

STATE OF ALABAMA)

JEFFERSON COUNTY)

365

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LAST WILL AND TESTAMENT

OF

MARTELIA BELL SWAGLER

I, MARTELIA BELL SWAGLER, a resident of Jefferson County, State of Alabama, being of sound mind and disposing memory, do make, publish and declare this instrument as and for my Last Will and Testament, hereby revoking any and all other wills and codicils heretofore made by me.

ITEM ONE: I direct that all of my debts, including the expenses of my last illness and funeral, shall first be paid out of my estate by my Executor, hereinafter named, as soon as practicable after my death.

ITEM TWO: I give and bequeath all of my wearing apparel, jewelry, books, pictures, automobiles, and all other objects of my personal use, including any household furniture and furnishings which I may own, together with any insurance thereon, all club memberships and stadium certificates, to my husband, Richard C. Swagler, absolutely if he survives me, and if not, to my children, Susan Margaret Swagler and Richard C. Swagler, Jr., equally, the lineal descendants then living of any of said children who shall have predeceased me to take, per stirpes, the share to which the parent would have been entitled if living. If any property bequeathed under this Item is distributable to a descendant of mine who has not attained the age of nineteen years, my successor Executor may, in its sole discretion deliver the same directly to such descendant or to the parent, guardian, or other person having custody of such descendant. I hereby vest in my Executor full power and authority to determine what objects of property are included in the foregoing descriptions.

Signature

First Nat'l Bk. of Bham.
att. Jackie Smith

Filed in office this the 18th
day of June, 1980
for Probate and Record.

C. J. Florence
Judge of Probate

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ITEM THREE: If my husband does not survive me and my estate qualifies for the orphan's deduction, then I give, devise and bequeath to each child of mine under the age of twenty-one (21) years at the time of my death and who, immediately after my death, has no known living parent, an amount equal to Five Thousand Dollars (\$5,000.00) multiplied by the excess of twenty-one (21) over the age (in years) of said child at the time of my death, reduced by the amount by which the orphan's deduction available to any bequest or bequests under this Item may be diminished because of other transfers made to or for the benefit of such child at my death, by this Will or otherwise; provided, however, that although such bequest shall be vested in such child, the same shall be transferred and paid over to my Executor, who shall hold said share as Trustee for the benefit of such child, and as such Trustee, to be vested with all of the exemptions, powers and authority given to my said Executor, and until said child shall attain the age of twenty-one (21) years, the Trustee shall use and apply for his or her health, maintenance, support and education such part of the income and principal of such share as the Trustee deems necessary or desirable for said purposes, accumulating and adding to principal any income not so used or distributing the same in such manner as the Trustee deems to be in the best interest of such child. When such child shall attain the age of twenty-one (21) years, the Trustee shall transfer and pay over said share to him or her free of trust, and if such child shall die prior to attaining the age of twenty-one (21) years, the Trustee shall transfer and pay over said share to his or her executor or administrator.

(a) To the extent that my estate is insufficient to fund the bequest under this Item, I hereby expressly exercise the power of appointment granted to me under the Marital Trust of the will of my said husband, and I appoint to my estate an amount of property equal to the difference between the value of the assets in my estate available to fund the bequests under this Item and the aggregate value of said bequests. In addition, I hereby expressly exercise said power of appointment in favor of my estate in an amount sufficient to pay all state and federal estate taxes payable

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as a result of the inclusion in my estate for estate tax purposes of any property subject to such power of appointment. I hereby declare that it is not my intention to exercise said power of appointment except to the extent herein specifically expressed.

(b) Upon making any payment or transfer hereunder, my Trustee shall be discharged as to such payment or transfer without liability for subsequent application thereof, and when the final payment or transfer is made from the principal of the trust, such trust shall terminate and the Trustee shall be fully discharged as to such trust.

(c) It is my intention that any bequest under this Item shall qualify for the orphan's deduction provided by the United States Internal Revenue Code, as amended to the date of my death. Accordingly, any bequest under this Item shall not include, and my Executor shall not allocate to it, if avoidable, any property with respect to which a credit against the federal estate tax would be forfeited by such allocation.

(d) I direct that no estate or other tax levied against my estate by reason of my death shall be paid out of property used to fund any bequest under this Item, or out of property otherwise qualifying for the orphans's deduction for federal estate tax purposes.

