

LETTERS TESTAMENTARY

PROBATE - 60

IN THE MATTER OF THE ESTATE OF

IN THE PROBATE COURT OF
JEFFERSON COUNTY, ALABAMAMARGARET U. BETHUNE

Deceased

CASE NO. 18013120080110000013430 1/26 \$86.00
Shelby Cnty Judge of Probate, AL
01/10/2008 09:28:30AM FILED/CERT

LETTERS TESTAMENTARY

TO ALL WHOM IT MAY CONCERN:

The Will of the above-named deceased having been duly admitted to record in said county. **Letters Testamentary** are

hereby granted to JAMES J. BETHUNE, JR.
 the Personal Representative named in said will, who has complied with the requisitions of the law and is authorized to administer the estate. Subject to the priorities stated in § 43-8-76, Code of Alabama (1975, as amended), the said Personal Representative, acting prudently for the benefit of interested persons, has all the powers authorized in transactions under § 43-2-843, Code of Alabama (1975, as amended).

WITNESS my hand this date, NOVEMBER 8, 2002

Judge of Probate

I, Carol K. Johnson, Chief Clerk of the Court of Probate of Jefferson County, Alabama, hereby certify that the foregoing is a true, correct and full copy of the **Letters Testamentary** issued in the above-styled cause as appears of record in said court. I further certify that said Letters are still in full force and effect.

WITNESS my hand and seal of said Court this date, _____

Chief Clerk

THE MATTER OF THE ESTATE OF)	PROBATE COURT OF
)	
MARGARET U. BETHUNE)	JEFFERSON COUNTY, ALABAMA
)	
Deceased.)	Case No. 180131

PETITION FOR PROBATE OF WILL

TO THE HONORABLE MICHAEL F. BOLIN, JUDGE OF PROBATE OF JEFFERSON COUNTY, ALABAMA:

Come your petitioner, JAMES J. BETHUNE, JR., and upon information and belief, respectfully show unto your Honor the following facts:


1. MARGARET U. BETHUNE died in Jefferson County, Alabama on or about October 15, 2002 and at the time of his death, was an inhabitant of Jefferson County, Alabama.

2. Surrendered herewith is said decedent's last will and testament, dated Deceber 15, 1997, naming petitioner as Executor; said will was duly signed on her behalf and at her dicrection by W. Clark Goodwin in accordance with **AL. Code §43-8-131**, said decedent when over eighteen (18) years of age. The will was attested by the following witnesses: namely,

<u>Name</u>	<u>Present Address</u>
JAMES D. HICKS	1201 – 58 th Street So. Birmingham, AL 35222
ANNE W. MITCHELL	420 North 20 th Street, Suite 1600 Birmingham, AL 35203

3. The decedent's last will and testament, as identified in paragraph 2 hereof, was self-proved in a manner substantially in accordance with the requirements of **Ala. Code §43-8-132**. The name of the officer authorized to administer oaths before whom said will was acknowledged is as follows:

KIMBERLY SMITH


 20080110000013430 2/26 \$86.00
 Shelby Cnty Judge of Probate, AL
 01/10/2008 09:28:30AM FILED/CERT

180131

4. The following is a true, correct, and complete list of the names, ages, conditions, relationships, and addresses of said decedent's next-of-kin; namely,

Name, age, condition, relationshipAddress

JAMES J. BETHUNE, JR., spouse
competent, over the age of 19

5385 Meadow Brook Road
Birmingham, AL 35242

THOMAS JACKSON BETHUNE, son
competent, over the age of 19

9795 Loblolly Lane
Roswell, GA 30075

ANN BETHUNE HARRIS, daughter
competent, over the age of 19

2038 Cliff Creek Court
Smyrna, GA 30083

Wherefore, your petitioners pray that your Honor will take jurisdiction of this petition; will cause all such notices or citations to issue to the next-of-kin and attesting witnesses as may be proper in the premises; and will cause such proceedings to be had and done, and such proof to be taken, and render such orders and decrees as will duly and legally effect the probate and record in this Court of said will as the last will and testament of said deceased. This Petition is deemed to be verified pursuant to **Ala. Code §43-8-22.**

Attorney for petitioner:)

Anne W. Mitchell)

Berkowitz, Lefkovits,)

Isom & Kushner, P.C.)

1600 SouthTrust Tower)

Birmingham, Alabama 35203)

Telephone: (205) 328-0480)

James J. Bethune Jr.
JAMES J. BETHUNE, JR.

Petitioner

Address: 5385 Meadow Brook Road
Birmingham, AL 35242

FILED IN OFFICE THIS 8th DAY OF
Nov, 2002, PRAYER

GRANTED AND PETITION ORDERED RECORDED

Michael F. Bolin
JUDGE OF PROBATE



20080110000013430 3/26 \$86.00
Shelby Cnty Judge of Probate, AL
01/10/2008 09:28:30AM FILED/CERT

LAST WILL AND TESTAMENTOFMARGARET U. BETHUNE

180131

I, MARGARET U. BETHUNE, a resident of Shelby County, Alabama, being of sound mind and disposing memory, do hereby make, publish and declare this instrument as and for my Last Will and Testament and hereby expressly revoke any and all Wills, Codicils and other testamentary dispositions heretofore made by me.

