(38)

STATE OF ALABAMA )

JEFFERSON COUNTY )

126869

LAST WILL AND TESTAMENT

OF

DOMINICK VINCENT PACIFICO

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I, DOMINICK VINCENT PACIFICO, a resident of the County of Jefferson, State of Alabama, being of sound and disposing mind and 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 I

PAYMENT OF DEBTS/PROBATE OF WILL

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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 possible after my death, except, however, I direct that my Executor pay all transfer, inheritance, legacy, estate, succession and other taxes (together with any interest or penalty thereon) levied upon and against my estate attributable to property passing hereunder or otherwise, from that portion of my estate and in the manner hereinafter directed. I further direct that my Executor may probate my Last Will and Testament either in the county of my residence at the time of my death or in any county in the State of Alabama in which I may own property at the time of my death.

ITEM II

DISPOSITION OF PERSONAL EFFECTS

I give and devise all of my wearing apparel, jewelry, books, pictures, household furniture and furnishings, both useful and ornamental, any automobile that I may own, and all other objects of my personal use, to my wife, Amelia Catherine Pacifico, absolutely, if she is living at the time of my death. There is excluded from this devise all cash on hand or on deposit, stocks, bonds, notes, evidences of debts, other choses in

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For Probate and Record.

C. N. Florence

action, intangibles and all other property held for investment. In the event my said wife shall predecease me, I give and devise all of said objects of property, absolutely, to my son, Albert D. Pacifico. If my son should predecease me, then I give and devise said property to his then living issue, per stirpes. In the event that my said wife and my said son should both predecease me, leaving no issue surviving, then this devise shall lapse, and the aforesaid property shall become a part of the residue of my estate. I hereby vest in my said Executor, hereinafter named, full power and authority to determine what objects of property are included in the foregoing description contained in this Item of my Will. In the event any of my said beneficiaries shall be under the age of twenty-one (21) years on the occasion of my death, my said wife having predeceased me, I direct that my Executor shall transfer, assign and deliver over to my Trustee, hereinafter named, such beneficiary's share of the objects of property described herein. I authorize my Trustee, in its sole discretion, either to pay over his or her share of said objects of property to said beneficiary, or to hold his or her share of said objects of property in trust for him or her until he or she shall attain the age of twenty-one (21) years, at which time his or her share of said objects of property shall be paid over to him or her, free from any trust. In the event my Trustee, in its absolute discretion, feels it to be impractical to hold any of said objects of property in trust for a beneficiary who is under the age of twenty-one (21) years, I authorize my Trustee to sell such objects of property as it may deem desirable, transferring and paying over any proceeds which may be realized as a result of such sale to the trust herein created for the benefit of such beneficiary.



## ITEM III

## MARITAL DEVISE

(a) If my wife, Amelia Catherine Pacifico, survives me, I give and devise to her, as Trustee, in trust, however, for the uses and purposes and with the powers hereinafter set forth, an amount equal to the maximum marital deduction allowable in determining the federal estate tax payable by reason of my death, reduced by the value for federal estate tax purposes of all other items which pass or have passed to my wife under

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other provisions of this Will or which have already passed to her or for her benefit otherwise than under the terms of this Will, by operation of law, through life insurance policies or otherwise, either at my death or at any time during my life, but only to the extent that such items are included in my gross estate and are allowable as a marital deduction for federal estate tax purposes; provided, however, that the amount of the devise hereinabove set forth shall be further reduced by that amount, if any, needed to increase my taxable estate to the largest amount which, after taking into account the Unified Credit Against Estate Tax available to my estate for federal estate tax purposes and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state), but no other credit, will result in the least possible federal estate tax being payable by my estate. The assets comprising the devise determined in the manner hereinabove set forth shall be hereinafter known as and referred to as "Trust Estate 'A'". I hereby direct that this devise of assets comprising Trust Estate "A" shall vest in the said Trustee immediately upon my death.







(b) In making the computations necessary to determine the amount of this devise, the final determinations for federal estate tax purposes shall control. However, for purposes of funding this devise, each item of property allocated in kind shall be valued by the Executor at the lesser of (i) the value of such item of property as finally determined for federal estate tax purposes in my estate, or if such item is an investment or reinvestment of property included in my gross estate for federal estate tax purposes, or the proceeds of any sale or other disposition of property so included or of any such investment or reinvestment, at the federal income tax basis of such item at the actual date of allocation or distribution, or (ii) at the value of such item at the actual date of allocation or distribution. The provisions of the Code of Alabama §19-3-9 (1975), as from time to time amended, as well as the provisions of any similar statute regarding satisfaction of pecuniary bequests, devises or transfers to or for the benefit of a surviving spouse by selection and distribution of assets in kind now or hereafter in force in the State of Alabama or in any other jurisdiction, are hereby expressly waived and shall not apply to the marital devise made in this Item of my Will.

(c) In the sole power and discretion of the Executor, the payment of this amount may be made wholly or partly in cash or property as selected by it; provided, however, that in no event shall there be included in this devise any asset or the proceeds of any asset which does not qualify for the marital deduction for federal estate tax purposes; and provided further, that any asset or the proceeds of assets with respect to which any estate or death taxes are paid to any foreign country or any of its possessions or subdivisions shall be the last to be used to satisfy this devise.

(d) In the event that my estate is required to file a federal estate tax return, I direct that my Executor determine the effect of the marital deduction upon my estate and, after taking into consideration the separate estate of my said wife, the state of her health, and any other circumstances which may have a bearing upon the projected federal estate tax due both at my death, and at the death of my said wife, determine whether it is in the best interest of my estate and my said wife's estate to make an election under Section 2056(b)(7) of the Internal Revenue Code of 1986, as amended from time to time, to have all or any part of the property in Trust Estate "A" treated as Qualified Terminable Interest Property which qualifies for the marital deduction. My Executor shall, in its discretion, either make such an election or refrain from making such an election, as said Executor deems to be in the best interest of my estate and my wife's estate. My Executor shall not be liable to any beneficiary herein, by reason of its decision to make or not make such election, where such Executor has exercised good faith and ordinary diligence in the making of such decision.

(e) In the event that my Executor makes an election to have all or any part of the property in Trust Estate "A" treated as Qualified Terminable Interest Property, as set forth above, it is my intent to secure for my estate the marital deduction allowable by the Federal Internal Revenue Code in force on the occasion of my death for the property with respect to which my Executor has made said election, and to that end, I direct my Executor to take whatever action may be necessary to obtain the marital deduction for such property. If the effect of any provision of this Will would be to prevent the allowance of the marital deduction with respect to such property in Trust Estate "A", then I direct that such offending provision shall not apply to Trust Estate "A", and insofar as Trust Estate "A" and its distribution and administration are concerned, this Will shall read and take effect as if such offending provision did not exist. By way of illustration, but not limited thereto, the Trustee of Trust Estate "A", notwithstanding any other provisions of this Will, shall not have the power, in the administration of Trust Estate "A", to make allocation of any receipt to principal or of any expense to income, if such allocation would result in my said wife's receiving less than the whole amount of the income from Trust Estate "A" to which she would be entitled under the applicable rules of law.





