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LAST WILL AND TESTAMENT

OF

THOMAS B. MILLER

I, **THOMAS B. MILLER**, being a resident of Mobile County, Alabama, over the age of eighteen (18) years, and of sound mind and disposing memory, do hereby make, publish, and declare this my Last Will and Testament and expressly revoke all wills and codicils which may have been at any time heretofore made by me.

ARTICLE ONE

SPECIAL

The following terms and words wherever used in this Will shall have the meanings hereinafter stated in this Article, unless clearly otherwise indicated by the terms and provisions of this Will:

- A. **Spouse:** Wherever the term "spouse" appears in this Will, such term shall mean and refer to **LORRAINE M. MILLER**.
- B. **Children and Descendants:** Whenever the term "children" is used in this Will such term shall mean and refer to **LORRY ANN REDDIT, RENEE MARIE BAILIN, MARK B. MILLER** and **THOMAS BENTON MILLER, JR.**
- C. **Fiduciaries:** Wherever the term "Personal Representative" or "Trustee" appears in this Will, each such term and any reference thereto shall be taken to mean and include each Personal Representative or Trustee (whether acting as the sole Personal Representative or Trustee or as a Co-Personal Representative or Co-Trustee) acting in such respective capacity hereunder from time to time.

- D. **Estate Taxes:** The term "Estate Taxes" shall include all estate, legacy, succession, inheritance and other transfer taxes, however designated, which are incurred at the time of my death and by reason of my death upon property required to be included in my estate for Federal estate tax purposes or for similar state estate tax purposes and any interest and penalties thereon, but shall not include any taxes levied pursuant to the provisions of Chapter 13 ("the generation skipping tax") or Section 2044 of the Internal Revenue Code, or any similar state statute.
- E. **Internal Revenue Code:** The term "Internal Revenue Code" shall mean the Federal Internal Revenue Code of 1986, as amended, or the corresponding provisions of any subsequent Federal tax law.
- F. **Will:** The word "Will" shall mean this, my Last Will and Testament, and all Codicils hereto that may hereafter be executed by me and that shall not have been revoked.
- G. **Per Stirpes:** Property that is to be divided among an individual's surviving or then-living descendants, "per stirpes," shall be divided into as many equal shares as there are children of the individual who are then living or who have died leaving surviving or then-living descendants. A share allocated to a deceased child of the individual shall be divided further among such deceased child's surviving or then-living descendants in the same manner.

ARTICLE TWO

PAYMENT OF DEBTS, TAXES AND EXPENSES

A. I will and direct that my Personal Representative hereinafter named shall as soon after my death as practicable pay all of my pledges to charitable and/or religious organizations, all of my legal debts, the legal claims against my estate, any expenses of or incident to my funeral and burial and the expenses of the administration of my estate. However, I direct that the payment of any debt secured by any mortgage or pledge of real or personal property may be postponed, extended or refinanced by my Personal Representative in my Personal Representative's discretion.

B. All Estate Taxes and administration expenses, together with the expenses of my last illness, payable in any jurisdiction by reason of my death (including those taxes payable with respect to assets which do not pass under this Will) shall be paid out of and charged generally against the principal of my residuary estate, without apportionment; provided that any part of the residue of my estate given to a legatee which is a qualified charity under Section 2055 of the Internal Revenue Code shall bear no part of any estate, inheritance, legacy, succession or transfer taxes and all of such taxes shall be paid from the residue of my estate given to the legatees which are not qualified charities under Section 2055 of the Internal Revenue Code.

C. I waive any right of reimbursement for, recovery of, or contribution toward the payment of Estate Taxes and administration expenses, except my Personal Representative shall, to the maximum extent permitted by law (including but not limited to Sections 2206, 2207, 2207A and/or 2207B of the Internal Revenue Code), seek reimbursement for, recovery of, or contribution toward the payment of Federal or State Estate Tax attributable to property in which I have a qualifying income interest for life, over which I have a power of appointment, or which is included in my gross estate by reason of Sections 2036, 2038, 2041, 2042 and/or 2044 of the Internal Revenue Code, and which tax is not otherwise paid or payable. Any generation-skipping tax resulting from a transfer occurring under this Will shall be charged to the property constituting the transfer in the manner provided by applicable law.

ARTICLE THREE

GENERAL BEQUEST OF PERSONAL EFFECTS

A. I give and bequeath all of my personal effects, including, but not limited to, books, pictures, automobiles, boats, household furniture, furnishings and appliances, china, silverware, crystal, glass, jewelry, art objects, wearing apparel and other articles of household or personal use or ornaments (together with any insurance on any specific item) owned by me at the time of my death and then held primarily for personal use and enjoyment and not for business use, production of income or investment, to my spouse, **LORRAINE M. MILLER**, if my spouse survives me; or if my spouse does not survive me, to my then living children, in equal shares.