ITEM IDEBTS

I direct that all my debts and funeral expenses be paid as soon after my death as may be practicable.

ITEM IIPERSONAL ITEMS

(a) I devise to my husband, JAMES J. BETHUNE, JR., if he survives me, all my jewelry, wearing apparel, automobile or automobiles, books, furniture and furnishings, and all other articles of personal and household use, together with any insurance thereon. I hereby vest in my Executor full power and authority to determine what objects of property are included in the foregoing description contained in this ITEM.

(b) If my said husband does not survive me, then I devise all of the property hereinabove described in Paragraph (a) of this ITEM in equal shares to my children who survive me and to the descendants, per stirpes, of any of my children who predeceases me, subject to the provision made below for a beneficiary under twenty-one (21) years of age. The Executor shall have absolute discretion to divide such property among such beneficiaries, having due regard for their personal preferences, and such division shall be conclusive and binding. If any beneficiary entitled to a share of the property disposed of by this Paragraph shall be under the age of twenty-one (21) years at the time of my death, the Executor shall have absolute discretion, without requiring bond in any case, either to:

(1) Retain for such beneficiary all or any part of such beneficiary's share of said property until such beneficiary attains the age of twenty-one (21) years;

(2) Deliver all or any part of any such beneficiary's share of such property directly to such beneficiary, or to any person deemed suitable by my Executor, for the benefit of such beneficiary; or

(3) Sell all or any part of such beneficiary's share of such property, publicly or privately, and add the net proceeds thereof to the principal of the trust hereinafter referred to or directed to be set apart for such beneficiary.

Upon making any payment or transfer hereunder, my Executor shall be discharged with respect thereto, without liability for the subsequent application thereof. Storage, insurance and other carrying charges incurred in retaining any such property for any beneficiary shall be paid out of funds held for the benefit of such beneficiary under this Will.

ITEM III
DIVISION OF RESIDUARY ESTATE
INTO MARITAL SHARE AND FAMILY SHARE

(a) If my husband, JAMES J. BETHUNE, JR., survives me, my Executor shall divide all the rest, residue and remainder of my estate into two parts, hereinafter designated as the "Marital Share" and the "Family Share," each ascertained as follows:

(1) Marital Share. The Marital Share shall consist of that amount of property which, if qualifying for the federal estate tax marital deduction, will result in the imposition of the lowest possible federal estate tax on my estate, reduced by the value of:

(i) all property passing to my husband under prior provisions of this Will, outside this Will, by operation of law, through insurance policies or otherwise, but only to the extent that such property is includable in determining my gross estate for federal estate tax purposes and would qualify for the marital deduction for such purposes; and

(ii) the maximum amount which can pass tax free as a result of all available credits, including without limitation thereto, the Unified Credit allowed under Section 2010 of the Internal Revenue Code, as amended, after taking into account any adjusted taxable gifts, but taking into account the State Death Tax credit only to the extent that doing so does not result in the payment of any additional State Death Tax.

In making the computations necessary to determine the amount to be allocated to the Marital Share, the final determination for federal

estate tax purposes shall control, whether my Executor shall choose the date of death or alternate valuation date. In the sole power and discretion of my Executor, acting in a fiduciary capacity, the payment of this amount may be made wholly or partly in cash or property, as selected by my Executor; provided, however, that all such property so selected shall be valued at fair market value at the date or dates of distribution; and provided further, that so far as is possible, there shall not be included in the Marital Share any assets or the proceeds of any assets:

(i) which are of the type which do not qualify for the marital deduction for federal estate tax purposes,

(ii) with respect to which any estate or death taxes are paid to any foreign country or any of its possessions or subdivisions, or

(iii) with respect to which any tax credit or deduction shall be available because it shall be subject to both federal estate and federal income tax.

(2) Family Share. The Family Share shall consist of the balance of my residuary estate after deducting the amount allocated to the Marital Share, plus any portion of my estate with respect to which my husband shall make a "qualified disclaimer" pursuant to Internal Revenue Code Section 2518, as amended. I direct that my personal residence shall be allocated to the Family Share, to the extent that its value does not exceed the amount to be allocated to such Share under this ITEM.

(b) If my husband shall not survive me, the Family Share shall consist of my entire residuary estate.

ITEM IV

DISTRIBUTION OF MARITAL SHARE

I devise the Marital Share of my residuary estate, hereinafter referred to as the "Marital Trust," to my Trustee hereinafter named, to be held in trust for the use and benefit of my husband as hereinafter provided:

(a) Distributions to James J. Bethune, Jr.. During the lifetime of my husband, JAMES J. BETHUNE, JR., the Trustee shall pay to him the entire net income from the Marital Trust in

convenient installments, but at least annually, and if practicable, in monthly or quarterly installments. If, at any time during such period, the net income from said Trust is not reasonably sufficient, in the opinion of the Trustee, for my husband's support and maintenance in his accustomed manner of living, and for his health, including medical, surgical, hospital or other institutional care and expenses of invalidism, taking into account other resources available to his and known to the Trustee, the Trustee shall pay to him such additional sum or sums out of the principal of said Trust as the Trustee may deem necessary or desirable for such purposes.