(f) In the event my said wife shall disclaim in whole or in part the devise described hereinabove by filing with my Executor a qualified disclaimer as defined in Sections 2046 and 2518 of the Internal Revenue Code of 1986, as amended, said property, or portion thereof to which the disclaimer applies, shall be added to my residuary estate and disposed of as hereinafter provided.



(g) Should my said wife predecease me, I direct that Trust Estate "A", which is set up for her use and benefit, and all other devises made to her in this Item shall lapse, and the assets of my estate which would have constituted the devise to the Trustee of Trust Estate "A" for her use and benefit in this Item shall be merged with and become a part of the residue of my estate.

(h) I understand that in the process of the administration of my estate, occasions may arise where there is a possible conflict between the interest of my said wife on the one hand, and the interests of my lineal descendants on the other, especially, but without being limited to, interpretations by my Executor relative to income and estate tax matters. I specifically direct my Executor and Trustee to interpret any provision of my Will and to take such action in the administration of my estate or of the trusts created hereunder, which will serve to promote the welfare and best interest of my said wife, to the possible detriment of the interest of any other beneficiary.

## ITEM IV

## DISPOSITION OF RESIDUE

I give and devise unto Amelia Catherine Pacifico, as Trustee, in trust nevertheless, for the uses and purposes, upon the terms and conditions, and with the powers and duties hereinafter set forth, all of the residue of my estate, including the residue of the property, whether real or personal, of every kind and wherever located, belonging to me at my death, or payable to my estate from any source, and remaining after payment of all debts of my estate and provisions for any devises hereinabove set forth, which said assets comprise the residue of my estate, all of which such property is herein referred to as "Trust Estate 'B'". Except as otherwise specifically provided herein, I direct that my Executor pay all transfer, inheritance, legacy, estate, succession, and other taxes (together with any interest or penalty thereon) levied upon or against my estate attributable to property passing hereunder or otherwise, out of said Trust Estate "B". No devisee, legatee, donee or insurance beneficiary shall be required to pay, or contribute to the payment of, any of the above taxes.



## ITEM V

## TRUST ESTATE "A"

(a) The Trustee shall segregate from the assets of Trust Estate "A" an amount equal to the difference between the total Generation Skipping Transfer exemption allowable under the provisions of Internal Revenue Code §2631(a) (hereafter "GST exemption") and the amount of such exemption allocated by my Executor to any transfers made by me during my lifetime or at my death with the exception of the devise to Trust Estate "A". It is my request (but not my requirement) that my Executor allocate any available Generation Skipping Transfer exemption to transfers made by me during my lifetime and/or at my death other than the devise to Trust Estate ''A'', to the extent that such transfers would otherwise constitute generation skipping transfers either at my death, at the death of my wife, or at the death of my son, in order that the total amount so segregated under this paragraph shall represent the smallest possible amount consistent with the full utilization of the GST exemption available to my estate. After the allocation of my GST exemption to gifts and devises other than the assets in Trust Estate "A", I direct that my Executor shall allocate all of my remaining GST exemption to the assets so segregated. For purposes of funding the amount required by this paragraph to be so segregated, the assets of Trust Estate "A" shall be valued at their value as finally determined for federal estate tax purposes in my estate, and the Trustee, in its sole power and discretion, may fund such amount in cash or property as selected by it.



(b) The Trustee shall transfer to my said wife, outright and forever, all assets of this Trust Estate ''A'' other than those segregated in accordance with the provisions of the preceeding paragraph. The assets so segregated shall continue to be held in this Trust Estate ''A'' under the terms and provisions hereinafter set forth.



(c) I direct that my Trustee shall hold Trust Estate "A" for the use and benefit of my said wife, for and during her lifetime. During the lifetime of my said wife, the Trustee shall pay to her all of the income from said Trust Estate "A", in such installments as may be convenient to my said wife, but in no event less frequently than annually. In addition to all of the income from said Trust Estate "A", I direct that my said wife may appoint to herself from the corpus of said Trust Estate "A" such amount, as from time to time may be necessary to maintain her in health and reasonable comfort, to support her in her accustomed manner of living, and to provide for her health, medical, dental, hospital and nursing expenses and expenses of invalidism. It is my intention that this power which has been granted to my said wife in the immediately preceding sentence shall be a power limited by an ascertainable standard, as defined in Treasury Regulations Section 20.2041-1(c)(2), and such power shall not be a general power of appointment. It is also my intention that this power of appointment which I have granted to my wife shall be exercised by her only in strict accordance with the standards set forth in this paragraph. I further direct that any other Trustee who shall be serving and acting may appoint to my said wife from the corpus of said Trust Estate "A" pursuant to the standards set forth hereinabove. Any sums so paid to or used for the benefit of my said wife shall not be deemed to be advancements upon any payment of net income which she may thereafter become entitled to receive.

(d) My said wife shall have no right or power, either directly or indirectly, to anticipate, charge, mortgage, encumber, assign, pledge, hypothecate, sell or otherwise dispose of the net income from said Trust Estate "A" which may be payable to her during her life, or any part thereof, until the same shall have been actually paid to her by the Trustee. Nor shall such income, nor the principal nor corpus of said Trust Estate "A", nor any part of, or interest in, either of them be liable for or to any extent subject to any debts, claims or obligations of any kind or nature whatsoever, or to any legal process in aid thereof, contracted or incurred by or for my said wife, before or after my death.

(e) Upon the death of my said wife, my said Trustee shall pay over to my said wife's estate all income, if any, which shall have accrued to my wife's benefit prior to her death, but which remains unpaid as of the date of her death, and my said Trustee shall then transfer and pay over, or hold in trust the principal remaining in Trust Estate "A" to or for the benefit of my son, if he is living at that time, or the lineal descendants of my son, if he is not then living, upon the same terms and conditions as provided in ITEM VI hereof, subject to all of the terms, conditions and limitations of said ITEM VI. The Trustee shall pay over absolutely to my son, if he is living at that time, or the lineal descendants of my son, if he is not then living, the portion of Trust Estate "A" to which he or she may be entitled at that time under the provisions of ITEM VI hereof. If any property is held for my said son or his lineal descendants under the terms of Trust Estate "B", then the Trustee shall retain such funds remaining in Trust Estate "A" in trust for said son or lineal descendants of my son upon the same terms and conditions as provided in Trust Estate "B". The Trustee may, in its discretion, merge and consolidate the funds remaining in Trust Estate "A" with the funds in Trust Estate "B".

