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died on September 1, 1976 without appointing a successor trustee. The executor of the Estate of Frances Norwood Funderburk is her oldest son, George Norwood Funderburk. The settle rule of law in South Carolina is that "Upon the death of a trustee, in whom real estate has been vested by a deed or other instrument creating the trust, the office and estate created by such instrument descends to and vests in the heir at law of the Trustee, not his heirs under the statute of distributions, which it seems does not apply to trust estates, but his heir at common law". Cone v. Cone, 61 S.C. 512. The heir at common law of Frances Norwood Funderburk is her oldest son, the Respondent, George Norwood Funderburk.

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According to his Petition, John W. Norwood, Jr., the surviving income beneficiary, desires to have the Court appoint Benjamin K. Norwood, Jr. as a successor or substitute trustee. As recognized by the South Carolina Supreme Court in Cone v. Cone, supra, "The Court certainly has the power and will exercise it by appointing a Trustee in place of the deceased Trustee, for it is a maximum that the Court of Equity will never allow a Trust to fail for want of a Trustee." Furthermore, South Carolina Code (1976), Section 21-29-30, provides for the substitution of a Trustee "when the person entitled to the use of any property or estate vested in trustees, being of age, or his guardian, if underage, may be willing to have other trustees substituted in the room of those in whom the legal estate is vested or to have any one or more trustees substituted in the room of any one or more of the first or former trustees."

It appears to the Court and I so find that all of the persons who have a present interest in the subject Trust and in the Trust corpus, either legal or beneficial, have been made parties to this proceeding. All of these persons have indicated his or her consent to the appointment of Benjamin K. Norwood, Jr. as the Trustee of said Trust. The Court believes that under the aforesaid facts and circumstances and in accordance with the