(b) Income Producing Property. My husband shall have the power to compel the Trustee to make all or any part of the principal of the Marital Trust productive or income producing or to convert any unproductive or non-income producing property into productive or income producing property. Said power shall be exercised by a written instrument delivered to the Trustee, and the Trustee shall take any action required by the exercise of said power as soon as reasonably practicable.

(c) Termination of Trust. Upon the death of my said husband, the Marital Trust shall terminate, and all of the property thereof shall be treated as follows:

(1) The Trustee shall transfer and pay over all undistributed income thereof to such person or persons, including the estate of my husband, as he, by his Last Will and Testament, may appoint and direct, making specific reference to this general power of appointment, which shall be exercisable by him alone and in all events.

(2) The Trustee shall divide the principal of the Trust and any undistributed income of the Trust which is not appointed as provided above into as many equal shares as I shall then have children living and children dead with descendants surviving.

Any share allocated to a child or descendants of a deceased child of mine shall be transferred and paid over to such child or descendants, per stirpes, absolutely; provided that if any share shall be allocated to a child or descendant of a deceased child who shall then have other property held in trust under any provision of

this Will, then his or her share shall be transferred and paid over to the Trustee of the separate trust established for such child or descendant under this Will.

ITEM V

DISTRIBUTION OF FAMILY SHARE

I devise the Family Share of my residuary estate, hereinafter referred to as the "Family Trust," to my Trustee hereinafter named, to be held in trust, administered and distributed as hereinafter provided:

(a) Distributions to James J. Bethune, Jr.. If my husband, JAMES J. BETHUNE, JR., survives me, the Trustee shall pay to or apply for the benefit and use of my said husband all of the net income of the Family Trust in quarterly or more frequent installments during his lifetime. During the lifetime of my said husband, the Trustee shall also pay to him or apply for his benefit so much of the principal of the Family Trust as, in the discretion of the Trustee, shall be reasonably necessary for my husband's support and maintenance in his accustomed manner of living, and for his health, including medical, surgical, hospital or other institutional care and expenses of invalidism, taking into account other resources available to him and known to the Trustee.

(b) Use of Residence by James J. Bethune, Jr.. If the Family Trust shall include any interest in my personal residence, in which I resided at my death, then the Trustee shall be authorized to retain and maintain such home as an asset of the Trust for the occupancy, use and benefit of my said husband during his lifetime. During his occupancy of any such home, my husband shall not be required to pay any rent, but he shall pay all taxes, assessments, insurance premiums or costs of repairs or maintenance associated with such home. If at any time my said husband notifies the Trustee in writing that he desires to cease living in such home (or any subsequent home purchased pursuant to this Paragraph) and to occupy another home, the Trustee shall be empowered and authorized to sell such home and to purchase as an asset of the Trust such

other home as my husband desires; provided that the purchase price of such other home shall not exceed the net proceeds of the sale. My said husband shall have the same rights to the occupancy, use and benefit of, and shall have the same obligations with respect to, any other home so purchased as he possessed and had in regard to the home originally included in the Trust. Any amount by which the net proceeds of such sale exceed the purchase price shall be added to the principal of this Trust. If at any time my said husband notifies the Trustee in writing that he desires to cease living in any home described in this Paragraph, but that he does not wish the Trustee to purchase any other home for his occupancy, the Trustee shall be empowered and authorized to sell such home and to add the net proceeds of such sale to the principal of this Trust.

(c) Allocation and Distribution of Trust. Upon my death or upon the death of my husband, if he survives me, the Family Trust as it then exists shall be divided into as many equal shares as I shall then have children living and children dead with descendants surviving. Any share allocated to a child shall be transferred and paid over to such child, absolutely. Any share allocated to the descendants of any child shall be transferred and paid over to such descendants, per stirpes, absolutely, subject, however, to the provisions hereinafter set forth with respect to any descendant who is under the age of twenty-one (21) years.

(d) Trust for Descendant Under Age Twenty-One (21). If any descendant to whom the Trustee shall be directed to distribute any share of the principal of any trust is under the age of twenty-one (21) years when the distribution is to be made, then though his or her share shall be fully vested in him or her, the Trustee shall continue to hold the same as a separate trust, with all of the powers and authority given the Trustee with respect to other trust property held hereunder. Until such descendant attains the age of twenty-one (21) years, the Trustee shall use and apply so much of the net income and principal of the trust as the Trustee shall deem

reasonably necessary or desirable for such descendant's support, education and maintenance in his or her accustomed manner of living, and for his or her health, including medical, surgical, hospital or other institutional care and expenses of invalidism. Any excess income not so distributed shall be added to principal. When such descendant attains the age of twenty-one (21) years, or sooner dies, the Trustee shall transfer and pay over the principal and any undistributed income, free of trust, to such descendant, or his or her estate, as the case may be.