## ITEM VI

## TRUST ESTATE "B"

(a) The Trustee shall hold said Trust Estate "B", without division into shares, in trust for the use and benefit of my said wife and my son, for and during the lifetime of my said wife. During the lifetime of my said wife, the Trustee shall pay over to my said wife the entire net income from said Trust Estate "B", in such installments as may be convenient to her. Furthermore, my said wife may appoint to herself from the corpus of said Trust Estate "B" such amount, as from time to time may be necessary to maintain her in health and reasonable comfort, to support her in her accustomed manner of living, and to provide for her health, medical, dental, hospital and nursing expenses and expenses of invalidism. It is my intention that this power which has been granted to my said wife in the immediately preceding sentence shall be a power limited by an ascertainable standard, as defined in Treasury Regulations Section 20.2041-1(c)(2), and such power shall not be a general power of appointment. It is also my intention that this power of appointment which I have granted to my wife shall be exercised by her only in strict accordance with the standards set forth in this paragraph. I further direct that any other Trustee who shall be serving and acting may appoint to my said wife from the corpus of said Trust Estate "B" pursuant to the standards set forth hereinabove.

(b) In interpreting the powers granted to my said wife, as Trustee, I direct that, any provision in this, my Last Will and Testament to the contrary notwithstanding, although she shall be entitled to the beneficial enjoyment, as a life beneficiary, of the income from said Trust Estate "B", she shall not exercise any such power so as to divert to herself as income any part of the assets of said Trust Estate "B" which would not, under the statutes and decisions of the State of Alabama, be construed as income, it being my intention to protect the corpus or principal of said Trust Estate "B" for the exclusive use and benefit of the remaindermen, subject only to the right herein granted to my said wife to appoint to herself from the principal thereof pursuant to the standards set forth hereinabove.

(c) If, at any time during the lifetime of my said wife, the Trustee should deem it desirable to advance to my son, or to any lineal descendant of my son, if he is not then living, any sum or sums out of the principal of said Trust Estate "B", for the purpose of establishing such son or descendant in a business or profession, or purchasing for such son or descendant a home, or for any other special or commendable purpose, the Trustee shall transfer and pay over to my son, or to any lineal descendant of my son, if he is not then living, such part of the principal of said Trust Estate "B" as my said Trustee shall deem it wise so to distribute, but any sum so advanced to such son or descendant of my son shall be a charge against any part of said Trust Estate "B" to which such son or descendant may subsequently become entitled under the other provisions of this Will. No such advance shall be made to my son, or to any lineal descendant of my son, if he is not then living, however, without the written consent and concurrence of my said wife, provided that she is then mentally competent to give such consent.

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(d) Any provision herein to the contrary notwithstanding, the Trustee shall have no power or authority to make any advance of principal to my son for the purpose of discharging any legal obligation which the Trustee has or may have to support said son.

(e) Upon the death of my said wife, or upon my death if my wife predeceases me, the Trustee shall apportion from the assets remaining in said Trust Estate "B" the sum of Ten Thousand Dollars ($10,000.00), and shall transfer and pay over said sum to my nephew, Joachim T. Calabrese, free from trust. If my said nephew is not living, this devise shall lapse.

(f) Following the death of my wife, the Trustee shall hold said Trust Estate "B" in trust for the use and benefit of my said son, for and during the lifetime of my said son. During the lifetime of my said son, the Trustee shall pay over to such son the entire net income from Trust Estate "B", in such installments as may be convenient to him. The Trustee may appoint to my said son from the principal of said Trust Estate "B" such amount as from time to time may be necessary to maintain him in health and reasonable comfort, to support him in his accustomed manner of living, and to provide for his health, medical, dental, hospital and

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nursing expenses and expenses of invalidism. It is my intention that the power which has been granted to the Trustee in the immediately preceding sentence shall be a power limited by an ascertainable standard, as defined in Treasury Regulations Section 20.2041-1(c)(2), and such power shall not be a general power of appointment.

(g) Anything hereinabove to the contrary notwithstanding, in the event that my son shall die after the death of my wife and prior to the distribution to him of all of said Trust Estate "B", and in the further event that for purposes of computing the federal estate tax due at the death of my son, the maximum marginal estate tax bracket of such son is less than the maximum federal estate tax rate then in effect, then I give to my son a general power of appointment, exercisable by specific reference thereto in his valid Last Will and Testament, over that portion of said Trust Estate "B" determined as hereinafter set forth, such power being an unlimited power and right to appoint that portion of said Trust Estate "B" to his estate, to the creditors of his estate, or to any other appointee, either outright or otherwise. The portion of said Trust Estate "B" over which said son will have the general power of appointment referred to hereinabove shall equal the lesser of (i) the amount equal to that portion of said Trust Estate "B" which constitutes the "taxable amount" multiplied by the "inclusion ratio", as such terms are defined for generation-skipping transfer tax purposes in the Internal Revenue Code of 1986, as amended from time to time, or (ii) an amount equal to the maximum that can pass to beneficiaries (other than a spouse of such son or a charitable organization as such is described in Section 2055(a) of the Internal Revenue Code of 1986, as amended) from said Trust Estate "B" and be subject to federal estate taxes in the estate of said son computed at estate tax rates that are less than the maximum estate tax rate in effect as of the date of the death of such son. To the extent that my son is given a general power of appointment exercisable under the trust estate provisions of any other trust instrument, the amount of which is determined by a formula substantially similar to the formula set forth in this paragraph, then for purposes of computing the amount described in (ii) above, said amount shall be prorated among each said trust estate over which my son based upon the respective values of the trust estates over which my son

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given such a general power of appointment. In the event that said son shall die having failed to exercise the foregoing power of appointment as above granted to him, then I nevertheless direct that the Trustee shall pay to the personal representative of said son's estate, an amount equal to the increase in federal and state taxes and any increased administration expenses which his estate would have to pay because of the inclusion of the said portion of the principal of said Trust Estate "B" in his estate for tax or administrative purposes, and the balance of the assets of said Trust Estate "B" shall be transferred, delivered and paid over in accordance with the provisions hereinabove set forth.

(h) Notwithstanding any contrary provisions hereinafter contained in this Item of my Will, my son, by specific reference thereto in his valid Last Will and Testament, shall have the power to direct the Trustee to continue to hold any part or all of the balance of assets in said Trust Estate "B" following his death for the use and benefit of his wife, for and during the lifetime of his said wife, or until the remarriage of his said wife. During such period, the Trustee shall pay to or expend for the use and benefit of such wife, the net income from such part or all of said Trust Estate "B" so administered for the benefit of such wife for the maintenance and support of such wife, with no right, however, to pay or expend any part of the corpus or principal thereof to or for the use of said spouse. Upon the death or remarriage of such wife, the balance of assets remaining in such Trust Estate "B" shall be transferred, delivered and paid over to those beneficiaries and in the manner herein set forth.

(i) Upon the later to occur of (i) the death of my said son, or (ii) the death of the last to die of my wife and me, or, in the event my son has elected to exercise the power of appointment granted to him in the preceding paragraph, then upon the last to occur of (i) above, (ii) above and (iii), the earlier of my son's wife's death or her remarriage (hereinafter referred to as the "division date"), the Trustee shall apportion said Trust Estate "B" into equal shares for the children of my son then living or deceased (hereinafter referred to as "grandchildren"). Each share apportioned for my said grandchildren, or the lineal descendants of a deceased grandchild, shall be a separate and distinct trust. I authorize my Trustee if it so desires, for the sake of convenience, to refrain from making a physical separation of the assets of these trusts into separate equal trusts, if such treatment will facilitate the administration of said trusts. I also authorize my Trustee to mingle and commingle investments, but I wish it specifically understood that I am creating independent trusts for all purposes.