B. I request that the beneficiaries hereunder abide by any memorandum or letter signed by me directing the disposition of this property or any part thereof. This request is precatory and not mandatory. If the beneficiaries do not agree among themselves to an equitable division of said property, then my Personal Representative, in the absolute discretion of such Personal Representative, shall divide said property among such beneficiaries, and such division shall be binding on all parties.

C. All costs of safeguarding, insuring, packing, and storing my tangible personal property before its distribution and of delivering each item to the place of residence of the beneficiary of that item shall be deemed to be expenses of administration of my estate.

D. My Personal Representative shall select from my estate the property deemed to be given by this Article and my Personal Representative's selection shall be binding on all parties. My Personal Representative is authorized to pay, distribute or deliver any of said property directly to a

person under legal disability of non-age or otherwise, to a parent of such person, to a guardian of such person, or to anyone with whom such person may reside, all without bond; and the receipt of such person, parent, guardian or individual with whom such person may reside shall be a full and complete release and discharge for the payment, delivery or distribution so made.

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ARTICLE FOUR

FAMILY TRUST

A. If my spouse, **LORRAINE M. MILLER**, survives me, I give, devise and bequeath to my Trustee (whether one or more) hereinafter named, **IN TRUST**, a portion of my estate equal in value at time of distribution to the amount, if any, which can pass free of federal estate tax by reason of the applicable credit amount allowable to my estate at the time of my death against federal estate tax, reduced by the aggregate of:

1. The value as finally determined for federal gift tax purposes of all gifts, if any, made prior to my death which shall have reduced the applicable credit amount to which my estate is or would otherwise be entitled for federal estate tax purposes;
2. All amounts, if any, charged to or paid from principal of my estate that would have been allowed as deductions in computing my federal estate tax had my Personal Representative not elected to treat them as deductions in computing my estate's federal income tax; and
3. The value of all property, if any, included in my gross estate for purposes of federal estate tax that passes or passed by other Articles of this Will or otherwise than under this Will and which does not qualify as a marital or charitable deduction in computing my said federal estate tax.

B. I recognize that under some circumstances no property may be allocated to the Family Trust pursuant to the formula set forth in paragraph A of this Article. I further recognize that my

spouse may have the right to disclaim or renounce, and may elect to exercise such right with respect to any interest or interests passing under this Article or in said Trust.

C. For purposes of funding the Family Trust:

1. Property allocated in kind shall be valued at its fair market value as of the date of its allocation to the Family Trust; and
2. All property or proceeds of property with respect to which the federal estate tax marital deduction would not be allowable, if distributed outright to my spouse, shall be allocated to the Family Trust.

D. The Family Trust shall be administered as follows:

1. **Income and Principal:** My Trustee, at any time or times during the lifetime of my spouse, may pay or apply such amount or amounts of income and principal (even to the extent of all of same) to or for the use of my spouse and my lineal descendants as such Trustee may deem necessary, proper or desirable to provide adequately and properly for my spouse's and lineal descendants' support or maintenance in health and reasonable comfort, support in accustomed manner of living, medical, dental, hospital and nursing expenses, and/or expenses of invalidism, considering all circumstances and factors deemed pertinent by the Trustee; provided however, that:
 - (a) Any undistributed net income shall be added to the principal of the trust from time to time, as determined by the Trustee;
 - (b) My primary concern during the life of said spouse is for the maintenance in health and reasonable comfort of said spouse, and the Trustee need not consider the interests of any other beneficiary in making distributions to said spouse for those purposes under this paragraph;
 - (c) No distribution made under this paragraph to a descendant of mine shall be charged as an advancement; and
 - (d) The Trustee may make unequal distributions to my descendants, may exclude one or more of them, and shall have no duty to equalize those distributions.

The foregoing power to invade principal shall be a power limited by an ascertainable standard, as defined in Treasury Regulations Section 20.2041-1(c)(2) of the Code, and such power shall not be a general power of appointment.

2. **Termination:** Upon the death of my spouse, my Trustee shall distribute the balance of this Family Trust to or for the benefit of (outright or in trust) such of my then living lineal descendants as my spouse may direct in my spouse's Last Will and Testament, after which, this Family Trust shall terminate; provided, however, that any exercise of this limited testamentary power of appointment must refer specifically to this subparagraph and to the limited testamentary power of appointment granted herein; and provided further, however, that this limited testamentary power of appointment shall not be exercisable in favor of my spouse, the creditors of my spouse, my spouse's estate, or the creditors of my spouse's estate. In the event my spouse does not so exercise the limited testamentary power of appointment granted herein, then upon my spouse's death, my Trustee shall distribute the balance of this Family Trust to the then living or existing person, persons, entity or entities (and in the manner and proportions) who would be entitled to the residue of my estate under Article Five of my Will, determined as if I had died on the date this trust terminated. Once such distribution is complete, this Family Trust shall terminate.

ARTICLE FIVE

GIFT OF RESIDUE

I give, devise and bequeath all the rest, residue and remainder of all property of every kind and wherever situated which I may own at my death or to which my estate may be or become entitled, including any lapsed gifts hereunder, and including all property over which I may have any power of appointment or disposition, hereby exercising each such power, to my spouse, **LORRAINE M. MILLER**; or if my spouse does not survive me, then to my then living lineal descendants, per stirpes, subject to the provisions of Article Six below.

