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CONSTRUCTION FINANCING AGREEMENT among THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF VINCENT, a public corporation and instrumentality under the laws of Alabama (herein called "the Board"), SOUTHEASTERN PORCELAIN & CONSTRUCTION COMPANY, INC., a corporation organized under the laws of the State of Alabama (herein called "the Company"), and BIRMINGHAM TRUST NATIONAL BANK, a national banking association having its principal place of business in the City of Birmingham, Alabama (herein called "the Bank"),

R E C I T A L S

Pursuant to a letter agreement between the Board and the Company dated May 17, 1976 (herein called "the Inducement Agreement"), the Board has heretofore acquired title to the real property described on Exhibit A attached hereto and made a part hereof, at and for a purchase price of \$23,200 (said real property being herein called "the Site"), with funds temporarily advanced to it for that purpose by the Company. In the Inducement Agreement, the Board has agreed to construct and equip on the Site a plant for the fabrication and processing of metals and metal products having a floor area of approximately 51,000 square feet (herein called "the Plant"), and to lease the Site and the Plant, as so equipped, to the Company.

In order to finance permanently the costs of acquiring the Site and constructing and equipping the Plant thereon (the Site and the Plant, as so equipped, being herein together called "the Project"), the Board proposes to issue approximately \$600,000 principal amount of long-term revenue bonds (herein called "the Long-Term Bonds"), but the Board has been advised by counsel that an extended period of time will be required for the consummation of such financing. The Company, urgently needing the Plant, has requested the Board to commence the work of constructing and equipping the Plant as promptly as possible. It will therefore be necessary for the Board to make one or more temporary loans, in anticipation of the sale of the Long-Term Bonds, for the purpose of obtaining funds with which to reimburse the Company for the purchase price of the Site, and to finance temporarily the costs of constructing and equipping the Plant.

To provide such funds, the Board proposes to borrow not exceeding \$600,000 from the Bank and to issue, in evidence of such borrowing and in anticipation of the issuance and sale of the Long-Term Bonds, one or more Industrial Revenue Bond Anticipation Notes, Southeastern Porcelain & Construction Series (herein called "the Bond Anticipation Notes"), which shall not exceed \$600,000 in aggregate principal amount. Each of the Bond Anticipation Notes shall be

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Executed in 2 Counterparts of
Which This is Counterpart # 3

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dated the date of the borrowing evidenced thereby, shall bear interest, payable at its maturity, at the rate of 8% per annum, and shall mature and come due on May 1, 1977, with the Board having the privilege of prepaying all or any portion of the principal indebtedness evidenced thereby at any time, without any prior notice and without any penalty or premium, provided that prior to or simultaneously with each such prepayment, the Board pays the interest accrued on each Bond Anticipation Note, or portion thereof so prepaid.

The Bank has indicated its willingness to lend not exceeding \$600,000 to the Board and to accept one or more Bond Anticipation Notes in evidence of such borrowing, provided that the Company will agree to purchase the Project from the Board, on the terms and conditions hereinafter set out, if the issuance and sale of the Long-Term Bonds have not been consummated by May 1, 1977, the due date of the Bond Anticipation Notes. The Company, recognizing

(1) that the Board will have no revenues available for payment of the Bond Anticipation Notes other than those derived from the sale of the Long-Term Bonds or from the sale of the Project,

(2) that, without the Company's agreement to such an arrangement and its execution hereof, the Bank would not be willing to lend such moneys to the Board, and the Board would not be in a position promptly to commence the construction and equipping of the Plant, and

(3) that the acquisition of the Site by the Board, the construction and equipping of the Plant thereon and the subsequent lease of the Project to the Company will be of substantial benefit to the Company and will further its corporate purposes,

has entered into this Agreement with the Board and the Bank to induce the Bank to make said temporary loans to the Board, to enable the Board promptly to commence the construction and equipping of the Plant, and to evidence the Company's agreement to purchase the Project from the Board under the terms and conditions hereinafter set out.