(j) Notwithstanding any contrary provisions contained in this Item of my Will, my said son, by specific reference thereto in his valid Last Will and Testament, shall have the power to direct the Trustee named herein to retain the shares of one or more of my grandchildren beyond the time set herein for distribution on such terms as he may specify and/or to alter the foregoing division of said Trust Estate "B" among my lineal descendants by dividing it among my lineal descendants in such manner and in such equal or unequal proportions, in trust or otherwise, as my said son may see fit, whether or not the parent of such lineal descendant shall be living. I recognize that my said son, if he should survive me, may be better able, based on conditions which may prevail after my death, to make a more appropriate division of said Trust Estate "B" among my said descendants than I have directed, and accordingly, I desire him to have the above limited special power of appointment, in order that he may change the method of distribution of my estate as set out hereinabove, in such manner as he considers desirable, taking into consideration the financial condition of each of my said descendants and any other circumstances which may exist at said particular time. Anything above to the contrary notwithstanding, under no conditions may my said son appoint any part of said Trust Estate "B" to himself, to his estate, to his creditors or to the creditors of his estate. In exercising the limited power of appointment given to my son by creating a trust for the benefit of any of my lineal descendants, he is hereby expressly prohibited from including in any such trust any provisions which may be interpreted as violating the common-law rule against perpetuities as applicable in the State of Alabama.

(k) Subject to the terms of Paragraph (c) of the ITEM entitled "MISCELLANEOUS", the Trustee shall hold the share of each grandchild in trust for him or her until he or she shall attain the age of twenty-one (21) years, at which time his or her share of said Trust Estate "B" shall be transferred and paid over to him or her, free from this trust. Prior to the date that such grandchild shall attain the age of twenty-one (21) years, the Trustee shall use and apply, for his or her support, education and comfort, such part of the net income from his or her share of said Trust Estate "B", and of the principal thereof, as the Trustee deems necessary or desirable for said purposes. Any income not so applied shall be accumulated and added to the principal of his or her share of said Trust Estate "B" at the end of the fiscal year of the trust.



(l) Any grandchild of mine, by specific reference thereto in his or her valid Last Will and Testament, shall have a general power of appointment over his or her share of said Trust Estate "B", such power being an unlimited power and right to appoint his or her share of said Trust Estate "B" to his or her estate, to the creditors of his or her estate, or to any other appointee, either outright or otherwise. In the event that a grandchild of mine shall die having failed to exercise the foregoing power of appointment as above granted to him or her, then I nevertheless direct that the Trustee shall pay to the personal representative of such grandchild's estate, an amount equal to the increase in federal and state taxes and any increased administration expenses which his or her estate would have to pay because of the inclusion of his or her share of the principal of said Trust Estate "B" in his or her estate for tax or administrative purposes, and the balance of the assets of said Trust Estate "B" shall be transferred, delivered and paid over in accordance with the provisions hereinafter set forth.





(m) In the event any grandchild of mine shall die prior to the division date or distribution of his or her share of said Trust Estate "B", leaving any descendants of him or her then living, and having failed to exercise the general power of appointment hereinabove granted to him or her in Section (l) of this Item, then at the division date, or at the death of such grandchild, whichever occurs later, the Trustee shall transfer and pay over to the descendants then living of such deceased grandchild, per stirpes, the share of said Trust Estate "B" apportioned for such deceased grandchild; provided that, if any descendant of such deceased grandchild shall not at said time have attained the age of

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twenty-one (21) years, then, subject to the terms of Paragraph (c) of the ITEM entitled "MISCELLANEOUS", though the share of such descendant in said Trust Estate "B" shall be deemed then to have vested in him or her, and shall be payable to his or her estate in the event of his or her death prior to attaining the age of twenty-one (21) years, the Trustee shall continue to hold the same in trust for him or her until he or she shall attain the said age of twenty-one (21) years, using and applying for his or her support, education and comfort, such part of the net income or principal from his or her share of said trust as the Trustee deems necessary or desirable for said purpose. Any income not so paid or applied shall be accumulated and added to his or her share of said Trust Estate "B" at the end of the fiscal year of the trust.

(n) In the event that any grandchild of mine shall die prior to the division date or distribution of his or her share of said Trust Estate "B", leaving no descendants of him or her then living, and having failed to exercise the general power of appointment hereinabove granted to him or her in Section (1) of this Item, then at the division date, or at the death of such grandchild, whichever occurs later, the Trustee shall transfer and pay over the share of said Trust Estate "B" apportioned for such deceased grandchild to such of said grandchild's brothers and sisters, and the descendants of any deceased brother or sister of said grandchild, as then are living, per stirpes; provided, however, that if any such brother or sister or descendant of a deceased brother or sister of said deceased grandchild shall then have other property held in trust for him or her under any provision of this, my Last Will and Testament, then although his or her share in the share of such deceased grandchild shall be deemed then to have vested in him or her, such property shall be added to, merged in and administered and disposed of like such other property so held in trust for him or her. It is my intention that any reference herein to a grandchild's brothers and sisters shall be deemed to refer only to those brothers and sisters who are also my grandchildren.

(o) In the event any grandchild of mine shall die prior to the division date or distribution of his or her share of said Trust Estate "B", leaving no descendants of him or her, or of me, then living, and having failed to exercise the general power of appointment hereinabove granted to him or her in Section (1) of this Item, or in the event that my son shall die prior to the division date or distribution of said Trust Estate "B", leaving no descendants of him or of me, then living, or in the event that the death of the last to die of my wife and me, there shall be no lineal descendants of mine then living, then (i) at the division date, or (ii) at the death of such grandchild, whichever occurs later, the Trustee shall transfer and pay over the share of said Trust Estate "B" apportioned for such deceased grandchild, or all of said Trust Estate "B", as the case may be, to such person or persons as would be entitled to inherit the property constituting said share, and in the proportions in which they would be entitled to inherit the same from me under the laws of Alabama then in force had I died at said time a resident of Alabama intestate and owned said property.