ARTICLE SIX

TRUST FOR PERSONS UNDER AGE OF TWENTY-FIVE

If any beneficiary hereunder (referred to in this Article as the "Beneficiary") becomes entitled to any property under the terms of the preceding Article Four or Five and is under the age of twenty-five (25) years at the time the Beneficiary becomes entitled to same, all property to which the Beneficiary may become entitled thereunder shall not be distributed to the Beneficiary, but instead shall be held for the Beneficiary as a separate trust fund by the Trustee, and the Trustee shall hold, manage, invest and reinvest the same, collect the income therefrom, and pay and distribute the net income and principal thereof as follows:

- A. **Income and Principal During Term of Trust:** During the term of the trust, the Trustee shall pay or apply to or for the benefit of the Beneficiary the amount or amounts of net income and/or principal of the trust (even to the extent of all of same) as the Trustee may deem necessary for the Beneficiary's support or maintenance in health and reasonable comfort, support in his or her accustomed manner of living, education (including college and professional education), medical, dental, hospital and nursing expenses, and/or expenses of invalidism, taking into consideration the income and funds available to the Beneficiary from other sources.
- B. **Termination:** The Beneficiary shall receive distribution of the full balance of his or her trust upon attaining twenty-five (25) years of age, and the Beneficiary's trust shall terminate.
- C. **Death of Beneficiary:** If the Beneficiary dies prior to the termination of the trust established hereunder, then upon the Beneficiary's death, the Beneficiary's entire trust fund shall be paid to the personal representative of the Beneficiary's estate, and the Beneficiary's trust shall terminate.

ARTICLE SEVEN**APPOINTMENT OF FIDUCIARIES**

A. I appoint **MARK B. MILLER** and **THOMAS BENTON MILLER, JR.** as Co-Personal Representatives of this my Last Will and Testament. In the event either of said individuals shall fail to survive me, die, resign or otherwise fail to qualify or cease to serve as Personal Representative, then the other shall serve as sole Personal Representative.

B. I appoint **MARK B. MILLER** and **THOMAS BENTON MILLER, JR.** as Co-Trustees of the Family Trust established by Article Four hereof. If either of said individuals should fail to survive me, die, resign or otherwise fail to qualify or cease to serve as such Trustee, then the other shall serve as sole Trustee.

C. In the event a trust is established pursuant to Article Six hereof for a beneficiary under the age of twenty-five years, then I appoint the parent(s) of said individual as Trustee(s).

D. In the event there is any trust established hereunder for which no individual or entity is serving as Trustee, then the current income beneficiary of such trust shall select a bank or trust company to serve as successor Trustee for such trust, provided that if such beneficiary lacks capacity (by reason of age, incompetency or otherwise) to make such selection, then such beneficiary's legal representative (or attorney in fact if the applicable power of attorney specifically or generally authorizes such action) shall make such selection on behalf of such beneficiary.

E. If any corporate Trustee designated to act or at any time acting hereunder is merged with or transfers substantially all of its assets to another corporation, or is in any other manner

reorganized or reincorporated, the resulting or transferee corporation shall become Trustee in place of its corporate predecessor.

F. If a Trustee is unable to act in any jurisdiction with respect to any property, asset, interest or claim owned by any trust created hereunder because of the laws of the state in which such property, asset, interest or claim is located, then the Trustee is authorized to appoint, employ, remove and compensate any person or corporate fiduciary capable of so acting with regard to such property, asset, interest or claim, in such manner and upon such terms and conditions (including the power to establish a trust and employ as Trustee any person or corporate fiduciary, including any affiliated company, capable of acting with regard to such property, asset, interest or claim) as the Trustee deems acceptable and to treat as an expense of the trust any compensation, charges and expenses so paid. Any such fiduciary shall be permitted to act without giving bond. If any such fiduciary is appointed, such person or corporation, in addition to the powers conferred by law of its situs, shall have all of the rights, powers and discretion that are set forth or referred to herein (including the power to sell real or personal property at public or private sales for any purpose and to hold title to property in the name of a nominee), to be exercised without court order; provided, however, that in the exercise of any power granted, such fiduciary shall first consult with and obtain the written consent of the Trustee acting generally at the time before taking any action whatsoever.

G. A successor Trustee shall have all of the title, powers and discretion granted to the original Trustee, without court order or act of transfer. No successor Trustee shall be personally liable for any act or failure to act of a predecessor Trustee. Any successor Trustee may, in its

discretion, accept the account furnished by any predecessor Trustee and waive any requirement that such account be approved by a court of competent jurisdiction.

H. Any Trustee may resign at any time by giving prior written notice to the beneficiary or beneficiaries to whom the current trust income may or must then be distributed. In the event any such individual Trustee lacks capacity by reason of age or otherwise, the instrument of resignation may be signed by the legal representative of such Trustee on his or her behalf, or by his or her attorney in fact if the applicable power of attorney specifically authorizes such resignation.

