residence located at Gulf Coast Village that are to be paid after my death by Gulf Coast Village to my son, **Roger S. Finlaw**, per stirpes.
- B. I give and devise all of the remainder of my estate to my grandson, **Jeffrey Finlaw**, per stirpes.
- C. If at the time of my death my son, **Roger S. Finlaw**, shall owe money to me, then and in such event said money that was owed to me shall be cancelled and is not to be repaid to my estate.

ARTICLE IV

I nominate, constitute and appoint my grandson, **Jeffrey S. Finlaw**, as personal representative of this my Last Will and Testament. Should **Jeffrey S. Finlaw** be unwilling or unable to act, then I appoint my son, **Roger S. Finlaw**, as alternate personal representative of this my Last Will and Testament.

I direct that **Jeffrey S. Finlaw** shall act as the Trustee of any trust created under this will for such minor.

**ARTICLE V**  
**Trust for Minors**

Notwithstanding any other provisions of this Trust or my Will, except for gifts of tangible personal property, no distribution of any property shall be distributed to any person who has not yet attained his or her **twenty-fifth (25th)** birthday. This birthday shall be referred to as the "age of distribution." His or her share shall be held in trust under this trust instrument by the Trustee, who shall be the same person as the nominated personal representative in this will or any codicil, or any successor Trustee, who shall manage the gifts made and shall distribute the income and principal of the trust in the following manner:

1. As used herein the term "beneficiary" includes any beneficiary who is entitled to present enjoyment of trust assets.

2. The trust shall be for the benefit of my beneficiaries who have not yet reached their age of distribution.

3. Each beneficiaries' share, subject to this paragraph, shall be vested subject to limitations and reverts as stated herein and shall be segregated from other trust assets. The income and principal of the beneficiary's share shall be distributed to or for the benefit of the beneficiary, from time to time and in such amounts as in the discretion of the Trustees is necessary or desirable for reasonable support, maintenance, and education of the beneficiaries in good health, taking into consideration the standard of living to which they are accustomed at the time of the Grantor's death. The trustee may withhold payment if in the trustee's sole discretion the beneficiary suffers from a drug, alcohol, gambling or other problem which would cause a disbursement from the trust to not be in the best interest of the beneficiary. The income and principal may be used also in the discretion of the Trustee to provide college and professional or technical training to the extent permitted by the trust estate. Undistributed income shall be added to principal.

4. After a beneficiary attains his or her age of distribution, he or she will receive full distribution of the remaining share. The trustee may continue this trust and withhold payment for any period of time if in the trustee's sole discretion the beneficiary suffers from a drug, alcohol, gambling or other problem which would cause a disbursement from this trust to not be in the best interest of the beneficiary.

5. If, at any time, in the judgement of the Trustees the value of the principal held in this trust does not warrant the continuance of the trust under the circumstances then existing, the Trustees in their discretion are authorized to terminate the trust and to distribute to each beneficiary his or her share of the assets of the trust regardless of age. A distribution to a beneficiary who is a minor at the time of distribution shall be made to the custodian for the minor under the Florida Gifts to Minors Act. If there is none, the custodian shall be appointed by the Trustee, and the Trustee may appoint himself or herself as custodian.

6. The trustee is granted all powers enumerated in Florida statues chapter 736. Should there be no person able or willing to act as Trustee, a parent of the beneficiary shall become Trustee, and in the absence of a parent an uncle or aunt shall act as Trustee.

7. Should any beneficiary die prior to his or her age of distribution without leaving legal issue his or her share shall be distributed in accordance with the dispositive provisions of this trust as if he or she had

predeceased the maker of this Trust. Should any beneficiary die prior to his or her age of distribution leaving legal issue his or her share shall be distributed, per stirpes, subject to this Trust for Minors.

8. This is a spendthrift trust. Except for the right to disclaim, (and except as specifically provided by powers of appointment) no principal or income distributable from any trust created under this instrument shall be subject, either voluntarily or involuntarily, to anticipation, assignment, mortgage or pledge in any manner by any beneficiary, or to the interference or control of any creditor of a beneficiary, and shall not be reached by any legal or equitable or other process, including bankruptcy proceedings, in satisfaction of any debt or liability of a beneficiary.