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## ITEM VII

## TRUST POWERS

In the management and control of any trust created by the terms of my Will, the Trustee, in its sole judgment and discretion, may do and have done with respect to each trust estate, all things which, in the judgment and discretion of the Trustee, may seem necessary, desirable and proper to promote, protect and conserve the interest of the trust estates and of the beneficiaries thereof, in like manner as if the Trustee were entitled to said property beneficially, and every determination of the Trustee in the construction of the powers conferred upon the Trustee, or in any manner committed to the discretion of the Trustee, or with respect to which the Trustee may be empowered to act hereunder, whether made upon a question formally or actually raised or implied in relation of the premises, shall be binding upon all persons interested in the trusts, and shall not be objected to or questioned on any grounds whatsoever, provided, however, that in the administration of Trust Estate "A", my Trustee will take no action which will impair the ability of my estate to procure the full marital deduction as allowed by the applicable federal estate tax laws (except under the circumstances set forth in any provision of my Will), and more specifically, my Trustee, in interpreting the powers granted to it hereunder, shall do nothing to interfere with the beneficial enjoyment of my said wife as a life beneficiary of Trust Estate "A". Without in any way limiting the generality of the foregoing, but solely in order to define with particularity certain of the powers herein vested in the Trustee, the Trustee shall have and may, in its judgment and discretion, and except as specifically herein provided, without notice to anyone or order of court, exercise, among others, the powers following, to be broadly construed with reference to each trust estate and each share thereof:



1. To sell, exchange, transfer or convey, either before or after option granted, all or any part of said trust estate, upon such terms and conditions as it sees fit, to invest and reinvest said trust estate and the proceeds of sale or disposal of any portion thereof, in such loans, stocks, bonds or other securities, mortgages, common trust funds, shares of investment companies or investment securities of management-type investment companies such as mutual funds, or other property, real or personal, whether so-called "legal" investments of trust funds or not, as to it may seem suitable, and to change investments and to make new investments from time to time as to it may seem necessary or desirable. The Trustee may delegate all or any part of the above powers to such investment counselors, consultants or managers as it deems appropriate.





2. To improve, repair, lease, rent for improvement, or otherwise, for a term beyond the possible termination of this trust, or for any less term, with or without option of purchase, and to let, exchange, release, partition, vacate, dedicate or adjust the boundaries of real estate constituting a part of said trust estate.

3. To borrow money for such time and upon such terms as the Trustee sees fit, either without security, or on mortgage of any real estate, or upon pledge of any personal property held by the Trustee hereunder, and to execute mortgages or pledge agreements therefor.

4. To hold any property or securities originally received as a part of said trust estate, including any stock or obligations of any corporate Trustee serving hereunder from time to time, or of any holding company or similar corporation which owns stock of such corporate Trustee, so long as the Trustee shall consider the retention thereof in the best interest of said trust estate, irrespective of whether such property or securities are a so-called "legal" investment of trust funds, without liability for depreciation or loss through error of judgment, and in disposing of any property constituting a part of said trust estate, to acquire other property which is not a so-called "legal" investment of trust funds, including any stock or obligations of any corporate Trustee serving hereunder from time to time, or of any holding company or similar corporation which owns stock of such corporate Trustee, where such course is, in the opinion of the Trustee, in the best interests of said trust estate.

5. To keep any property constituting a part of said trust estate properly insured against fire and tornado, and other hazards, to pay all taxes or assessments, mortgages, or other liens now or hereafter resting upon said property and generally to pay all of the expenses of the trust incurred in the exercise of the powers herein vested in the Trustee which, in the Trustee's judgment, may be proper or necessary.

6. To hold any or all securities or other property in bearer form, in the name of the Trustee or in the name of some other person, partnership, or corporation, without disclosing any fiduciary relationship.

7. To continue any business or partnership in which I may be interested at the time of my death, for such time and under such management and conditions as, in the discretion of the Trustee, may be expedient, or to liquidate or dissolve any such business or partnership at such time and upon such terms and conditions as, in the judgment of the Trustee, are for the best interests of said trust estate, or so far as may be necessary in the Trustee's judgment, to cause to be incorporated any such business or partnership and to use the funds of my estate to protect my interest in any contract, business or partnership in which I may be interested at the time of my death, or to protect any interest which I may have in the securities of any corporation. I grant to my Trustee the power to do all the acts in connection with said businesses which I, in my lifetime, could have done, or to delegate such powers to any partner, manager or employee, without liability for any loss occurring therein. I authorize my Executor and Trustee to make public or private sale of said business or businesses, and the real and personal property thereof, at such time or place, and for such price, and upon such terms as to cash or credit, with or without security for the purchase price, as to the Trustee may seem best, and to execute all necessary assignments and conveyances to the purchasers, without liability on the part of the purchasers to see to the application of the purchase monies.

8. To vote in person or by proxy upon all stocks held by the Trustee, to unite with other owners of similar property in carrying out any plan for the reorganization of any corporation or company whose securities form a portion of the trust estate, to exchange the securities of any corporation for other securities upon such terms as the Trustee shall deem proper, to assent to the consolidation, merger, dissolution or reorganization of any such corporation, to lease the property or any portion thereof of such corporation to any other corporation, to pay all assessments, expenses and sums of money as the Trustee may deem expedient for the protection of the interest of the trust estate as the holder of such stocks, bonds or other securities, and generally, to exercise, in respect to all securities held by it, the same rights and powers as are or may be exercised by persons owning similar property in their own right; provided, however, that if, at any time a corporate Trustee is serving hereunder, it shall purchase or retain stock or obligations of itself or of any holding company, or similar corporation which owns stock of such corporate Trustee, then in the election of directors and other matters in which said corporate Trustee is prohibited from voting its stock or stock of any holding company or similar corporation which owns stock of a corporate Trustee, such stock shall be voted by the eldest adult beneficiary hereunder.

9. To determine whether any money or property coming into its hands and allocated to Trust Estate "B" shall be treated as a part of the principal of said Trust Estate "B" or a part of the income therefrom, to apportion between such principal and income any loss or expenditure in connection with said Trust Estate "B" as to it may seem just and equitable, and to set up reserves out of income to meet such items of depreciation, obsolescence, future repairs or amortization of indebtedness deemed by the Trustee to be a proper charge against income. Any death benefits which shall become payable under any qualified pension or profit sharing plan, including a plan for self-employed individuals and owner-employees in which I may be a participant shall be allocated to the principal of Trust Estate "B" under the terms and provisions of this, my Last Will and Testament. In those instances in which a beneficiary hereunder is serving as sole Trustee, income and principal shall be apportioned in accordance with the terms and provisions of the Income and Principal Act of the State of Alabama.

10. To institute and defend any and all suits or legal proceedings relating to the said trust estate, in any court, and to employ counsel and to compromise or submit to arbitration all matters of dispute in which said trust estate may be involved, as in its judgment may be necessary or proper.

11. At any time or from time to time to advance money to the trust estate from its funds for any purpose or purposes of the trust, and

may reimburse itself for the money advanced and interest thereon from the trust property or from any funds belonging to the trust property thereafter coming into its custody from any source.

12. To pay from and out of the income of the trust property any and all expenses reasonably necessary for the administration of the trusts, including interest, taxes, insurance, including public liability insurance, and compensation to the Trustee, as well as any other expense incurred for the benefit of the trust estate, and in the event the income from the trust property is insufficient for the purpose of paying such expenses, to pay the same from the corpus of the trust estate.

13. To execute and deliver any and all contracts, conveyances, transfers, or other instruments and to do any acts necessary or desirable in the execution of the powers herein vested in it.