NOW, THEREFORE, in consideration of the respective agreements on the part of the Board, the Company and the Bank herein contained, the Board, the Company and the Bank do hereby agree as follows:



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Section 1. The Board will borrow from the Bank, and the Bank will lend to the Board, on the terms and conditions outlined above, such amounts (not exceeding \$600,000 in the aggregate) as shall be necessary to enable the Board (a) to reimburse the Company for the purchase price of the Site, and (b) to pay the costs of constructing and equipping the Plant; provided, however, that such moneys shall not be borrowed hereunder by the Board except after delivery to the Board of a written request signed on behalf of the Company by one of the Authorized Company Representatives hereinafter referred to.

Section 2. Prior to or simultaneously with the first borrowing from the Bank by the Board hereunder, the Board will furnish to the Bank, or will cause to be so furnished,

(a) a certified copy of a resolution of the Board authorizing (i) the execution and delivery of this Agreement on the part of the Board, and (ii) the borrowings contemplated hereby and the issuance of the Bond Anticipation Notes in evidence thereof; and

(b) an opinion of counsel for the Company stating in substance (i) that the Company is a duly organized and existing corporation under the laws of the State of Alabama and is in good standing as such, (ii) that the execution and delivery of this Agreement on behalf of the Company have been duly authorized by all necessary corporate action, and (iii) that this Agreement has been duly executed on behalf of the Company and is a valid and binding instrument, enforceable against the Company in accordance with its terms.

At the time of the first and each subsequent borrowing by the Board from the Bank hereunder, the Board will furnish to the Bank, or will cause to be so furnished,

(1) an opinion of Messrs. Johnson North Haskell & Slaughter, Attorneys at Law of Birmingham, Alabama (who are acting as Bond Counsel in connection with the transaction described in this Agreement), approving the validity and legality of the Bond Anticipation Note issued by the Board in evidence of such borrowing;

(2) a signed copy of incumbency, no-litigation and other closing certificates of the Board, in form and substance satisfactory to the Bank; and

(3) such other certificates and ancillary documents (including certificates from the Company or its officers) as the Bank and said Bond Counsel may reasonably require.

Any provision hereof to the contrary notwithstanding, unless such opinion of Messrs. Johnson North Haskell & Slaughter states that the interest income on the Bond Anticipation Note evidencing any such borrowing is, under then existing statutes and regulations, as then construed, exempt from the Federal income tax [except for any period during which it is held by a person who is a "substantial user" of the Project or a "related person" as those terms are used in Section 103(c)(6)(C) of the Internal Revenue Code of 1954, as amended], the Bank shall not be obligated to make the loan evidenced by such Bond Anticipation Note.

Section 3. From the proceeds of the first borrowing from the Bank hereunder, the Board will pay the sum of \$23,200 to the Company, to reimburse the Company for the purchase price of the Site. The Board will, in addition, proceed continuously and with all reasonable dispatch (but only to the extent that the available proceeds from the temporary borrowings made by it hereunder, or moneys provided by the Company in accordance with the provisions of this Section 3 are sufficient to pay the costs thereof) with the construction and equipping, wholly within the boundary lines of the Site, of the Plant, substantially in accordance with plans and specifications prepared by the Company, and with written orders from the Company to the Board; provided, however, that the Board will not hereafter enter into any contract for such construction or any part thereof or any purchase order for the acquisition or installation of any such equipment unless such contract or purchase order is first approved in writing by one of the said Authorized Company Representatives hereinafter referred to. The Board will commence and complete said construction and equipping as promptly as practicable, delays incident to strikes, riots, acts of God and the public enemy and other similar acts beyond the reasonable control of the Board only excepted. If, after the Board has borrowed the aggregate sum of \$600,000 from the Bank hereunder and has expended the proceeds thereof (and all earnings therefrom and other accretions thereto), additional funds are necessary to provide for full payment of all the costs of the aforesaid acquisition, construction and equipping, the Company will either pay such excess costs itself or advance to the Board such additional funds as shall be necessary therefor, in which case the Board will pay such excess costs.