#### ARTICLE VI

I hereby authorize and empower my personal representative herein above named to sell, mortgage, pledge, transfer, rent or convey any personal or real property that I may own at my death and to give full or partial satisfaction of mortgage in order to pay debts and legacies and administer my Estate; this power may be exercised either at public or private sale, and upon such terms and conditions as such personal representative, in its discretion, deem best, without any order of court. I authorize said personal representative to make good and sufficient conveyance to any purchaser and to hold the proceeds of sale to the same uses as hereinbefore declared in the several items of this my Will.

#### ARTICLE VII

I direct that any gift of real or personal property which is transferred as a specific bequest or devise shall bear all costs related to such property and shall be transferred without reimbursement or payment from other assets of the estate, and such property shall fully bear the burden of mortgages, liens, taxes, assessments, and maintenance charges related directly to such property; provided however, that this provision shall not apply if such property becomes part of the residuary property of the estate and is transferred as part of the residuary property rather than as a specific bequest or devise.

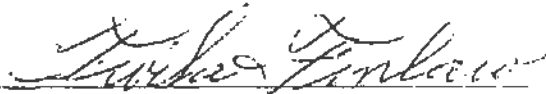
#### ARTICLE VIII

##### Mediation of Disputes


In the interest of reducing litigation and administrative time and expense, any interested person may request the mediation of any dispute between or among the beneficiaries and a fiduciary or any combination of such persons. A request to mediate may be accepted or rejected without prejudice to any person. If the request to mediate is rejected it will be without prejudice to any person. The mediator shall be a person mutually acceptable to all parties and the mediation shall be held at a time and place mutually agreed to by all parties. The person requesting the mediation shall be solely responsible for the mediator's fee unless otherwise agreed. If a fiduciary requests the mediation the mediator's fee shall be paid from the estate assets as an expense of administration. Mediation is non-binding unless an agreement is reached by the parties. Any agreement reached at the mediation must be in writing and signed by all affected parties and may be enforced in a court of law. Mediation is not available when the validity of all or part of a will or trust is in dispute. Mediation shall not toll any time requirements to file documents or statute of limitations unless agreed to in writing by the

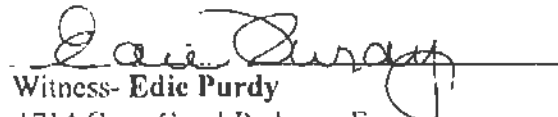
affected parties.

IN WITNESS WHEREOF, I have declared this instrument to be my will and hereunto set my hand and seal at Cape Coral, Florida, on **December 23, 2014**.

  
Twila Finlaw

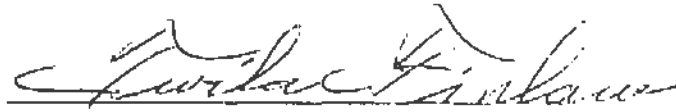
The foregoing instrument was signed, sealed and declared and published by Twila Finlaw as her Last Will and Testament in the presence of us, the undersigned, who at her instance and request, do sign and attest the same as witnesses, after said Maker signed her name thereto, and in the presence of each other, on the day and year last written above.

  
Witness- **Deborah Jo Brown**  
1714 Cape Coral Parkway E.  
Cape Coral, FL 33904

  
Witness- **Edie Purdy**  
1714 Cape Coral Parkway E.  
Cape Coral, FL 33904

STATE OF FLORIDA  
COUNTY OF LEE

We, **Twila Finlaw**, Deborah Jo Brown and Edie Purdy, Maker of this will and the witnesses respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned officer that the Maker signed this instrument as her last will and that each of the witnesses in the presence of the Maker and in the presence of each other signed the will as a witness.

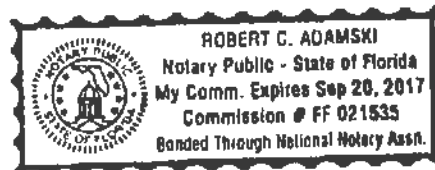
  
Twila Finlaw

  
Witness- **Deborah Jo Brown**

  
Witness- **Edie Purdy**

Acknowledged and subscribed before me by the testator, **Twila Finlaw**, who is personally known to me or provided \_\_\_\_\_ as identification, and sworn to and subscribed before me by the witnesses, **Deborah Jo Brown and Edie Purdy**, who are personally known to me, and subscribed by me in the presence of the testator and the subscribing witnesses on **December 23, 2014**.