ITEM VI

MARITAL DEDUCTION INTENTION

(a) It is my intention that the property allocated to the Marital Share under this Will and held and distributed as hereinabove set forth shall constitute "qualified terminable interest property" as defined in Section 2056(b)(7)(B) of the Internal Revenue Code, as amended, as to which the marital deduction provided by the Internal Revenue Code will be allowed if my Executor shall so elect. My Executor shall be authorized to make any election permitted by said Section with respect to such property as, in the sole discretion of the Executor, shall be in the best interests of my estate, the beneficiaries of said Share and the other beneficiaries of my estate, or to make no election with respect to such property, taking into consideration the circumstances prevailing after my death. My Executor shall not be liable to my estate, the Trustee of the trust established to hold the Marital Share, or any current or future beneficiary or creditor of such trust or my estate on account of having made or declined to make any election with respect to such property, unless such election is made or not made due to gross negligence or bad faith on the part of the Executor.

(b) If my Executor shall elect to treat the property of the Marital Share as qualified terminable interest property qualifying for the marital deduction permitted by the Internal Revenue Code, as amended, then my Executor, regardless of any adverse interest,

shall construe all provisions of my Will which may require construction in order that my estate may become and remain entitled to said marital deduction and is hereby authorized to adopt, agree to or acquiesce in, such construction thereof as the Executor may from time to time deem necessary or advisable in order that such deduction may be obtained for my estate.

(c) If my Executor shall elect to claim as a deduction for income tax purposes any payments made out of the principal of my estate, (1) no adjustment shall be made between principal and income, and (2) the value of my estate for the purpose of computing the Marital Share shall not be reduced by the amount of such payments.

ITEM VII

PAYMENT OF ESTATE TAXES

All estate and inheritance taxes which may be assessed or imposed with respect to my estate or any part thereof, wherever situated, whether or not passing under my Will, including the taxable value of all policies of insurance on my life of which I am owner, and of all transfers, powers, rights or interests in my estate for the purposes of estate taxes, shall, if my said husband survives me, be paid out of the Marital Share of my residuary estate, or if such share is insufficient, out of the Family Share. If my said husband does not survive me, such taxes shall be paid out of the Family Share of my residuary estate. In any event, such payment shall be made without apportionment.

ITEM VIII

APPOINTMENT OF EXECUTOR AND TRUSTEE

(a) I hereby nominate and appoint JAMES J. BETHUNE, JR. to serve as Executor of this, my Last Will and Testament, and as Trustee of any trust which may become operative hereunder. In the event that he shall fail to qualify, die, resign, become incompetent, or otherwise fail or cease to serve as Executor or Trustee, then I appoint my daughter, ANN HARRIS BETHUNE, and my son, THOMAS JACKSON BETHUNE, as Executors or Trustees hereunder.

If either of them shall fail or cease to serve as Executor or Trustee for any reason, then I appoint the other of them to serve in such capacity.

(b) No Executor or Trustee serving hereunder shall be required to give bond or to file an inventory or accounting in any court, or to render any report in court upon final settlement of acts performed as Executor or Trustee. However, any Executor or Trustee serving hereunder shall make out and keep an inventory and maintain records of all transactions relating hereto and shall exhibit the same to any party in interest at any reasonable time.

(c) To the extent permitted by law, each of my Executors and Trustees is hereby authorized to delegate at any time or from time to time, any or all of the rights, powers, duties and authority granted to Executors and Trustees herein, whether discretionary or ministerial, to any other Executor or Trustee, by an instrument in writing signed by the delegating party; provided, however, that any such delegating instrument shall be revocable at any time.

(d) All checks or withdrawals from any bank account maintained by my estate or any trust hereunder may be signed or made by any one or more of the Executors or Trustees as they may mutually agree.

(e) During the administration of my estate, I hereby authorize and empower my Executor to exercise all powers conferred upon my Trustee herein, regardless of whether or not any trust authorized by this Will shall become operative.

ITEM IX

RESIGNATION OF EXECUTOR OR TRUSTEE

(a) Any Executor or Trustee may resign upon ninety (90) days written notice to the co-Executor or co-Trustee, or if there is no co-Executor or co-Trustee then serving, to the successor to such Executor or Trustee designated herein. No resignation by a sole Executor or Trustee shall be effective until a successor Executor or Trustee shall have accepted appointment and qualified to serve as Executor or Trustee.

(b) In the event no successor Executor or Trustee designated herein is available to serve, then the Executor or Trustee wishing to resign may petition a court of competent jurisdiction for the appointment of a successor Executor or Trustee and the judicial settlement of his or her account.