Section 4. There is hereby created a special trust fund, the full name of which shall be "Southeastern Porcelain Project Construction Fund" (herein called "the Construction Fund"), for the purpose of providing for payment of the costs of constructing and equipping the Plant (the said costs being herein together called "the Project Costs"). The Board will pay into the Construction Fund all proceeds derived from the borrowing herein provided for,

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promptly as such proceeds are received by it. The Bank shall be and remain the custodian, depository and disbursing agent for the Construction Fund and will pay out moneys on deposit therein for the purpose of paying Project Costs, but only upon receipt of

(a) a requisition or payment request signed on behalf of the Board by the Chairman or the Vice Chairman of its Board of Directors, or by the Secretary, the Treasurer or other duly authorized officer or agent of the Board and stating, with respect to each such payment, the amount requested to be paid, the name and address of the person, firm or corporation to whom such payment is due and the particular Project Cost for which such payment is requested; and

(b) an endorsement on such requisition or payment request signed by one of the Authorized Company Representatives (hereinafter referred to) approving the payment thereby requested to be made.

The moneys at any time on deposit in the Construction Fund shall be and at all times remain public funds impressed with a trust for the purposes specified in this Section 4. The Bank shall at all times keep the moneys on deposit in the Construction Fund continuously secured, for the benefit of the Board and the holder or holders of the Bond Anticipation Notes, in such manner as may be required or permitted by applicable state and federal laws and regulations respecting the security for, or granting a preference in the case of, the deposit of public or trust funds; provided, however, that it shall not be necessary for the Bank so to secure any portion of the moneys on deposit in the Construction Fund that is insured by the Federal Deposit Insurance Corporation or other agency of the United States of America that may succeed to its functions or any portion thereof that may be invested as provided by Section 5 hereof.

Section 5. The Board will pay, out of moneys on deposit in the Construction Fund, all costs and expenses incurred by it in connection with this Agreement and in the making of the loans herein provided for, including, without limitation, any fees and charges of the Bank for its services in acting as depository, custodian and disbursing agent for the Construction Fund. The Bank will, upon written request of the Board signed on its behalf by the Chairman or Vice Chairman of its Board of Directors, or by its Secretary or its Treasurer, and approved by the Company (such approval to be evidenced by the signature of one of the Authorized Company Representatives to whom reference is hereinafter made), invest moneys on deposit in the Construction Fund in securities that are direct obligations of the United States of America or in interest-bearing bank deposits, all as and to

the extent directed in such written request; provided that the Board will not request and the Company will not approve any investment that would result in any of the Bond Anticipation Notes or any of the Long-Term Bonds being considered "arbitrage bonds" within the meaning of Section 103 of the Internal Revenue Code of 1954, as amended.

Section 6. The Board and the Company will, as promptly as practicable under the circumstances, enter into a lease agreement providing for the lease of the Project to the Company for an initial or primary term extending until date of the last maturity of the Long-Term Bonds. The said lease agreement, which is herein called "the Lease," (a) shall provide for the semiannual payment by the Company of net rentals, during such initial term, sufficient to pay the principal of and the interest on the Long-Term Bonds, as and when such principal and interest respectively become due and payable, (b) will contain such renewal and purchase options as are mutually agreeable to the Board and the Company, (c) will grant to the Company the option of terminating the Lease at any time after full payment and retirement of the Long-Term Bonds by giving the Board notice in writing not less than thirty (30) days prior to the date on which such termination is to become effective, (d) will provide that upon the Company's furnishing to the Board moneys therefor, the Board will apply such moneys to prepayment of the Long-Term Bonds at such time and in such manner as the Company shall direct, (e) will be freely assignable, and (f) will contain such other provisions as are customarily included in leases of similar nature - all as shall be mutually agreeable to the Company, the Board and the prospective purchaser of the Long-Term Bonds.