  
Robert C. Adamski, Notary Public.  
Z:\DEBIESTATE PLANNING\FINLAW\Last Will 12-23-14 fms



eFiled  
Lee  
County  
Clerk  
of  
Courts  
Page  
14

Last Will and Testament, Page 4.

EXHIBIT B

PARTNERSHIP AGREEMENT

THIS AGREEMENT, is entered into at Zanesville, Muskingum County, Ohio, on this 17<sup>th</sup> day of November, 1986, and is by and among ROY E. PALMER and CONSTANCE F. PALMER, whose residence address is 351 Fernbank Road, Zanesville, Ohio, 43701, and R. I. FINLAW and TWILA E. FINLAW, whose mailing address is 1662 Pine Street, Zanesville, Ohio, 43701, and

WHEREAS, the parties to this Agreement wish to form a partnership and to carry on as co-owners of a business for profit, with such business to consist of the ownership, operation, and maintenance of certain real estate in the City of Zanesville, Ohio, and such other business or businesses as the partners might hereinafter determine.

NOW, THEREFORE, in consideration of the promises and covenants herein contained, the parties do hereby agree as follows:

I. NAME

The name of the partnership shall be "PALMER - FINLAW ASSOCIATES".

II. PLACE OF BUSINESS

The place of business of this partnership shall be 351 Fernbank Road, Zanesville, Ohio, 43701, or such other place or places as the parties might agree.

III. PURPOSE

The purpose of the partnership shall be to own, hold, lease and operate real property situated in the City of Zanesville, Muskingum County, Ohio, and to carry on any other type of business for profit as to which the parties might agree.

IV. TERM

The partnership shall begin on January 1, 1987, and shall continue until terminated as hereinafter provided.

V. INITIAL CAPITALIZATION

The original capital of the partnership shall consist of Four Thousand Dollars (\$4,000.00) in cash, and the conveyance to the partnership by each of their interest in the real estate which is hereinafter described. Each partner

shall contribute one-fourth (1/4) of the cash capital. The partners further acknowledge and agree that the fair market value of the real estate to be conveyed to the partnership, as of January 1, 1987, is \$\_\_\_\_\_.

#### VI. ACCOUNTS

An individual capital account shall be maintained for each partner. The capital interest of each partner shall consist of his capital contributions, including both the real and personal property, increased by such partner's proportionate share of the partnership's net profits, which the partners may determine to transfer to partnership capital and decreased by: (1) distributions in reduction of partnership capital and (2) such partner's proportionate share of the partnership's net losses.

#### VII. WITHDRAWALS

Each partner shall receive, to the extent available, the net income of the partnership. Such distribution shall be made in cash on a monthly basis, or at such other intervals as the partners might agree, but not less than twice each year.

#### VIII. INTEREST

No interest shall be paid on either the initial or subsequent contributions of capital.

#### IX. MANAGEMENT OF BUSINESS

The partners shall cooperate with each other in the management of the business and may, if they deem necessary, appoint a managing agent. The purpose of the partnership is to manage and maintain a brick commercial building located on lots of land in the Moorehead and Merrick Additions to said City, with such real estate being located on the West side of Maysville Avenue, in the Southern part of the City of Zanesville, Ohio.

Any improvement, sale, mortgaging or leasing of all or any part of the premises may be made only with the consent of all partners. Any rents or other receipts collected by the partnership for the use of the premises or from the sale of any part thereof, shall first be applied for the maintenance and operation of the premises, including interest and principal on any mortgage liens thereof, and for the unfinanced cost of any improvement or expense connected therewith.



X. BANK ACCOUNTS

All funds of the partnership shall be deposited in its name in such bank account or accounts in any national bank or savings and loan in Muskingum County, Ohio, as the parties might designate. One of the partners shall be designated to draw checks against such account or accounts. One of the other partners may be designated to sign checks in the absence of the primary party.

XI. BOOKS AND RECORDS

Proper and complete books of account shall be kept and during business hours, on reasonable notice, shall be open to inspection by any partner or his agent. An audit of such books shall be made from time to time or if requested by at least two (2) of the partners, and a copy of the report of such audit shall be delivered to each partner.

XII. MEETINGS

The partnership shall hold such meetings as are necessary to properly supervise and transact the business of the partnership, but shall hold at least one (1) meeting each year. Notice of such meeting shall be given to all partners at least five (5) days prior to such meeting.

XIII. CONTRACTS

No partner shall make any contract in the name of the partnership, unless authorized to do so by all of the partners.