14. While I have granted to my Trustee broad powers to facilitate the administration of my trust estate, I specifically direct that my Trustee take no action which will have the effect of denying to my said wife the substantial present enjoyment of all income of Trust Estate "A" herein established, for and during her lifetime.

15. In making any division of the trust property into shares for the purpose of any distribution thereof directed or permitted by the provisions of this Will, the Trustee may make such division or distribution either in cash or in kind, or partly in cash and partly in kind, as the Trustee shall deem most expedient, and in making any division or distribution in kind, the Trustee may allot any specific security or property, or any undivided interest therein, to any one or more of such beneficiaries, and in such proportions and amounts, without regard to equality of distribution or federal income tax basis thereof, as it may deem proper, and to that end, may appraise any or all of the property so to be allotted, and the Trustee's judgment as to the propriety of such allotment and as to the relative value and basis for the purposes of distribution of the securities or property so allotted, shall be final and conclusive upon all persons interested in this trust or in the division or distribution thereof; provided, however, that in exercising the authority given to it under this provision, the Trustee shall not violate any provision in this, my Last Will and Testament, dealing with devises to my surviving spouse, which are to qualify for the marital deduction. In allocating, transferring and assigning to any beneficiary, property, or interests in property, in order to equal the total value of a pecuniary devise made to any beneficiary under the terms and provisions of this, my Last Will and Testament, I caution my Executor to investigate the income tax impact, if any, that might result to my estate in allocating, transferring and assigning to such beneficiary for such purposes any asset belonging to my estate which would constitute "Income in Respect of a Decedent" pursuant to the then applicable provisions of the United States Internal Revenue Code, and regulations pertaining thereto.

16. Any provision in this, my Last Will and Testament, to the contrary notwithstanding, I hereby give and grant unto my said wife the unqualified power and right to compel or require the Trustee, within a reasonable time after demand, to exchange or convert any nonproductive or nonincome producing property or interests in property held in Trust Estate "A" for or into productive property or income producing property.

17. In the event my estate owns an interest in the shares of stock of any closely-held family corporation, and the persons named herein as Executor and/or Trustee shall be or shall become affiliated with any such closely-held corporation, serving as employees, officers or directors thereof, I direct that such persons so serving as Executor or Trustee of my estate shall not be disqualified from employment by any such family corporation or its successor, or the continued employment by said persons for either the same or greater compensation as determined from time to time by the board of directors in office. In the circumstances described in this paragraph, said persons so serving as Executor and/or Trustee of my estate shall be exonerated from any claim or demand arising from the fact that they may be receiving or have received compensation for serving

as a director, officer and/or employee when serving as Executor or Trustee or successor Executor or Trustee.

18. To enter into a partnership agreement or arrangement with others, or accept the assignment of, or otherwise acquire, hold and dispose of an interest in a partnership, continue the operation of any such partnership, and in doing so to use in such partnership any part or all of any trust estate owning such partnership, and to become either a general or limited partner. In any such case, as to creditors of or claimants against such partnership and as to the other members of such partnership, liability, if any, of the Trustee for the debts and other liabilities of the partnership shall be limited to the assets of any trust estate owning such partnership, or so much thereof as may be necessary to discharge such debts and liabilities, but no personal liability shall attach to the Trustee, or to the beneficiaries of any such trust estate.

19. To buy, sell and trade in securities of any nature, including short sales, on margin, and for such purposes may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by them with such brokers as security for loans and advances made to the Trustees.

20. To buy, sell, or otherwise deal with any split interests, including life interests, interests for a term of years, or remainder interests that may at any time be owned by said trust estate, or in which said trust estate may have an interest. I direct that the decision of the Trustee as to the use of actuarial tables or information in determining the value of any said split interest shall be made at the sole discretion of the Trustee, and be free from any interference, demand or control of any beneficiary, and for the honest exercise of the discretion conferred on it, the Trustee shall be liable to no one.



## ITEM VIII

## MISCELLANEOUS

(a) Any trust created under my Will, at the election of my Executor, may be treated as operating from the date of my death, whether the trust property shall then be actually paid over to the Trustee and set aside or not, and I hereby authorize and empower my Executor hereinafter named to make any payments which the Trustee is herein authorized to make after the actual establishment of the trust herein created.

(b) It is my will and I direct that the invalidity of any gift or devise, or of any limitation over, or interest intended, as to any property or as to any beneficiary, shall not be considered materially to disturb the plan of distribution herein created or to affect the validity of any other gift or devise or limitation over, or interest in or trust herein given or created.

(c) Anything in this Will to the contrary notwithstanding, no trust created hereunder shall continue beyond the day next preceding twenty-one (21) years after the death of the last to die of those trust beneficiaries who were living at the time of my death; and upon the expiration of such period all trusts created hereunder shall terminate and the assets thereof shall immediately be vested in and distributed outright to those persons entitled, and in the same proportions to which they are entitled to take, under the provisions hereinabove set forth, irrespective of the attained ages of such beneficiaries on such date.

(d) Any persons may at any time, and from time to time, add cash, securities or other property, whether real or personal, to the corpus of the trust estates herein created, by deed, gift or will, with the consent of the Trustee. Any addition to any of the trust estates herein created shall be held, administered and distributed as an integral part of the corpus thereof in accordance with all of the terms and provisions of this Will applicable to the said trust estate.

(e) I specifically authorize and empower my Executor regardless of whether or not it affects the interest of any beneficiary under this Will, or the amount of property directed to such beneficiary now or hereafter, to exercise any election granted by the Internal Revenue Code in effect at the time of my death which permits my Executor to take as deductions for federal income tax purposes any amounts which are also allowable for federal estate tax purposes, and my Executor shall incur no liability whatsoever to any beneficiary under this Will as the result of any elections so made, and no adjustment between principal and income shall be required as a result of such election.

(f) Anything to the contrary notwithstanding, in the event that any property or interest in property or life insurance passing under this Will, by operation of law or otherwise by reason of my death, shall be encumbered by mortgage or lien, or shall be pledged to secure any obligation (whether the property or interest in property so encumbered or pledged shall be owned by me jointly or individually), it is my intention that such indebtedness shall not be charged to or paid from my estate, but that the devisee, legatee, joint owner taking by survivorship, or beneficiary receiving such property or interest in property shall take it subject to all encumbrances existing at the time of my death.

(g) It is my direction and intention that my Last Will and Testament be interpreted and administered by my Executor and Trustee in accordance with the Internal Revenue Code of 1986, as amended. My

Executor and Trustee shall not be liable to any beneficiary herein for any action taken or not taken, election made or not made, or resulting federal income tax consequences upon the apportionment or distribution in kind or otherwise of any asset of my estate, where such Executor or Trustee has exercised good faith and ordinary diligence in the performance of its duties.

(h) Any provisions herein for the benefit of my beneficiaries are expressly in lieu of any right to homestead allowance, exempt property and the family allowance; and any acceptance of such statutory or constitutional benefits shall be charged against any benefits hereunder.