Section 7. Simultaneously with or promptly following the execution of the Lease, the Board will proceed with the aforesaid permanent financing and with the issuance and sale of the Long-Term Bonds in a principal amount mutually agreeable to the Board and the Company, but in any event at least sufficient to provide for payment of (a) the principal of and the interest accrued on the then outstanding Bond Anticipation Notes, and (b) the expenses incurred by the Board in connection with the sale and issuance of the Long-Term Bonds, it being understood and agreed, however, that the Board may, immediately prior to the issuance of the Long-Term Bonds and upon being furnished with funds for that purpose by the Company, prepay (without any penalty or premium and without any notice) any portion of the principal of or interest on the Bond Anticipation Notes, or any such expenses. The Board will, promptly following the sale and issuance of the Long-Term Bonds, apply so much as may be necessary of the proceeds therefrom for payment of the principal of and the interest accrued on the then outstanding Bond Anticipation Notes, and the Board does hereby expressly assign such amount of such proceeds and said moneys to the Bank or to the then holder or holders of the Bond Anticipation Notes.



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Section 8. If, by May 1, 1977 (the due date of the Bond Anticipation Notes), the Board and the Company have not entered into the Lease and the Board has not issued, sold, delivered and received payment for the Long-Term Bonds, the Board will tender to the Company a deed conveying the Project (in its then condition, whatever it may be) to the Company, subject to such exceptions, reservations and encumbrances as to title, and to such mechanics' and materialmen's liens, as may then exist with respect thereto, whereupon the Company will accept such deed and will pay to the Board in immediately available funds an amount equal to the principal of and the interest accrued on the then outstanding Bond Anticipation Notes; provided (a) that if at such time part of the Project has theretofore been taken by condemnation, the Board shall be obligated to tender to the Company a deed transferring and conveying to the Company only such portion of the Project as has not been so taken, (b) that if at such time the entire Project has been taken by condemnation, the Board shall be obligated to tender to the Company only a notice stating that the entire Project has been so taken, and (c) that in either of such events the Company shall nonetheless be obligated to pay to the Board the total amount of moneys above specified, in the manner and at the time there specified. The Board will apply any and all moneys payable to it under and pursuant to the foregoing provisions of this Section 8 to payment of the principal of and the interest on the then outstanding Bond Anticipation Notes, and it does hereby expressly assign such moneys to the Bank or to the then holder or holders of the then outstanding Bond Anticipation Notes.

The obligations of the Company contained in the first sentence of this Section 8 shall be absolute and unconditional, irrespective of any rights of set-off, recoupment or counterclaim it might otherwise have against the Board, and the Company will not fail to perform any of the agreements on its part contained in such sentence for any cause, including, without limiting the generality of the foregoing, any failure of the Board to comply with any of the agreements on its part contained in this Agreement.

Section 9. The Board will not, as long as any part of the principal of or the interest on any of the Bond Anticipation Notes remains outstanding and unpaid, sell, mortgage, lease or otherwise convey or encumber any part of or interest in the Project (except to the extent otherwise provided in Sections 6, 8 and 13 hereof); provided that it may, simultaneously with the payment and retirement of all of the Bond Anticipation Notes, lease the Project to the Company and mortgage the Project as security for the Long-Term Bonds.

Section 10. The Bank and any future holder or holders of any of the Bond Anticipation Notes shall be a third party beneficiary of the covenants and agreements on the part of the Company herein contained and shall be entitled to enforce observance and performance of such covenants and agreements on the part of the Company herein contained as fully and completely as the Board.

Section 11. The Company hereby warrants, represents and agrees as follows:

(a) that no state, territory or possession of the United States, nor any political subdivision of any such state, territory or possession, nor the District of Columbia, has, since April 30, 1968, issued any obligations, the proceeds of which are to be or have been used primarily with respect to any facilities (i) that are located within the corporate limits of the Town of Vincent, Alabama, and (ii) the principal user of which facilities was, is or will be, the Company or a related person [as the terms "principal user" or "related person" are used in Section 103(c)(6) of the Internal Revenue Code of 1954, as amended], and for purposes of this subsection (a) a contiguous or integrated facility located on both sides of the border between two or more political jurisdictions shall be considered as being located wholly within each such political jurisdiction; and

(b) that substantially all the proceeds from the borrowing evidenced by the Bond Anticipation Notes will be applied for the acquisition, construction, reconstruction or improvement of land or property of a character subject to the allowance for depreciation, within the meaning of Section 103(c)(6)(A) of the Internal Revenue Code of 1954, as amended.