XIV. PROHIBITION

No partner shall do or perform any act which might jeopardize the financial condition of the partnership or any of the individual partners and specifically shall not sell, assign, pledge, mortgage or in any manner transfer his or her interest in the partnership or any part thereof, except pursuant to the terms of this Agreement.

No partner shall compromise or release any claim or debt due the partnership, except upon full payment, unless he or she has been fully authorized to do so by a majority of the partners.

XV. BORROWING

No partner shall borrow money in the name of the partnership unless he or she shall be authorized to do so by a majority of all partners.

XVI. VOTING

At all times this partnership shall have sixteen (16) partnership voting units, with each partner being entitled to vote four (4) of such units. Therefore, in all matters relating to partnership business, which require a decision by the partners, each partner shall exercise four (4) votes. Any partner may acquire pursuant to this Partnership Agreement all or a portion of the votes of a resigning or deceased partner. At all times there shall be sixteen (16) votes, representing One Hundred Per Cent (100%) of the partnership interest.

XVII. AGREEMENT AS TO VALUE OF PARTNERSHIP ASSETS

During the month of January of each year during the life of this partnership, the partners shall prepare and attach to each of their respective copies of this Agreement, a Certificate of Agreed Value. This Certificate shall constitute the agreed and fixed fair market value of the assets of the partnership and shall be used for all purposes wherein an agreed value must be established for the assets of the partnership. Such Certificate of Agreed Value shall remain in full force and effect, and be fully binding upon all partners, their heirs, administrators and assigns until a subsequent Certificate has been prepared.

XVIII. RESIGNATION

Any partner may resign from the partnership by the giving to all other partners written notice of his or her intention to do so. Such notice must be given at least ninety (90) days prior to the effective date of the resignation. A resigning partner shall offer his partnership interest equally to the remaining partners at a price not to exceed the value of his or her respective share of the partnership assets. Such value shall be determined from the Certificate of Agreed Value, above mentioned. Each of the remaining partners shall have fourteen (14) days to notify the resigning partner of his or her desire to purchase the interest being so offered. If one or more of the remaining partners elects not to purchase such interest, then the remaining partner or partners shall have the right to equally purchase such interest from the resigning partner. The partner or partners who so elect to purchase, shall do so within sixty (60) days from the date of their notice of acceptance to the resigning partner. Should none of the remaining partners elect to so purchase the interest, then the resigning partner may cause the partnership to be liquidated and dissolved, or may

sell his or her partnership interest to any other party or parties as he or she might so desire. However, any party purchasing such interest shall be bound by all of the terms and provisions contained in this Agreement.

XIX. DEATH OF A PARTNER

Any partner shall have the right and privilege of leaving his or her interest in the partnership by Last Will and Testament to his or her spouse or to his or her lineal descendants.

To protect and preserve the family character of this partnership, each of the undersigned partners agree to have prepared and to execute a Last Will and Testament so as to insure that his or her interest in this partnership will, upon his or her death, pass to and vest in his or her surviving spouse. Each partner, who shall ultimately become a surviving spouse, further agrees to have prepared and to execute a Last Will and Testament so as to vest his or her interest in this partnership in his or her children (lineal descendants). Should any partner neglect or fail to execute such Last Will and Testament, so as to ultimately cause his or her partnership interest to pass to and vest in an individual, who is not a spouse or lineal descendant of these partners, then upon such event, the partnership shall be liquidated and dissolved forthwith.

However, should the legatee of any deceased partner, wish to sell the interest in this partnership which he or she has acquired by virtue of the death of a partner, such shall be accomplished in the same manner and form as if the legatee desires to <sup>Resign C.P.F.</sup> ~~take~~ as an active partner, all as provided above.

*Resign C.P.F.  
D.P.P. D.P.F.  
C.P.F.*

XX. DISSOLUTION

On any voluntary dissolution, the partnership shall immediately commence to wind-up its affairs. The partners shall continue to share profits and losses during liquidation in the same proportions as before liquidation. Debts of the partnership shall be paid before the capital contributions of the partners, as reflected in their capital accounts, shall be redeemed.

Any gain or loss on the disposition of partnership properties in the process of liquidation shall be credited or charged to the partners in the proportion of their interests in profits or losses. Any property distributed

in kind in the liquidation shall be valued and treated as though the property were sold and the cash proceeds were distributed. The difference between the value of property distributed in kind in its book value shall be treated as a gain or loss on sale of the property and shall be credited or charged to the partners in the proportion of their interests in profits or losses.