(i) As to the net income which, by any of the provisions of this Will, may be payable to any of my lineal descendants, he or she shall have no right or power, either directly or indirectly, to anticipate, charge, mortgage, encumber, assign, pledge, hypothecate, sell or otherwise dispose of same, or any part thereof, until same shall have been actually paid to him or her by the Trustee. Nor shall such income, nor the principal nor corpus of said trust estate, nor any part of, or interest in, either of them be liable for or to any extent subject to any debts, claims or obligations of any kind or nature whatsoever, or to any legal process in aid thereof, contracted or incurred by or for any such child or descendant, before or after my death.

(j) Where I have herein directed that funds shall be used and applied by the Trustee for the benefit of, or paid to, any beneficiary under the age of twenty-one (21) years, or any otherwise incompetent beneficiary, the Trustee may in its discretion pay over such sums to the persons having custody of such beneficiary, if any, or to such other person as it may select, including the beneficiary, or custodian for such beneficiary under the Uniform Transfers to Minors Act of any jurisdiction, to be used and applied for the purposes herein directed and the receipt of such persons shall be full discharge to the Trustee as to any sums so paid.

(k) I specifically authorize and empower my Executor to execute and file a joint income tax return with my wife for the year in which my death occurs and for any years prior thereto. I also authorize and empower my Executor to execute and file joint gift tax returns with my wife if any gift tax return is required of either of us for the year in which my death occurs or for any year prior thereto. I also specifically authorize and empower my Executor to pay any portion or all of any resulting income taxes and gift taxes. I grant full discretion to my Executor to acquiesce in, compromise, or litigate any demand made against my estate for federal or state income or estate taxes. My Executor shall incur no personal liability for any action taken by it in good faith in accordance with either of the foregoing authorizations.

(l) I recognize that various devises in this, my Last Will and Testament, are determined by the use of formulae and that, consequently, it is possible, or even likely, that no property may be disposed of by some one or more ITEMS in my Will which purport to contain dispositions of my said property.

(m) Any person acting or named to act in a fiduciary capacity hereunder or required to be legally competent in order to act hereunder shall be considered to have ceased or failed to act or to be legally incompetent to act when a physician whom such person has consulted within the prior three years has certified as to such consultation and also as to the present lack of the physical or mental capacity of such person to manage his or her financial affairs.

(n) In the event that either my wife or I create a trust or trusts, whether by will or by intervivos agreement, the provisions of which are substantially similar to those of the trusts created under this, my Last Will and Testament, the Trustee may, in its discretion, merge and consolidate the trust or trusts created hereunder with such other trust or trusts; provided, however, that any trust created under the terms of this Will which qualifies for the marital deduction shall be merged and consolidated only with a similar trust or trusts which likewise qualifies for the said marital deduction, and provided further, similar trusts shall be merged only with trusts which have the same "inclusion ratio" as defined in the Internal Revenue Code of 1986, as amended. In determining whether the provisions of such other trust or trusts are substantially the same as those of the trust or trusts created hereunder, the discretion of the Trustee shall be conclusive and shall not be subject to a review.

(o) I specifically authorize and empower the Executor, regardless of whether or not it affects the interest of any beneficiary under this Will or any trust created hereunder, or the amount of property directed to such beneficiary now or hereafter, to allocate any generation-skipping transfer exemption available to me or my estate to any property of which I am the transferor, including property transferred by me prior to my death.

(p) In order to prevent any trust created hereunder from having an inclusion ratio (as defined in Internal Revenue Code § 2642, as amended) of other than one (1) or zero (0), the Trustee, in its sole power and discretion, may divide said trust estate into two separate trusts, so that after such division and the allocation of my generation skipping transfer exemption, one such trust shall have an inclusion ratio of one (1) and the other trust shall have an inclusion ratio of zero (0). Except as otherwise specifically provided herein, the dispositive provisions of each separate trust shall be identical to the dispositive provisions of the original trust divided pursuant to this paragraph. Each of the two separate trusts so created shall have the same name, except that the trust having an inclusion ratio of zero (0) shall have the phrase "GST Exempt" added to its name. For purposes of funding the shares to be transferred to each separate trust, undivided fractional interests in each of the assets allocated to the trust estate need not be created and the Trustee, in its sole power and discretion, may fund the separate trusts in cash or property as selected by it.

(q) If, at any time during the continuation of a trust created hereunder, the assets of such trust shall be insufficient, in the Trustee's discretion, to warrant the expenses of administration of such trust, then, in such event, the Trustee shall transfer and pay over to the income beneficiaries of such trust his or her entire share of such trust estate.

(r) The Trustee shall have the power to pay the funeral and/or burial expenses of any income beneficiary of a trust created hereunder.

ITEM IX

SIMULTANEOUS DEATH

In the event my death and the death of my said wife shall occur simultaneously, or approximately so, under circumstances causing doubt as to which of us survives the other, or, in the event the death of my said wife shall occur within five (5) days after my death, then, any presumption created by the laws of the State of Alabama or any other applicable jurisdiction notwithstanding, I direct that it be presumed that my said wife survived me.



ITEM X

EXECUTORS



(a) I hereby nominate and appoint Amelia Catherine Pacifico as Executor of this, my Last Will and Testament. In the event Amelia Catherine Pacifico shall predecease me or shall die during the administration of my estate or be unable or unwilling to serve as Executor, then I nominate and appoint Albert D. Pacifico to serve as Executor of this, my Last Will and Testament. In the event Albert D. Pacifico shall predecease me or shall die during the administration of my estate or be unable or unwilling to serve as Executor, then I nominate and appoint Albert D. Pacifico, II to serve as Executor of this, my Last Will and Testament. In the event Albert D. Pacifico, II shall predecease me or shall die during the administration of my estate or be unable or unwilling to serve as Executor, then I nominate and appoint AmSouth Bank N.A. (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 Executor of this, my Last Will and Testament.



(b) I direct that my said Executor, whoever or whichever shall serve, shall not be required to give any bond or to file an inventory or appraisal of my estate or to make any accounting, report or final settlement in any court, though it shall make out and keep an inventory and shall exhibit the same to any party in interest at any reasonable time. I hereby vest in my said Executor the same full powers of management, control and disposition of my estate herein given to the

Trustee under any section hereof, and I direct that in the ... such powers my Executor shall be free from the control and supervision of the Probate Court, or any other court.

## ITEM XI

## TRUSTEES

(a) In the event of the death, incapacity, inability or unwillingness to serve as Trustee hereunder of Amelia Catherine Pacifico, either prior to or during the continuance of any said trust, then I direct that Albert D. Pacifico shall serve and act as Trustee of the trusts created in this, my Last Will and Testament, together with all the rights, powers, duties and discretion vested in the original Trustee. In the event of the death, incapacity, inability or unwillingness to serve as Trustee hereunder of Albert D. Pacifico, either prior to or during the continuance of any said trust, then I direct that Albert D. Pacifico,II shall serve and act as Trustee of the trusts created in this, my Last Will and Testament, together with all the rights, powers, duties and discretion vested in the original Trustee. In the event of the death, incapacity, inability or unwillingness to serve as Trustee hereunder of Albert D. Pacifico,II either prior to or during the continuance of any said trust, then I direct that AmSouth Bank N.A. (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) shall serve and act as Trustee of the trusts created in this, my Last Will and Testament, together with all the rights, powers, duties and discretion vested in the original Trustee.