(e) In the event that a child of mine under the age of twenty-one (21) years and I shall die under such circumstances that the order of our deaths cannot be clearly established, then said child shall be deemed to have survived me for the purposes of this Item.

ITEM FOUR: All of the rest, residue and remainder of my property, of whatever kind and character and wherever situated, I give, devise and bequeath to my Trustee, hereinafter named, who shall hold the same in trust for the uses and purposes as hereinafter provided:

(a) During the lifetime of my said husband, the Trustee shall pay to him the entire net income from said trust in installments convenient to him. The Trustee, in any calendar year, shall pay to my said husband such additional sum or sums out of the principal of the trust as he may request in writing, provided, however, that the aggregate of such distri-

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bution shall not exceed the greater of (a) Five Thousand Dollars (\$5,000.00) per annum, or (b) Five Percent (5%) of the value of the corpus of the trust as determined on the last day of such calendar year. If my said husband should fail to exercise this power before the end of any calendar year, it shall lapse as to that year, and under no conditions shall it be treated as cumulative.

(b) Upon the death of my said husband, or upon my death if he shall not survive me, the Trustee shall apportion this trust into so many equal parts that there will be one share for each child of mine then living, and one share for the then living descendants of each deceased child of mine. The Trustee shall transfer and pay over, subject to subsection (e) of this Item, any share set aside for the living descendants of each deceased child of mine.

(c) The Trustee shall transfer and pay over one-half (1/2) of the share allocated to any child of mine to such child free of trust when the youngest living child of mine shall attain the age of twenty-three (23) years, or upon apportionment, whichever later occurs. The Trustee shall transfer and pay over the remainder of said share to such child when the youngest living child of mine shall attain the age of twenty-six (26) years, or upon apportionment, whichever later occurs. During the continuance of the trust for any child of mine, the Trustee shall pay to or for the benefit of such child so much of the income and principal of such child's share as the Trustee may deem necessary or desirable to provide for the health, maintenance, support and education of such child. Any part of the net income not so used shall be accumulated and added to the principal of said share, being thereafter invested and treated in all respects as a part thereof, or may be distributed in such manner as the Trustee may deem to be in the best interest of such child.

(d) Upon the death of any child of mine prior to the youngest living child of mine attaining the age for final distribution of his or her share, the Trustee shall transfer and pay over said share to the descendants of such child in such manner and proportions as he or she may by last will and Testament appoint and direct, making specific reference

Signature

Handwritten signature: M. J. [illegible]

to this limited power of appointment hereby granted. The Trustee shall transfer and pay over, subject to subsection (e) of this Item, any unappointed portion of such child's share to his or her then living descendants, per stirpes, or if none, then to my living descendants, per stirpes, the share of any such descendant to be merged with, administered and disposed of as a part of such other share, if any, as may then be held hereunder for the benefit of such descendant.

(e) If any share of this trust becomes distributable, other than by exercise of a power of appointment granted hereunder, to a descendant of mine who is under the age of twenty-one (21) years and for whom no other share is then being held in trust, or if any share of my estate becomes distributable to a child of mine under the provisions of Item Three hereof, then though his or her share shall be vested in him or her, the Trustee shall hold or continue to hold the same in trust with all of the powers and authority given it with respect to other trust property held hereunder, until he or she shall attain the age of twenty-one (21) years, using and applying for his or her health, maintenance, support and education such part of the income and principal of such share as the Trustee deems necessary or desirable for said purposes, accumulating and adding to principal any income not so used or distributing the same in such manner as the Trustee deems to be in the best interests of such descendant. When such descendant shall attain the age of twenty-one (21) years, the Trustee shall transfer and pay over said share to him or her free of trust. If such descendant shall die prior to attaining the age of twenty-one (21) years, the Trustee shall transfer and pay over said share to his or her executor or administrator.

(f) If, at the time of my death or at the time for distribution of the remainder of any trust created hereunder, any of my property is not otherwise disposed of either by the terms of this Will or by the exercise of any power of appointment granted hereunder, I give, devise and bequeath said property as follows:

(i) \$12,500 to Highlands United Methodist Church, Birmingham, Alabama;

Signature

(ii) \$10,000 to Birmingham- Southern College, Birmingham, Alabama; and

(iii) all the rest, residue and remainder of said property to my brother, Frank J. Bell, Jr., and my sister, Mary Eleanor Yancey, in equal shares per stirpes.