Should any partner have a deficit in his or her capital account, whether by reason of losses in liquidating partnership assets or otherwise, the deficit shall represent an obligation from such partner to the other partner, to be paid in cash within thirty (30) days after written demand by the other partners.

In the event that it becomes necessary to dissolve the partnership for any of the aforesaid reasons, then the dissolution shall occur either by agreement of the partners or if an agreement cannot be reached, any partner or partners exercising eight (8) of the votes of the partnership, may designate a Receiver who shall petition a Court of competent jurisdiction to liquidate and dissolve the partnership in accordance with the laws of the State of Ohio.

#### XXI. MISCELLANEOUS

(a) This Partnership Agreement shall be amended only by the consent of those partners exercising at least nine (9) votes.

(b) This Agreement and the application or interpretation thereof, shall be governed exclusively by its terms and under the laws of the State of Ohio.

(c) Every provision of this Agreement is intended to be severable. If any term or provision hereof is illegal or declared invalid for any reason whatsoever, such determination shall not affect the validity of the remainder thereof.

(d) This Agreement is binding upon and shall inure to the benefit of the parties hereto, their respective successors, heirs, executors, administrators or other personal representatives and their assigns.

(e) This Agreement constitutes the entire agreement of the parties and supersedes all prior oral or written agreements.

IN WITNESS WHEREOF, the parties have hereunto set their hands to the original and four (4) copies of this Agreement, each of which shall constitute an original, on the day and year above written.

Signed in the presence of:

*[Signature]*  
witness

*Cathy L. George*  
witness

*Roy E. Palmer*  
ROY E. PALMER

*Constance F. Palmer*  
CONSTANCE F. PALMER

*R. I. Finlaw*  
R. I. FINLAW

*Twila E. Finlaw*  
TWILA E. FINLAW

IN THE CIRCUIT COURT FOR  
LEE COUNTY, FLORIDA  
PROBATE DIVISION  
FILE NO. 16-CP-002896

IN RE: ESTATE OF

Twila Finlaw,

Deceased.

**ORDER ADMITTING WILL TO PROBATE  
AND APPOINTING PERSONAL REPRESENTATIVE**

The instrument presented to this court as the last will of Twila Finlaw, deceased, having been executed in conformity with law, and made self-proved at the time of its execution by the acknowledgment of the decedent and the affidavits of the witnesses, each made before an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will in the form required by law, and no objection having been made to its probate, and the court finding that the decedent died on December 14, 2016, it is

ADJUDGED that the will dated December 23, 2014 and attested by Deborah Jo Brown and Edie Purdy, as subscribing and attesting witnesses, is admitted to probate according to law as and for the last will of the decedent, and it is further

ADJUDGED that Jeffrey S. Finlaw is appointed personal representative of the estate of the decedent, and that upon taking the prescribed oath, filing designation of resident agent and acceptance, and entering into bond in the sum of \$ 55,000 letters of administration shall be issued.

ORDERED on the 16<sup>th</sup> day of Feb., 2017.

  
\_\_\_\_\_  
CIRCUIT JUDGE

COMPOSITE  
EXHIBIT D

IN THE CIRCUIT COURT FOR  
LEE COUNTY, FLORIDA  
PROBATE DIVISION  
FILE NO. 16-CP-002896

IN RE: ESTATE OF

Twila Finlaw,

Deceased

LETTERS OF ADMINISTRATION

TO ALL WHOM IT MAY CONCERN:

WHEREAS, Twila Finlaw, a resident of Lee County, Florida, died on December 14, 2016, owning assets in the State of Florida, and

WHEREAS, Jeffrey S. Finlaw has been appointed Personal Representative of the estate of the decedent and have performed all acts prerequisite to issuance of Letters of Administration in the estate.

NOW, THEREFORE, I, the undersigned Circuit Judge, declare Jeffrey S. Finlaw to be duly qualified under the laws of the State of Florida to act as Personal Representative of the estate of Twila Finlaw, deceased, with full power to administer the estate according to law; to ask, demand, sue for, recover and receive the property of the decedent; to pay the debts of the decedent as far as the assets of the estate will permit and the law directs; and to make distribution of the estate according to law.

WITNESS my hand at Lee County, Florida on this 22<sup>nd</sup> day of March, 2017.