ITEM X

STATUS OF SUCCESSOR EXECUTOR OR TRUSTEE

(a) Any successor Executor or Trustee shall be vested with all the duties, rights, titles, powers (whether discretionary or otherwise), and exemptions as if originally named as Executor or Trustee.

(b) No successor Executor or Trustee shall be liable or responsible in any way for the actions or defaults of any predecessor Executor or Trustee, nor bear any loss or expense from or occasioned by anything done or neglected to be done by any predecessor Executor or Trustee, but such successor Executor or Trustee shall be liable only for its own actions and defaults in respect to property actually received as such Executor or Trustee.

(c) Any successor Executor or Trustee serving hereunder may accept the account rendered and the assets and property delivered to it by the predecessor Executor or Trustee as a full and complete discharge of the predecessor Executor or Trustee, and shall incur no liability or responsibility to any beneficiary by reason of so doing, all without the necessity of any court proceedings or judicial supervision or approval, regardless of any beneficial vested or contingent interests of any minors, incompetent beneficiaries, or unborn beneficiaries.

ITEM XI

POWERS OF THE TRUSTEE

(a) Without limitation of the powers conferred by statute or general rules of law, my Trustee shall have the following powers and authorities, with respect to any property contained in any trust created hereunder, in addition to others now or hereafter conferred by law:

- (1) To allot to any trust created hereunder an undivided interest in any property transferred hereunder; to make joint investments for such trusts; to make any division or distribution in kind or partly in kind and partly in money; and to that end to allot specific securities or other property or an undivided interest therein to any person, share, part or trust, although it may differ in kind from securities or property allotted to any other person, share, part or trust; and to determine the value of any property so allotted, divided or distributed;
- (2) To hold and continue to hold as an investment the property received hereunder and any additional property which may be received, so long as the Trustee deems proper, and to invest and reinvest in any securities or property, whether or not income producing (except with respect to a Marital Trust), deemed by the Trustee to be for the best interest of the trust and the beneficiaries hereunder, without being limited to trust or chancery investments or so-called "legal investments" provided by law, and notwithstanding that the same may constitute general or limited partnership interests, leaseholds, royalty interest, patents, interests in mines, oil or gas wells, or timber lands or other wasting assets, and without any responsibility for any depreciation or loss by or on account of such investments, and without regard for normal requirements of diversification; provided, however, that no new investment shall be made in any security of any corporate Trustee, its holding company, affiliate or successor except upon the exercise of rights given to stockholders thereof;
- (3) To rent or lease any property of the trust for such time (including any lease for a period extending beyond the term of the trust) not exceeding a period of ninety-nine (99) years, and upon such terms and for such rental or price as in the Trustee's discretion and judgment may seem just and proper and for the best interest of the trust and the beneficiaries hereunder;
- (4) To sell, transfer, assign and convey any of the property of the trust or any interest therein, or to exchange the same for other property, in a public or private sale or transaction, for such price or prices and upon such terms and conditions as in the Trustee's discretion and judgment may be deemed for the best interest of the trust and the beneficiaries hereunder, and to execute and deliver any deeds or conveyances (with or without warranty), receipts, releases, contracts, or other instruments necessary in connection therewith;
- (5) To subdivide and develop real estate; to partition, vacate, and abandon real estate; to adjust the boundaries of any real estate; to grant easements, servitudes, rights-of-way, licenses and other interests in real estate; to dedicate real estate for any purpose in connection with the development of any real estate; and to change the use of any real estate to residential, recreational, commercial, cemetery or other usage;
- (6) To make all repairs and improvements at any time deemed necessary and proper to and upon real estate, and to build, construct and complete any building or buildings upon such property which in the Trustee's discretion and judgment may be deemed advisable and proper and for the best interests of the trust and the beneficiaries hereunder, and to determine the extent to

which the cost of such repairs and improvements shall be apportioned as between principal and income; to demolish and remove any buildings or other improvements on any real estate;

(7) To keep any property constituting a part of said trust properly insured against fire and tornado, and other hazards, and to deduct, retain, expend, and pay out of any money belonging to the trust any and all necessary and proper expenses in connection with the operation and conduct of the trust, and to pay all taxes and other legal assessments, debts, claims, or charges which at any time may be due and owing by, or which may exist against, the trust;

(8) 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; except that in no event shall such power be exercised in any manner that would deprive my husband of the income of the Marital Trust;

(9) To consent to the reorganization, consolidation, merger, liquidation, readjustment of, or other change in any corporation, company or association, or to the sale, mortgage or lease of the property thereof or any part thereof, any of the securities or other property of which may at the time be held hereunder, and to do any act or exercise any power with reference thereto that may be legally exercised by any person owning similar property in his or her own right, including the exercise of conversion, subscription, purchase, or other options, the deposit, surrender or exchange of securities, the entrance into voting trusts, and the making of agreements or subscriptions which the Trustee may deem necessary or advisable in connection therewith, all without applying to any court for permission so to do, and to hold and redeem or sell or otherwise dispose of any securities or other property which may be so acquired;