I. Except as otherwise specifically provided in this will, no Personal Representative or Trustee shall be required to file or give any bond or other security for the performance of their duties, in either such capacity, nor be required to file in any court any accounting or inventory of my estate, nor any report of the administration of my estate or any trust estate, either as Personal Representative hereof or as Trustee hereunder.

ARTICLE EIGHT

POWERS OF FIDUCIARIES

I hereby expressly authorize my Personal Representative and my Trustee, and their successor or successors, respectively, in each such capacity respectively, and any person, firm or corporation acting in either such capacity hereunder from time to time, with respect to my estate or to any trust established hereunder, in their absolute discretion, by way of illustration and not limitation and in addition to all powers and authorities inherent, implied or statutory given them by law or otherwise under this Will, as follows:

- A. To become the owner, manager and operator of any business which I am conducting as a sole proprietor at the time of my death, and to become a member of any partnership of which I may be a member at the time of my death, and to join with others in forming, or to form, partnerships, corporations, or other kinds and forms of business enterprises, and to purchase an interest therein or cause any part or all of my estate or of any trust estate to become the property thereof or subject thereto; and to manage, operate, liquidate, consolidate, and exercise such other rights with respect thereto as an individual owner might exercise, without liability for doing so.
- B. To purchase or otherwise acquire, and to retain, whether originally a part of my estate or subsequently acquired, any and all stocks and certificates of deposit (specifically including stock and certificates of deposit in the corporate fiduciary then acting hereunder, its parent corporation, or any brother corporation of it, any regulation, law or custom to the contrary notwithstanding), bonds, notes, or other securities, or any variety of real or personal property, or undivided interests therein, including stocks or interests in investment trusts and common trust funds, as they may deem advisable, whether or not such investments be of the character permissible for investments by fiduciaries, or be unsecured, unproductive, underproductive, overproductive or of a wasting nature. Investments need not be diversified and may be made or retained with a view to a possible increase in value. The Personal Representative or Trustee may at any time or times render liquid my estate or any trust estate, in whole or in part, and hold cash or readily marketable securities of little or no yield or deposit same in a checking or savings account of any banking institution (specifically including the corporate fiduciary then acting hereunder, its parent corporation or any brother corporation of it, any regulations, law the contrary notwithstanding) for such periods as they may deem advisable.
- C. To sell, lease, pledge, mortgage, transfer, exchange, convert or otherwise dispose of, or grant options with respect to, any and all property or interests therein, including oil, gas and minerals, at any time forming a part of my estate or of any trust created hereunder, in such manner, at such time or times, for such purposes, for such prices and upon such terms, credits, and conditions as they may deem advisable. Any lease made by the Personal Representative or Trustee may extend beyond any period fixed by statute for leases made by fiduciaries and beyond the duration of any trust created hereunder.
- D. To foreclose any mortgages and bid in any property under foreclosure, employing whatever assistance and whatever measures may, in their discretion, seem advisable.
- E. To borrow money for the purpose of paying debts or taxes due by me or my estate, or for any purpose connected with the protection, preservation or improvement of my

- general estate or of any trust whenever in their judgment such seems advisable, and as security, to mortgage or pledge any real or personal property of which I may die seized or possessed or at any time forming a part of my estate or of any trust created hereunder, upon such terms and conditions as they may deem advisable.
- F. To execute any waiver of notice or otherwise, and to vote in person or by general or limited proxy with respect to any shares of stock or other securities held by them to participate or consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of any corporation in which my estate or any such trust may have any interest, or to the sale, lease, pledge or mortgage of any property by or in such corporation; and to make any payments and to take any steps which they may deem proper and necessary.
- G. To continue or dispose of any business enterprise without liability therefor, whether such enterprise be in the form of a sole proprietorship, partnership, corporation or otherwise, and to develop, add capital to, expand or alter the business of such enterprise, to liquidate, incorporate, reorganize, manage or consolidate the same, or change its charter or name, to enter into, continue or extend any voting trust for the duration of or beyond the term of any trust, to appoint directors and employ officers, managers, employees or agents (including any trustee or directors, officers or employees thereof) and to compensate and offer stock options and other employee or fringe benefits to them, and in exercising the powers in relation to such business enterprise, to receive extra or extraordinary compensation therefor.
- H. To subdivide or otherwise develop, and to change the use or purpose of, any real estate constituting a part of my estate or any trust created hereunder into residential, recreational, commercial, cemetery, or other usage, to construct, alter, remodel, repair or raze any building or other improvement located thereon, to release, partition, vacate, abandon, grant easements in or over, dedicate or adjust the boundaries as to any such property.
- I. To operate farms and woodlands with hired labor, tenants or sharecroppers, to acquire real estate, crop allotments, livestock, poultry, machinery, equipment, materials, and any other items or production in connection therewith, to clear, drain, ditch, make roads, fence and plant part or all of such real estate, and to employ or enter into any practices or programs to conserve, improve or regulate the efficiency, fertility and production thereof, to improve, sell, auction or exchange crops, timber or other products thereof, to lease or enter into other management, cutting, production or sales contracts for a term beyond the possible termination of any trust created hereunder or for a less period, to employ the methods of carrying on agriculture, animal husbandry and silviculture which are in use in the vicinity of any of such real