Circuit Judge

COMPOSITE  
EXHIBIT D

IN THE CIRCUIT COURT OF THE 20<sup>TH</sup> JUDICIAL  
CIRCUIT, IN AND FOR LEE COUNTY, FLORIDA

PROBATE DIVISION

File No. 16-CP-2896

IN RE:

THE ESTATE OF TWILA FINLAW,

Deceased.

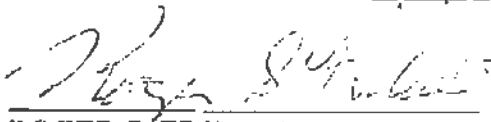
STATEMENT OF CLAIM

The undersigned hereby presents for filing against the above estate this Statement of Claim and alleges:

1. The basis of the claim is an interest in the Palmer-Finlaw Associates Partnership, to which the decedent failed to execute a will in conformity with the terms and conditions of paragraph XIX of the Palmer-Finlaw Associates Partnership Agreement dated November 17, 1986. The Decedent executed a Last Will and Testament on December 12, 2012 and a subsequent Will on December 23, 2014, and neither will is executed pursuant to the requirements of paragraph XIX of the Palmer-Finlaw Associates partnership Agreement dated November 17, 1986.
2. The claimants name and address is Roger S. Finlaw, 5610 SW 14<sup>th</sup> Place, Cape Coral, Florida 33914, and the name and address of the claimant's attorney is set forth below.
3. The amount of the claim is undetermined at this time.
4. The claim is not contingent or unliquidated.
5. The claim is secured by the Palmer-Finlaw Associates Partnership Agreement dated November 17, 1986.

Under penalties of perjury, I declare that I have read the foregoing, and the facts alleged are true, to the best of my knowledge and belief.

Executed this 15<sup>th</sup> day of July, 2017.

  
\_\_\_\_\_  
ROGER S. FINLAW,  
Creditor

  
\_\_\_\_\_  
KENNETH E. KEMP II  
Florida Bar No. 0607401  
PATRONE & KEMP, P.A.  
12685 New Brittany Blvd.  
Fort Myers, Florida 33907  
Telephone: (239) 278-1800  
[Kenneth@apatronelaw.com](mailto:Kenneth@apatronelaw.com)  
[Holly@apatronelaw.com](mailto:Holly@apatronelaw.com)

EXHIBIT E



IN THE CIRCUIT COURT FOR  
LEE COUNTY, FLORIDA  
PROBATE DIVISION  
FILE NO. 16-CP-002896

IN RE: ESTATE OF

TWILA FINLAW,

Deceased.

OBJECTION TO CLAIM

The undersigned, Robert C. Adamski, Counsel for Jeffrey Finlaw, Personal Representative of the above captioned estate of the decedent, hereby objects to the Statement of Claim of **Roger S. Finlaw** filed in this proceeding on November 15, 2017.

The claimant is limited to a period of thirty (30) days from the date of service of this objection within which to bring an action on the claim, as provided in Section 733.705 of the Florida Probate Code.

IF YOU FAIL TO BRING SUCH AN ACTION WITHIN THE TIME STATED, NO ACTION OR PROCEEDING ON THE CLAIM MAY BE BROUGHT AGAINST THE PERSONAL REPRESENTATIVE, AND THE CLAIM IS THEREAFTER FOREVER BARRED WITHOUT ANY COURT ORDER.

Signed on November 30, 2017.

s/ Robert C. Adamski

Robert C. Adamski

Attorney for Jeffrey Finlaw, Objector

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided this 30th day of November, 2017, via e-mail: Kenneth E. Kemp II, Patrone & Kemp, PA, Attorney for Creditor Roger S. Finlaw, at [kenneth@patronekemp.com](mailto:kenneth@patronekemp.com) and [Holly@patronekemp.com](mailto:Holly@patronekemp.com)

s/ Robert C. Adamski

ROBERT C. ADAMSKI

Attorney for Objector/Personal Representative

1714 Cape Coral Parkway E.

Cape Coral, Florida 33904

Tel 239/542-4733

FAX 239/542-9203

FLA BAR NO. 268771

Primary Email: [readamski@hotmail.com](mailto:readamski@hotmail.com)

Secondary Email: [courtfilings@capecoralattorney.com](mailto:courtfilings@capecoralattorney.com)

EXHIBIT F