ITEM FIVE: The Trustee and Executor shall hold and manage the said trust or trusts and all shares thereof in accordance with the following instructions:

(a) Upon my death or upon the death of my husband, Richard C. Swagler, if he shall survive me, my successor Executor or Trustee shall, as soon as possible, convert all stocks, bonds, and other securities comprising my estate, other than any municipal or U. S. government securities that I may own at the time of my death, into full faith and credit U.S. government securities maturing within fifteen (15) years from date of purchase and/or municipal securities rated A or better by either Moody's or Standard Poor's rating service, maturing within fifteen (15) years from date of purchase. Thereafter, the Trustee shall invest or reinvest the estate or trust estate only in such government and municipal securities described in this subsection (a).

(b) Anything herein to the contrary notwithstanding, I hereby direct that after the death of my said husband, Richard C. Swagler, any investment or reinvestment of the assets of my estate or of my trust estate by my Executor or Trustee shall be subject to approval by my cousin, Robert J. Sudderth, Jr., who is currently employed by American National Bank in Chattanooga, Tennessee. My Executor or Trustee shall submit proposals for all investments and reinvestments to my said cousin for approval. My said cousin shall approve or disapprove the proposed investment in writing within ten (10) days from the date on which the Trustee or Executor submits such proposal. If my said cousin fails to give written notice of disapproval to the Trustee within ten (10) days, the proposed investment shall be deemed approved.

(c) The Trustee shall hold and manage the said trust or trusts and all shares thereof, with all of the powers and authority he would have if he were the absolute owner thereof, including but not limited to the following powers:

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1. To collect the income therefrom.
2. To compromise, adjust and settle in his discretion any claim in favor of or against said trust estate.
3. To hold any real property originally received by the Trustee as a part of the trust estate and to hold any securities originally received by the Trustee as long as my said husband, Richard C. Swagler, is living.

4. To sell, convey, lease or rent for a period beyond the possible termination of the trust (or for a less period) for improvement or otherwise, or otherwise dispose of, all or any portion of the trust, in such manner and upon such terms and conditions, in accordance with the instructions in subsections (a) and (b) hereof, as the Trustee may approve.

5. To invest and reinvest the trust and the proceeds of sale or disposal of any portion thereof, in accordance with the instructions in subsections (a) and (b) hereof.

6. To keep any property constituting a part of said trust properly insured against hazards, to pay all taxes or assessments, mortgages or other liens now or hereafter resting upon said property, and to create reserves for depreciation, depletion or such other purposes as the Trustee may deem necessary or desirable.

7. To determine whether any money or property coming into the Trustee's hands shall be treated as a part of the principal of the trust or a part of the income therefrom, and to apportion between such principal and income any loss or expenditure in connection with the trust as to the Trustee may seem just and equitable.

8. To pay from income any expenses reasonably necessary for the administration of the trust, and in the event the income is insufficient for such payments, to pay the same from the principal thereof.

ITEM SIX: Additional property of any kind and character may be added to any trust hereunder, with the consent of the Trustee, by me or any person or fiduciary, by will or otherwise, and such property so received by my Trustee shall be added to, merged with and become a part of the property held in such trust hereunder, and thereafter shall be administered and disposed of in accordance with the terms of such trust. However, if any proceeds of a qualified pension or profit sharing plan are received by my Trustee, said proceeds shall not be used to pay any estate, inheritance or other tax, any claims or debts, or to satisfy any other obligation of my estate.

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ITEM SEVEN: The following provisions shall govern for all purposes of this Will, wherever they may be applicable:

(a) Any payment of income or discretionary payment of principal from any trust to or for any beneficiary may, in the discretion of the Trustee, be made to any person or organization (including the beneficiary, the guardian of the beneficiary, or anyone having custody and care of the beneficiary, or who provides goods or services for him or her), who shall apply such payment for the use and benefit of the beneficiary as provided for hereunder.

(b) Upon making any payment or transfer hereunder, the Executor and Trustee shall be discharged as to such payment or transfer without liability for the subsequent application thereof, and when the final payment or transfer is made from the principal of any trust, such trust shall terminate and the Trustee shall be fully discharged as to such trust.