estate or which the Personal Representative or Trustee deems otherwise appropriate, to make loans or advances at interest for production, harvesting, marketing or any other purpose hereunder, in such manner and upon such terms and conditions as the Personal Representative or Trustee may approve, and in general to take any action which the Personal Representative or Trustee deems necessary or desirable in such operation of farms and woodlands.

- J. To drill, explore, test, mine or otherwise exploit oil, gas, or other mineral or natural resources, to engage in absorption, repressuring, and other production, processing or secondary recovery operations, to install, operate and maintain storage plants and pipelines or other transportation facilities, to engage in any of the above activities directly under such business form as the Personal Representative or Trustee may select or to contract with others for the performance of them, and to enter into and execute oil, gas, and mineral leases, division and transfer orders, grants, farm-out, pooling or unitization agreements, and such instruments or agreements in connection therewith as the Personal Representative or Trustee deems necessary or desirable.
- K. To hold investments in the name of a nominee. To delegate any vested authority or discretion and to act by and through such attorneys or agents as they may select.
- L. To complete, extend, modify or renew any loans, notes, bonds, mortgages, contracts or any other obligations, which I may own or to which I may be a party or which may be liens or charges against any of my property or against my estate, although I may not be liable thereon, in such manner as they may deem advisable; to pay, compromise, compound, adjust, submit to arbitration, sell or release any claims or demands of my estate or any such trust against others or of others against my estate or any such trust as they shall deem advisable, including the acceptance of deeds to real estate in satisfaction of bonds and mortgages, and to make any payments in connection therewith which they may deem advisable.
- M. To make any division or distribution of my estate or of the principal of any trust created hereunder, in cash or in kind, or partly in cash and partly in kind, and to cause any share to be composed of cash, property or undivided fractional shares in property different in kind from any other share; and to determine the value and character of any property or interest included in any such division or distribution.
- N. To consult with and engage any attorney or attorneys at the expense of my estate or any trust estate, as the case may be, and in case of doubt as to their rights or responsibilities, to act upon and rely upon the written opinion of such attorney or attorneys, which written opinion shall fully protect my Personal Representative or Trustee from liability for any action taken or omitted in reliance thereon.

- O. To repair, demolish, remodel, or erect improvements or buildings on any real property, grant easements with respect to, or to insure the same against such hazards as they may deem reasonable or expedient.
- P. To hold, manage and administer any trusts created hereby (and any other trusts for the same beneficiary or beneficiaries and for the same or substantially the same uses and purposes and on the same or substantially the same terms and conditions, regardless of how created) in one or more consolidated funds, in whole or in part, in which the separate trusts shall have undivided interests.
- Q. To (i) conduct environmental assessments, audits, and site monitoring to determine compliance with any environmental law or regulation thereunder; (ii) take all appropriate remedial action to contain, clean up or remove any environmental hazard including a spill, release, discharge or contamination, either on its own accord or in response to an actual or threatened violation of any environmental law or regulation thereunder; (iii) institute legal proceedings concerning environmental hazards or contest or settle legal proceedings brought by any local, state, or federal agency concerned with environmental compliance, or by a private litigant; (iv) comply with any local, state or federal agency order or court order directing an assessment, abatement or cleanup of any environmental hazards; and (v) employ agents, consultants and legal counsel to assist or perform the above undertakings or actions. Any expenses incurred by the trustee under this Subparagraph may be charged against income or principal as the trustee shall determine.
- R. To receive any property, real or personal, to be added to the trust from my spouse in any event (and if the trustee consents in writing, from any other person) by lifetime or testamentary transfer or otherwise; provided, however, that the trustee may require, as a prerequisite to accepting property, that the donating party provide evidence satisfactory to the trustee that (i) the property is not contaminated by any hazardous or toxic materials or substances; and (ii) the property is not being used and has never been used for any activities directly or indirectly involving the generation, use, treatment, storage, disposal, release, or discharge of any hazardous or toxic materials or substances.
- S. To make such elections and allocations under the tax laws permitted to be made by the trustee as the trustee considers advisable (whether or not the election relates to trust property), without regard to, or adjustments between principal and income or the relative interests of the beneficiaries.
- T. To pay, distribute or deliver any bequest by me under this Will to a person under legal disability of non-age or otherwise (other than a bequest in trust for such person)