(10) To vote any corporate securities held hereunder in person, or by special, limited or general proxy, with or without power of substitution, or to refrain from voting; to become a party to any stockholders' agreements deemed advisable by the Trustee in connection with such securities; provided, however, that in voting any stock or security of any corporate Trustee, its holding company, affiliate or successor, such corporate Trustee shall vote said stock or security as a majority in interest of the then income beneficiaries (or the guardians of minor beneficiaries) may direct;

- (11) To engage in business with the property of the trust as sole proprietor, or as a general or limited partner, with all the powers customarily exercised by an individual so engaged in business, and to hold an undivided interest in any property as tenant in common or as tenant in partnership;
- (12) To continue any business (whether in the form of a sole proprietorship, partnership, corporation or otherwise) for such time and under such management and conditions as in the discretion of the Trustee may be expedient; to contribute capital to such business; to expand or alter such business; to incorporate, reorganize, merge or consolidate such business; to amend the charter or name of such business; to appoint directors and employ officers, managers, employees or agents (including any directors, officers or employees of any corporate Trustee of the trust); to compensate and offer stock options and other employee or fringe benefits to the employees of such business (including the establishment or operation of employee retirement plans, profit-sharing plans, pension plans and employee stock ownership plans); and to liquidate or dissolve any such business at such time and upon such terms and conditions as in the judgment of the Trustee is for the best interest of the trust and the beneficiaries hereunder;
- (13) To cause any security or other property which may at any time constitute a portion of any of the trusts to be issued, held or registered in the Trustee's individual name or in the name of a nominee or in such form that title will pass by delivery;
- (14) To appoint, employ, remove and compensate such accountants, attorneys (including without limitation, any attorney or accountant who may be serving as a Trustee hereunder), agents, investment advisors, investment managers, investment counselors, financial consultants, custodians, and representatives, individual or corporate, as the Trustee deems necessary or desirable for the administration of the trust, and to treat as an expense of the trust any compensation so paid;
- (15) To act hereunder through an agent or attorney-in-fact (including, without limitation, a bank or the trust department of a bank as an agent or custodian for the Trustee), by and under power of attorney or other instrument duly executed by the Trustee, in carrying out any of the powers and duties herein authorized;
- (16) To borrow money for any purposes of the trust, or incidental to the administration thereof, upon the bond or promissory note of the Trustee acting in such capacity, and to secure the repayment thereof by mortgaging, creating a security interest in, or pledging or otherwise encumbering any part or all of the property of the trust, and, with respect to the purchase of any property, as part of the consideration given therefor, to assume a liability of the transferor or to acquire such property subject to a liability;
- (17) To lend money to any person or persons upon such terms and in such manner and with such security as the Trustee may deem advisable for the best interest of the trust and beneficiaries hereunder;

- (18) To institute and defend any and all suits or legal proceedings relating to the trust in any court, and to employ counsel and to compromise or submit to arbitration all matters of dispute in which the trust may be involved, as in the judgment of the Trustee may be necessary or proper; to compromise, settle, arbitrate or defend any claim or demand in favor of or against the trust; to enforce any bonds, mortgages, security agreements, or other obligations or liens held hereunder; and to enter upon such contracts and agreements and to make such compromises or settlements of debts, claims, or controversies as the Trustee may deem necessary or advisable;
- (19) To foreclose mortgages and to bid in any property under foreclosure or to acquire mortgaged property in any other manner and for such consideration as the Trustee may determine;
- (20) To acquire as an asset of the trust a life insurance policy on the life of any person to whom the income of the trust is payable, or on the life of any person in whom such income beneficiary has an insurable interest, from such companies and in such amounts as the Trustee may deem advisable; to pay premiums on all such insurance policies, from income or principal, or both, as the Trustee may determine; and all such insurance shall be payable to, and all incidents of ownership vested in, the Trustee; provided that no such policy of insurance shall be acquired or held as an asset of the Marital Trust;
- (21) To engage in ranching and farming, including the purchase, leasing, operating, encumbering, selling, producing, and generally dealing in and with farms, ranches, timber, timber lands, water rights, machinery and equipment, livestock, wool, fiber, fertilizer, seed, crops and products of every kind;
- (22) To drill, mine and otherwise operate for the development of gas, oil and other minerals; to enter into contracts relating to the installation and operation of absorption and repressuring plants; to place and maintain pipe lines, telephone and telegraph lines, and to execute oil, gas and mineral leases, division and transfer orders, grants and other instruments of every kind and character containing such provisions as the Trustee considers appropriate with full power to lease or sell any such asset;
- (23) To allocate all deductions for depletion under Federal and State income tax statutes, in each tax year, among a group consisting of the Trustee and those persons to whom trust income may in such tax years have been distributed, in such shares and proportions as the Trustee may determine, to the extent permissible under the applicable statute. In the absence of a valid allocation so made all such deductions for any tax year shall be divided among the members of such group in proportion to the amounts distributed to or retained by each during such tax year; and the Trustee shall not be required to maintain any reserve for depletion despite any statute or rule of law to the contrary, but shall have the discretion to do so;
- (24) To open and maintain one or more accounts for the deposit of funds in any bank or trust company (including a corporate Trustee hereunder) or with any other