(b) I hereby direct that the Trustee named herein shall not be required to give any bond or security for the performance of the Trustee's duties. No successor Trustee shall be personally liable or responsible in any way for any act or failure to act of any predecessor Trustee nor bear any loss or expense from or occasioned by anything done or omitted by the predecessor Trustee, but such successor Trustee shall be liable only for its own acts and omissions in respect to property actually received as such Trustee. With the approval of a majority of adult beneficiaries, or the parent or guardian of any minor beneficiary, any

Trustee appointed hereunder may accept the account rendered and the assets and property delivered to it by the predecessor Trustee as a full and complete discharge of the predecessor Trustee, and shall incur no liability or responsibility to any beneficiary by reason of so doing, all without necessity of any court proceeding or judicial supervision or approval, regardless of any beneficial, vested or contingent interest of any minor, incompetent or unborn beneficiaries. Upon any such change in the trusteeship, the title to any trust estate shall vest forthwith in any successor Trustee acting pursuant to the foregoing provisions hereof without the necessity of any court order or of any conveyance or transfer of trust assets. The corporate Trustee shall receive reasonable compensation for its services hereunder.





ITEM XII

REMOVAL OR REDESIGNATION OF SUCCESSOR TRUSTEE

Notwithstanding anything hereinabove to the contrary, my wife shall have the right to add further successor Trustees and/or rearrange the order in which the successor Trustees named hereinabove shall serve, and/or to substitute for any successor Trustee any bank or trust company having, at the time of such redesignation, total resources of not less than One Hundred Twenty-Five Million Dollars ($125,000,000.00), or any one or more individuals. In the event my said wife should so redesignate any successor Trustee who has not at said time commenced serving as Trustee, then such redesignation shall be by a writing signed by my said wife, properly notarized, and filed in the Probate Court in which my Will was probated. A duplicate original copy shall be delivered to the Trustee then serving. In the event my said wife should so redesignate any successor Trustee who is at that time serving as Trustee hereunder, then such redesignation shall be by a writing signed by my said wife, properly notarized, addressed and delivered to the Trustee, advising the Trustee that it has been removed and naming therein the successor and confirming that the successor has accepted the trusteeship. A duplicate original copy shall be filed in the Probate Court in which my Will was probated. Thirty (30) days after receipt of such written notice as aforesaid, the Trustee shall thereupon be removed. Any such successor Trustee shall have vested in it all the rights, powers, duties and discretion herein [illegible] in the original Trustee. After the death of my wife, or from and after my death if my wife predeceases me, my son, Albert D. Pacifico, shall succeed to the power of redesignation of successor trustee as set forth above.

## ITEM XIII

## DEFINITIONS

As used in my Will, the terms "issue", "descendants" and "lineal descendants" are intended to include any persons heretofore or hereafter born to or adopted by any descendant of mine, and my son, Albert D. Pacifico, but any person who is adopted on or after age twenty-one (21) years, and the issue of such adopted persons, are intended to be excluded from this term. As used in my Will, the term "son" is intended to refer to Albert D. Pacifico. Where the context so permits, the terms "Executor" or "Trustee" and words of reference to my Executor or

Trustee, shall mean, respectively, any person or entity serving in that capacity, without regard to gender or number.

IN WITNESS WHEREOF, I, the undersigned, Dominick Vincent Pacifico, have hereunto set my hand and seal on this 22 day of Sept, 1987.

Dominick Vincent Pacifico (SEAL)
Dominick Vincent Pacifico

BOOK 1088 PAGE 369

SIGNED, SEALED, PUBLISHED and DECLARED by Dominick Vincent Pacifico as and for his Last Will and Testament, in our presence, and we, in his presence and in the presence of each other, and at his request, have hereunto set our hands and seals as witnesses thereto on the day the same bears date.

Melinda M Mathews
Address: 2222 Arlington Ave S.
B'ham, Al

Yvonne L. Agee
Address: 2222 Arlington Ave S
B'ham, Al.

Mary A. McKenzie
Address: 2222 Arlington Ave. So
B'ham, Ala

BOOK 1091 PAGE 108

BOOK 256 PAGE 861

126869

I, Dominick Vincent Pacifico, the testator, sign my name to this instrument this 21 day of Sept, 1987, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Dominick Pacifico

Dominick Vincent Pacifico

We, Melinda M. Mathews Yvonne L. Agee the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his last will and that he signs it willingly, and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that, to the best of our knowledge, the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

Melinda M Mathews

Witness

Yvonne L. Agee

Witness

JUD 1088 PAGE 370

BOOK 256 PAGE 862

JUD 1091 PAGE 109

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

Subscribed, sworn to and acknowledged before me by Dominick Vincent Pacifico, the testator, and subscribed and sworn to before me by Melinda M. Mathews and Yvonne L. Agee witnesses, this 22 day of September, 1987.

(SEAL)

Mary A. McKenzie

Notary Public

My Commission Expires: ________

MY COMMISSION EXPIRES JANUARY 3, 1989

Ref: CW/78930

126869

BOOK 256 PAGE 863

## CERTIFICATE TO THE PROBATE OF WILL

**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 ha s this day, in said Court, and before me as the Judge thereof, been duly proven by the proper testimony to be the genuine last Will and Testament ________ of Dominick Vincent Pacifico Deceased and that said Will ________ together with the proof thereof have been recorded in my office in Judicial Record, Volume ~~1088~~ 1091, Page ~~341-370~~ 80-110.

In witness of all which I have hereto set my hand, and the seal of the said Court, this date June 9, 1988.

O H Florence, Judge of Probate.

PROBATE-98

PROBATE-87

CERTIFICATE TO COPIES

# The State of Alabama

JEFFERSON COUNTY

PROBATE COURT

I, Peggy A. Proctor, 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 DOMINICK VINCENT PACIFICO, DECD; together with the certificate to the probate thereof;

| | | |
|---|---|---|
| 1. Deed Tax | $ | |
| 2. Mtg. Tax | $ | |
| 3. Recording Fee | $ | 80.00 |
| 4. Indexing Fee | $ | 3.00 |
| 5. No Tax Fee | $ | |
| 6. Certified Stamp Fee | $ | 1.00 |
| Total | $ | 84.00 |

Rec. 80.00
Ind. 3.00
Cert 1.00
84.00

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
89 SEP 18 AM 11:02
JUDGE OF PROBATE

in the matter of The Estate of DOMINICK VINCENT PACIFICO, DECD

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

Given under my hand and seal of said Court, this the 8th day of September, 1989

Peggy A. Proctor
Chief Clerk

BOOK 256 PAGE 864