The Board on its part warrants and represents that the entire Site is located wholly within the corporate limits of the Town of Vincent, Alabama, and that no part thereof is located within the corporate limits or the police jurisdiction of any other incorporated municipality.

Section 12. R. Wayne Duke and Donald Howse are hereby designated as the "Authorized Company Representatives" as that term is used in this Agreement. The Company may at any time and from time to time designate successor or substitute Authorized Company Representatives by a certificate in writing signed by its President or any Vice President and furnished to the Board and the Bank.

Section 13. Prior to the effective date of the Lease, the Company (a) shall have, until such time as the construction and equipping of the Plant have been completed, such rights of possession of the Project as are necessary and convenient to enable it to inspect and follow the progress of said construction and equipping and as shall

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not unreasonably interfere therewith, and (b) shall have, after the completion of such construction and equipping, the sole and exclusive right of possession of the Project; provided, however, (i) that the Company shall have the aforesaid possessory rights only during such time as it is not in default in the performance of the agreement on its part contained in Section 8 hereof, and (ii) that at all times subsequent to the execution and delivery of this Agreement, the risk of loss (as between the Board and the Company), with respect to any damage to or destruction or condemnation of the Project or any part thereof, shall be borne entirely by the Company, but (as between the Company and the Board) the Company shall, at all times while it is not in default hereunder, be entitled to any and all insurance and condemnation proceeds referable to any such damage, destruction or condemnation.

The Board hereby expressly assigns to the Company all insurance and condemnation proceeds that may, at any time while the Company is not in default hereunder, be received by the Board with respect to any damage to or destruction or condemnation of all or any part of the Project, or to which the Board may, at any such time, be entitled, and it will execute such assignments, consents and other documents as may be reasonably requested by the Company in furtherance of the provisions of this or the preceding paragraph. Further, the Board will cooperate fully with the Company in the handling and conduct of any prospective or pending insurance investigation or condemnation proceeding with respect to the Project or any part thereof and will not voluntarily settle, or consent to the settlement of, any prospective or pending insurance investigation or condemnation proceeding with respect to the Project or any part thereof without the prior written consent of the Company.

Section 14. Anything herein or in the Bond Anticipation Notes to the contrary notwithstanding, it is hereby expressly agreed that any liability and obligation of the Board hereunder shall be limited solely to (a) the proceeds derived by the Board from the borrowings herein authorized, (b) the revenues and receipts derived by the Board from any leasing or sale of the Project, (c) moneys paid to the Board by the Company pursuant to the provisions hereof, and (d) the proceeds derived by the Board from the sale of the Long-Term Bonds. Nothing contained herein or in the Bond Anticipation Notes shall ever be construed to constitute a personal or pecuniary liability or charge against the general credit of the Board, and in the event of breach of any agreement or covenant on the part of the Board contained herein or in any of the Bond Anticipation Notes, no personal or pecuniary liability or charge payable directly or indirectly from the general revenues of the Board shall arise therefrom.

Section 15. This Agreement shall fully and completely supersede all other prior and contemporaneous agreements between the Board, the Bank and the Company relating to the borrowing to be evidenced by the Bond Anticipation Notes, and no party to any such prior or contemporaneous agreement shall hereafter have any rights or liabilities thereunder but shall look solely to this Agreement for definition and determination of their respective rights or duties respecting the borrowing to be evidenced by the Bond Anticipation Notes.

Section 16. This Agreement shall be binding upon and shall inure to the benefit of, the Board, the Company, the Bank and their respective successors and assigns.

Section 17. This Agreement shall be severable. In the event any provision hereof shall be held unconstitutional, unenforceable or invalid by a court of competent jurisdiction, such holding shall not render unconstitutional, unenforceable or invalid any other provision hereof.