(c) Whenever the word "Trustee", "Trustees", "Executor" or "Executors" is used, it shall be construed either as singular or plural, and masculine, feminine or neuter, whichever is proper in accordance with the context.

(d) Any adopted person, including any person adopted by me, and his or her descendants, shall be considered to be descendants of the adoptive parents and of the ancestors of such adoptive parents, for all purposes hereunder, whether such adoption occurs before or after the execution of this Will.

ITEM EIGHT: I hereby designate and appoint my husband, Richard C. Swagler, as Executor hereunder. If my husband should resign or for any reason fail or cease to serve as Executor, then I nominate and appoint The First National Bank of Birmingham (and such successor corporation having trust powers as shall succeed to the business of said bank by purchase, merger, consolidation or change of charter or name) to serve as successor Executor hereunder. I hereby designate and appoint my husband, Richard C. Swagler, as Trustee of any trust hereunder. If my said husband

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should resign or for any reason fail or cease to serve as such Trustee, then I hereby designate and appoint the said The First National Bank of Birmingham as successor Trustee of any trust created hereunder. I direct that my Executor, successor Executor, Trustee and successor Trustee shall not be required to give bond or to file an inventory or appraisal of my estate or of any trust or share thereof in any court, though he or it shall make out and keep an inventory and shall exhibit the same to any party in interest at any reasonable time, and I direct that he or it shall be free from the control and supervision of any court. I further direct that after the death of my husband, Richard C. Swagler, my successor Executor and Trustee shall furnish to my cousin, Robert J. Sudderth, Jr., financial reports at least annually of its acts as such Executor and Trustee. I hereby vest in my Executor the same full powers of management, control and disposition of my estate as are given to the Trustee under Item Five with respect to the trust or trusts hereunder. The corporate Trustee shall be entitled to reasonable compensation for its services as Executor and Trustee. My husband shall not receive compensation for his services as Executor or Trustee.

ITEM NINE: In the event that my husband and I shall die in a common accident or disaster, or under any circumstances creating any doubt as to which of us survived the other, my husband shall be presumed to have predeceased me for all purposes under this Will.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 10 day of March, 1979.

Martelia Bell Swagler (SEAL)
Martelia Bell Swagler

We, the undersigned, hereby certify that the above named testatrix, Martelia Bell Swagler, has subscribed her name to the foregoing instrument in our presence, and published and declared the same to be her

Signature

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Last Will and Testament, and we, at the same time, at her request, in her presence and the presence of each other, have hereunto signed our names as subscribing witnesses.

[Signature]
Address: 2121 Highland Avenue
Birmingham, Alabama 35205

[Signature]
Address: 2121 Highland Avenue
Birmingham, Alabama 35205

[Signature]
Address: 2121 Highland Avenue
Birmingham, Alabama 35205

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Signature

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CERTIFICATE TO THE PROBATE OF WILL

BOOK The State of Alabama

JEFFERSON COUNTY

I, O. H. Florence, Judge of the Court of Probate, in and for said State and

County, do hereby certify that the foregoing instrument of writing has this day, in said Court, and before me

the Judge thereof, been duly proven by the proper testimony to be the genuine last Will and Testament

of Martella Bell Swagler Deceased and that said Will

together with the proof thereof have been recorded in my office in Judicial Record, Volume 658, Page 602-61

In witness of all which I have hereto set my hand, and the seal of the said Court, this date July 22, 1980

O. H. Florence, Judge of Probate

The State of Alabama
JEFFERSON COUNTY

PROBATE COURT

I, Peggy A. Gober, Chief Clerk of the Court of Probate,

in and for said County in said State hereby certify that the foregoing contains a full, true and correct copy of the

Last Will and Testament of Martelia Bell Swagler, Deceased,

together with the certificate to the probate thereof;

in the matter of The Estate of Martelia Bell Swagler, Deceased

as the same appears on file and of record, in this office.

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

Given under my hand and seal of said Court, this
the 4 day of June, 19 82

1982 JUN -9 AM 9:57

Peggy A. Gober

Chief Clerk

Thomas R. Snowden, Jr.
JUDGE OF PROBATE

Recd. 18.00
Paid. 1.00
19.00

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