financial institution (including any brokerage firm or other company maintaining "money market," cash management or other similar accounts), and to deposit to the credit of such account or accounts all of the funds belonging to the trust which may at the time be in the possession of the Trustee; from time to time to withdraw a portion or all of said funds so deposited by check or draft signed by the Trustee, and any such bank, trust company or financial institution is hereby authorized to pay such checks or drafts and also to receive the same for deposit, to the credit of any holder thereof who so signed or endorsed; to delegate to any one or more proper agents the right to sign checks or drafts against the aforementioned account or accounts for the purposes of the trust, and any bank, trust company or financial institution in which said account or accounts are maintained is hereby authorized and directed to pay such checks or drafts, provided, however, that prior thereto such delegation is evidenced by an appropriate instrument in writing deposited with the said bank, trust company or financial institution by the Trustee;

(25) In any contract or agreement made by the Trustee on behalf of any trust created herein, the Trustee may, and is hereby authorized, to stipulate and provide against personal liability; and all rights created under and by virtue of such contracts or agreements shall belong to the trust for which the same are made and the obligations thereunder shall be the obligations of such trust;

(26) To make, execute and deliver deeds, leases, mortgages, conveyances, options, receipts, releases, satisfactions and other quitclaims or disclaimers of liability, contracts, voting trusts, stock purchase agreements, buy-sell agreements, stock redemption agreements, or other instruments, sealed or unsealed, to any person or corporation with respect to the property of any of the trusts, or with reference to any matter involved in the administration thereof, or for the accomplishment of any of the powers vested in the Trustee, all of the foregoing upon such terms, provisions and conditions existing within or beyond the duration of any trust created hereunder as to the Trustee shall seem reasonable; to create reserves for depreciation, depletion or such other purposes to the extent the Trustee deems necessary or desirable;

(27) To incur and pay the ordinary and necessary expenses of administration;

(28) Except as otherwise expressly provided in this instrument, to determine as the Trustee may deem just and equitable the manner of ascertainment of income and principal and the apportionment between income and principal of all receipts and disbursements;

(29) To invest all or any part of any of the trust estate in any common trust fund at any time maintained by any bank or trust company (including a corporate Trustee hereunder);

(30) To transfer the situs of any trust estate to such other place as in the Trustee's opinion shall be for the best interests of the trust and of the beneficiaries hereunder; and

(31) To do all other acts which in the Trustee's judgment are necessary or desirable, for the proper and advantageous management, investment and distribution of any of the trusts.

(b) Except as otherwise provided herein, all references in this ITEM to any property contained in my estate or in any trust created hereunder shall be deemed to include specifically, without limitation, stock or other securities of any corporate Trustee at any time serving hereunder, its holding company, affiliate or successor, and, except as otherwise provided herein, the Executor and Trustee shall have the authority to deal with such stock or securities in the same manner as provided with respect to any other property contained in my estate or any trust.

(c) No person or corporation dealing with the Trustee shall be required to inquire into the terms of this instrument or any trust hereunder, nor shall any purchaser therefrom be required to see to the application of the purchase money.

(d) A majority in interest of the adult and otherwise legally competent beneficiaries then entitled to receive income of any trust established hereunder or, if there shall be no such beneficiaries, then a majority of the guardians or conservators of the beneficiaries of any such trust may, without liability to any present or future beneficiary of any such trust, approve the annual or other current account of the Trustee hereunder.

(e) The powers herein granted to the Trustee may be exercised in whole or in part, from time to time, and shall be deemed to be supplementary to and not exclusive of the general powers of trustees pursuant to law, and shall include all powers necessary to carry the same into effect.

(f) Notwithstanding anything herein to the contrary, I direct that no Trustee at any time serving hereunder shall have or exercise any power or discretion which would cause the Family Share of my residuary estate (or the Marital Share, to the extent it did not qualify for the federal estate tax marital deduction in my

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estate) to be treated as owned by my husband or as includable in computing his gross estate for purposes of the federal estate tax.

ITEM XII

SIMULTANEOUS DEATH

If my husband and I should die simultaneously or in circumstances which make it difficult to determine which of us died first, I direct that my husband shall be deemed to have survived me for the purposes of this Will, and I direct further that the provisions of this Will shall be construed upon that assumption, irrespective of any provisions of law establishing a contrary presumption or requiring survivorship for a fixed period as a condition of taking property by inheritance. If any other devisee under this Will and I should die simultaneously or in circumstances which make it difficult to determine which of us died first, I direct that such devisee shall be deemed to have predeceased me for the purposes of this Will, and I direct further that the provisions of this Will shall be construed upon that assumption.