IN WITNESS WHEREOF, the Board, the Company and the Bank have caused this Agreement to be executed in their respective names, have caused their respective seals to be hereunto affixed, have caused this Agreement to be attested, all by their duly authorized officers, in five (5) counterparts, each of which will be deemed an original, and have caused this Agreement to be dated as of June 1, 1976, although actually executed by the Board on July 14, 1976, by the Company on July 14, 1976, and by the Bank on July 14, 1976.

THE INDUSTRIAL DEVELOPMENT BOARD OF
THE TOWN OF VINCENT

By Robert H. Holston
Vice Chairman
of its Board of Directors

Attest:

Walter S. Brown
Its Secretary



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SOUTHEASTERN PORCELAIN & CONSTRUCTION
COMPANY, INC.

By *W. H. Duke*
Its *President*

Attest:
Donald House
Its *Secretary*



BIRMINGHAM TRUST NATIONAL BANK

By *Virginia Bellan*
Its CORPORATE TRUST OFFICER

Attest:
Jane Costerwood
Its ASSISTANT VICE PRESIDENT



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STATE OF Ala
COUNTY OF Jeff

BERTHA M. SKELTON

I, BERTHA M. SKELTON, a Notary Public in and for said county in said state, hereby certify that Robert H. Halston, whose name as Vice Chairman of the Board of Directors of THE INDUSTRIAL DEVELOPMENT BOARD OF THE TOWN OF VINCENT, a public corporation and instrumentality under the laws of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said public corporation.

GIVEN under my hand and official seal of office this 14 day of July, 1976.

[NOTARIAL SEAL]

Bert M. Skelton
Notary Public

MY COMMISSION EXPIRES OCTOBER 29, 1978

STATE OF Ala
COUNTY OF Jeff

BERTHA M. SKELTON

I, BERTHA M. SKELTON, a Notary Public in and for said county in said state, hereby certify that B.W. Burke, whose name as President of SOUTHEASTERN PORCELAIN & CONSTRUCTION COMPANY, INC., a corporation organized under the laws of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

GIVEN under my hand and official seal of office this 14 day of July, 1976.

[NOTARIAL SEAL]

Bert M. Skelton
Notary Public

MY COMMISSION EXPIRES OCTOBER 29, 1978

STATE OF Ala
COUNTY OF Jeff

BERTHA M. SKELTON

I, BERTHA M. SKELTON, a Notary Public in and for said county in said state, hereby certify that VIRGINIA H. WILLIAMS, whose name as CORPORATE TRUST OFFICER of BIRMINGHAM TRUST NATIONAL BANK, a national banking association, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said association.

GIVEN under my hand and official seal of office this 14 day of July, 1976.

[NOTARIAL SEAL]

Bert M. Skelton
Notary Public

MY COMMISSION EXPIRES OCTOBER 29, 1978



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EXHIBIT.....A.....

Begin at the southeast corner of the southwest 1/4 of the northeast 1/4, Section 23, Township 19 South, Range 2 East, thence run west along the south line of said quarter-quarter section a distance of 356.27 feet; thence turn an angle of 68° 39' 10" to the right and run a distance of 713.02 feet to the north line of the south 1/2 of the south 1/2 of said northeast 1/4; thence turn an angle of 111° 20' 20" to the right and run along the north line of said south 1/2, south 1/2, northeast 1/4, a distance of 655.94 feet to the west right-of-way of the Central of Georgia Railroad; thence turn an angle of 68° 40' 30" to the right and run along said right-of-way a distance of 712.94 feet to the south line of the southeast 1/4 of the northeast 1/4 of said section; thence turn an angle of 111° 20' to the right and run a distance of 299.67 feet to the point of beginning, all of said real property being situated in the south 1/2 of the southwest 1/4 of the northeast 1/4 and the south 1/2 of the southeast 1/4 of the northeast 1/4 in Section 23, Township 19 South, Range 2 East, Huntsville Meridian, in Shelby County, Alabama, and containing 10.00 acres, more or less.

Carroll H. Johnson
JUDGE OF PROBATE

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