- directly to a person under legal disability of non-age or otherwise, to a parent of such person, to a guardian of such person, or to anyone with whom such person may reside, all without bond, and the receipt of such person, parent, guardian or individual with whom such person may reside, shall be a full and complete release and discharge for the payment, delivery or distribution so made.
- U. To agree, consent or refuse to consent to the election of any corporation in which my estate may hold or own any common stock to have the taxable income of the said corporation taxed directly to the stockholders thereof under Sub-Chapter S (Section 1361, et seq.) of the Internal Revenue Code of 1986, as amended, and to pay any additional income tax resulting from the said election on my estate's pro rata share of the taxable income of the said corporation.
- V. To elect either the date of my death or any other date permitted by law for United States estate tax purposes for the valuation of my estate, to elect to take any expenses or any other credits or payments as deductions for estate tax purposes or income tax purposes, and to make any other elections with respect to taxes, all as my Personal Representative or Trustee may determine in their sole and absolute discretion, and my Personal Representative or Trustee shall incur no liability with respect to the same. My Personal Representative or Trustee shall not be required, and they are hereby relieved of any duty or obligation, to obtain the agreement or consent of any beneficiary under my Will or any trust established hereunder or to compensate any of the said beneficiaries whose interest may be adversely affected by any election with respect to taxes made by my Personal Representative or Trustee.
- W. To execute and deliver any and all instruments in writing which they may deem advisable to carry out any of the foregoing powers, with or without warranties. No party to any such instrument in writing signed by the Personal Representative or Trustee shall be obliged to inquire into its validity, nor be bound to see to the application by the Personal Representative or Trustee of any money or other property paid or delivered to them pursuant to the terms of any such instrument.
- X. To join, in the discretion of my Personal Representative or Trustee with my spouse in filing income tax returns and gift tax returns for any period prior to my death; and to pay and apportion between my spouse and my estate the income tax or refunds, including deficiencies, interest and penalties, that may result from so doing, even though not attributable to my own income, or to determine that all sums so payable shall be paid out of my estate, without giving or obtaining any consideration therefor. Any such taxes my Personal Representative or Trustee may agree to pay from my estate shall be paid out of the residue of my estate.

- Y. To determine whether any money or property coming into the hands of the Personal Representative or Trustee shall be treated as a part of the principal of the estate or any trust or a part of the income therefrom, and to apportion between principal and income any loss or expenditure in connection with the estate or any trust, as the Personal Representative or Trustee may deem just and equitable; provided, however, that (i) in no event shall the Personal Representative or Trustee exercise such power in any manner that would deprive my spouse of income of the trust named for my spouse to which my spouse is entitled under state law, or in such manner that would prevent property that would otherwise qualify as "qualified terminable interest property" as defined in Section 2056(b)(7)(B) of the Internal Revenue Code from qualifying for the marital deduction, and (ii) any proceeds received by the Personal Representative or Trustee from any "retirement plan," meaning any qualified pension, profit sharing, stock bonus, Keogh or other qualified plan, trust, contract, account, annuity, or bond, or individual retirement account, as those terms are defined in the Code, or any non-qualified deferred compensation agreement, salary continuation agreement, or similar arrangement, shall be treated by the Personal Representative or Trustee as principal, except that any income earned within the retirement plan from such proceeds as a result of an installment or similar election or any other deferral of payment of the retirement plan's proceeds to the Personal Representative or Trustee shall be treated by the Personal Representative or Trustee as income when received.
- Z. Notwithstanding any other provision of this instrument, I hereby limit the general discretionary powers of the Trustee so that (i) no Trustee shall participate in any decision regarding a discretionary distribution to that Trustee personally, except to the extent governed by and made pursuant to a standard under this instrument which constitutes an ascertainable standard within the meaning of Sections 2041 and 2514 of the Internal Revenue Code, and (ii) no Trustee may use trust income or principal to discharge the legal obligation of the Trustee individually to support or educate a beneficiary hereunder.

ARTICLE NINE

UNDISPOSED ASSETS

If any assets of my estate or any trust created herein shall remain undisposed of after compliance with all other terms hereof, I give, devise, bequeath and appoint such portion of my estate to those persons to whom and in the proportions in which the same would have been

distributed if I had died unmarried, intestate and a resident of Alabama and any such property of any such trust to those persons to whom and in the proportions in which the same would have been distributed if I had died immediately after the termination of such trust, the owner of the trust property, unmarried, intestate and a resident of Alabama.

ARTICLE TEN

MISCELLANEOUS

I direct that the provisions of this paragraph shall apply to this Will and to each trust held hereunder:

- A. If at any time a beneficiary eligible to receive net income or principal distributions is under legal disability, or in the opinion of the Personal Representative or Trustee is incapable of properly managing his or her financial affairs, the Personal Representative or Trustee, as the case may be, may make those distributions directly to the beneficiary, to a lawful guardian of the beneficiary, or to a custodian selected by the Personal Representative or Trustee for the beneficiary under a Uniform Transfers to Minors Act or similar applicable law, or may otherwise expend the amounts to be distributed for the benefit of the beneficiary in such manner as the Personal Representative or Trustee considers advisable. As used throughout this instrument, the term "lawful guardian" shall mean successively in the order named (i) the court-appointed conservator of the estate, (ii) either parent, or (iii) the individual having personal custody (whether or not a court-appointed guardian) where no conservator of the estate has been appointed.
- B. All net income accrued or undistributed at termination of any interest shall be prorated in accordance with Alabama law between the beneficiary whose interest terminated and the next beneficiary.
- C. Among the circumstances and factors to be considered by the Trustee in determining whether to make discretionary distributions of net income or principal to a beneficiary are the other income and assets known to the Trustee to be available to that beneficiary and the advisability of supplementing such income or assets. In exercising the Trustee's discretion to make any discretionary distributions to the beneficiaries of any trust

created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise the Trustee's discretion in accordance with the provisions for making such distributions hereunder. As used throughout this instrument, the term "education" includes, but is not limited to, private schooling at the elementary and secondary school level, college, graduate and professional schools, and specialized or vocational training.

- D. Except as otherwise provided by law, no power of appointment or power of withdrawal shall be subject to involuntary exercise, and no interest of any beneficiary shall be subject to anticipation, to claims for alimony or support, to voluntary transfer without the written consent of the Trustee, or to involuntary transfer in any event. This provision shall be in addition to any protection of estate or trust assets provided by applicable laws.
- E. If the Trustee shall determine that the trust is of a size that is no longer economical to administer, the Trustee, without further responsibility, may (but need not) distribute the trust to the beneficiary for whom the trust is named; provided, however, that no Trustee shall make such a determination at a time when he or she is also a beneficiary of such trust.
- F. Notwithstanding anything to the contrary herein contained, each trust created in and by the terms of this Will shall, unless sooner terminated by the other terms and provisions of this Will, terminate twenty-one (21) years from and after the death of the last surviving member of the class composed of my spouse, my children and issue of my children living at the time of my death, and the assets thereof shall be distributed at such termination to whoever is then entitled to receive the income thereof.
- G. For purposes of determining who is a descendant of mine or of any other person: (i) Whether for the determination of relationships or otherwise, adopted children shall have and be given exactly the same status as natural born children and be deemed the lawful issue of the adopting parent; provided, however, that individuals adopted by persons (other than me) after such individual has reached the age of twenty-one (21) years shall not be deemed to be the child, the issue, or the lineal descendant of the person by whom adopted; and (ii) a person born out of wedlock and those claiming through that person shall be deemed to be descendants (A) of the natural mother and her ancestors, and (B) if the natural father acknowledges

paternity, of the natural father and his ancestors, in each case unless a decree of adoption terminates such natural parent's parental rights.

- H. Upon making any payment or transfer, the Trustee shall be discharged as to such payment or transfer without liability for the subsequent application thereof, and when the final payment or transfer is made from the principal of a trust, that trust shall terminate and the Trustee shall be fully discharged as to that trust.
- I. If any person who would otherwise be a devisee, legatee or beneficiary hereunder shall die simultaneously with me, or under circumstances that render it difficult to determine who predeceased the other, I shall be deemed for purposes hereof to have predeceased such devisee, legatee or beneficiary.
- J. Throughout this Will, the masculine gender shall be deemed to include the feminine and neuter, and the singular the plural, and vice versa, whenever the context deserves such construction.
- K. The captions in the Articles herein are for convenient reference only, are of no legal effect, and under no circumstances shall affect the construction of any provision of this Will.
- L. This instrument and all dispositions hereunder shall be governed by and interpreted in accordance with the laws of the State of Alabama.

IN WITNESS WHEREOF, I, **THOMAS B. MILLER**, the testator, sign my name to this instrument this 25th day of January, 2002, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament, 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.

 (SEAL)
THOMAS B. MILLER

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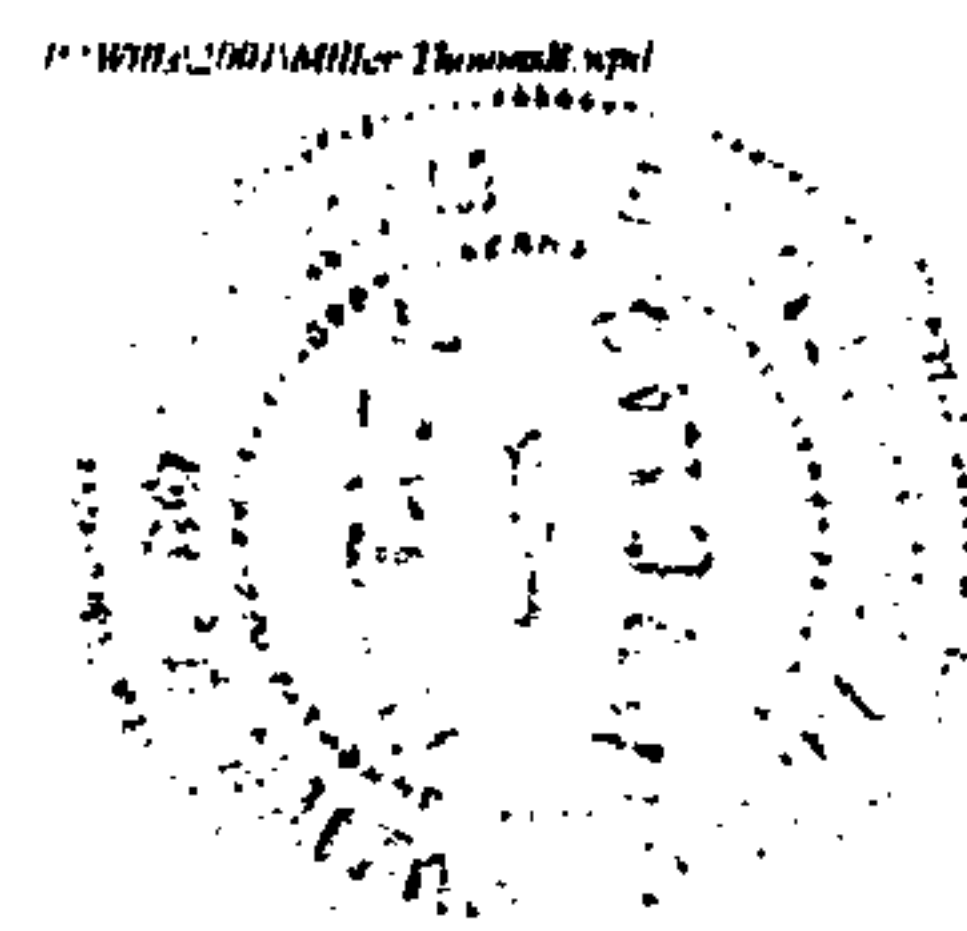
We, JOHN J. CROWLEY JR and HARWELL E. COALE III, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs and executes this instrument as his Last Will and Testament, and that he signs it willingly (or willingly directs another to sign for him), 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.

[Signature] residing at Mobile, Alabama
[Signature] residing at Mobile, Alabama

STATE OF ALABAMA:
COUNTY OF MOBILE:

Subscribed, sworn to and acknowledged before me by THOMAS B. MILLER, the testator, and subscribed and sworn to before me by John J. Crowley, Jr and Harwell E. Coale, III, witnesses, this 25th day of January, 2002.

[Signature]
NOTARY PUBLIC
My Commission Expires: 4-14-2002




BK0237PG0632

STATE OF ALABAMA)
)
MOBILE COUNTY) PROBATE COURT OF SAID COUNTY
)
) CERTIFICATE

I, **Don Davis**, Judge of the Probate Court in and for said County and State do hereby certify that the within instrument of writing, has this day in said Court, and before me as the Judge thereof, been duly proved, pursuant to §43-8-132, *Code of Alabama* 1975, as amended, which Section provides for self-proving wills, to be the genuine last will and testament of Thomas B. Miller, deceased, and that said will, together with the acknowledgment of the Testator and affidavit of the witnesses thereof, have been recorded in my office in Book of Wills No. 237 and on pages 611 et seq

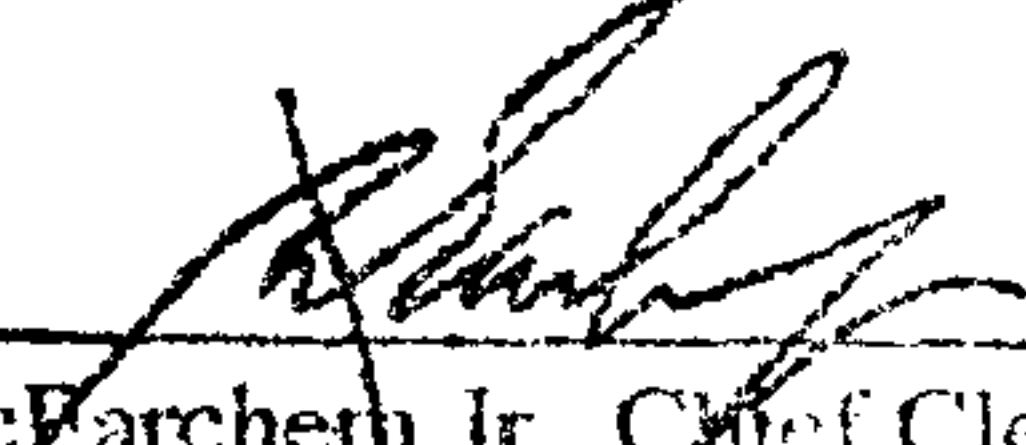
IN WITNESS of all which I have hereunto set my hand and the Seal of the said Court, this 1st day of April, 2004.



Don Davis, Judge of Probate

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Shelby Cnty Judge of Probate, AL
11/01/2004 10:50:00 FILED/CERTIFIED

CERTIFIED TRUE COPY
Probate Court of Mobile Co., AL
Don Davis, Judge

Signature 

Joe McEarchern Jr., Chief Clerk

Date 21 October 2004

(Not valid unless in red ink with raised seal of court)