ITEM XIII

DISSOLUTION OF TRUST

After the death of my husband, any trust created hereunder may, but need not be, terminated when, in the sole discretion of the Trustee, the income of such trust shall become too low to cover all fees and expenses of administration and also to yield a reasonable return to the beneficiary. In such event, the Trustee shall distribute the assets of such trust to the then current beneficiary of the income. If any such beneficiary shall be a minor at the date of such distribution, then the property of his or her trust shall be paid to a parent or relative of such beneficiary selected by the Trustee as custodian under the Uniform Transfers (or Gifts) to Minors Act in effect in the state of such beneficiary's residence.

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ITEM XIVMERGER OF TRUSTS

If there shall be in existence at the date of my death a trust which has been established under the Last Will and Testament of my husband, JAMES J. BETHUNE, JR., and if such trust shall contain the same administrative and dispositive provisions, have the same trustees and be for the benefit of the same beneficiaries as any trust established under this Will, then, in the sole discretion of the Trustee, such trusts may be merged for purposes of investment; provided, however that a separate account shall be maintained for each trust.

ITEM XVOPERATIONAL DATE OF TRUST

Any trust created under this Will shall 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 to make any payment which the Trustee is herein authorized to make.

ITEM XVIPERPETUITIES-TERMINATION

Each trust under this Will shall in any event terminate twenty-one (21) years after the death of the last survivor of such of the beneficiaries thereunder as shall be living at the time of my death, and thereupon the property held in that trust shall be distributed, discharged of trust, to the persons then entitled to the income and in the proportions to which they are entitled to the income.

ITEM XVIISPENDTHRIFT PROVISION

To the extent permitted by law, the interest of any beneficiary in principal or income of any trust under this Will shall not be subject to assignment, alienation, pledge, attachment, or to the claims of creditors of such beneficiary.

ITEM XVIIIANCILLARY ADMINISTRATION

If ancillary administration is required for property contained in my estate, then the Executor named herein shall serve as such administrator; or, if he shall not be qualified to serve as such, then the Executor shall appoint an ancillary administrator by an instrument signed and acknowledged by the Executor and delivered to such administrator.

ITEM XIXMISCELLANEOUS TAX PROVISIONS

(a) I authorize my Executor to join with my husband in making a joint income tax return or to execute a consent to any gift made by my husband for any taxable year that includes the date of my death or for any periods prior thereto, and in connection therewith, to pay such amounts of tax, interest and penalties as my Executor may deem advisable, even though not attributable entirely to my own income or gifts.

(b) Furthermore, I hereby authorize my Executor, to the extent permitted by law, to deduct administration expenses and commissions, whether against the gross estate in computing the estate tax or against estate income in computing estate income tax, and to pay such expenses and commissions from principal and income as my Executor, in his sole discretion, shall elect, and my Executor shall not be required to make any adjustment on account thereof in setting up any of the trusts herein provided for.

ITEM XXMISCELLANEOUS

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

(a) If any beneficiary of my estate or of any trust created hereunder shall be under any legal disability, or in the sole judgment of the Trustee, or Executor, shall otherwise be unable to apply the proceeds of his or her trust or share of my estate to his or her own best interests and advantage, the Trustee or Executor

may pay or apply income or principal authorized or directed to be paid to or for the benefit of such beneficiary in any one or more of the following ways:

- (1) directly to such beneficiary;
- (2) to a legal guardian or conservator of such beneficiary, or to a custodian under the Uniform Transfers (or Gifts) to Minors Act in effect in the state of such beneficiary's residence, for the use and benefit of such beneficiary;
- (3) to a relative of such beneficiary, to be expended by such relative for the benefit of such beneficiary; or
- (4) by the Trustee or Executor expending any such income or principal for the benefit of such beneficiary.

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

(c) Throughout this Will, the masculine gender shall be deemed to include the feminine and vice-versa, and both shall be deemed to include the neuter, and vice-versa; and the singular shall be deemed to include the plural, and vice-versa, whenever the context admits such construction.

(d) Provision made herein for my husband shall be in lieu of, and not in addition to, homestead, exempt property, family allowance and any other statutory interest or allowance.

(e) In this Will, references to my "children" mean ANN HARRIS BETHUNE and THOMAS JACKSON BETHUNE, both of whom are adults; and references to "descendants" mean legitimate descendants of the ancestor designated, provided always, however, that an adopted child of any person shall, for all purposes under this Will, whether for the determination of relationships or otherwise, be considered to have and shall be given exactly the same status as a legitimately born child.

(f) All headings and captions contained in this Will have been included for convenience of reference only, shall not be construed

as part of this Will and shall in no way be construed as defining, limiting or affecting the scope or intent of the provisions of this Will.


IN WITNESS WHEREOF, I, W. CLARK GOODWIN, do hereunto sign the name of the said MARGARET U. BETHUNE to this, her Last Will and Testament (containing in all twenty-one [21] pages including the attestation clause) at her direction and in her presence on December 15, 1997.

Margaret U. Bethune (SEAL)
MARGARET U. BETHUNE
By: W. Clark Goodwin
W. Clark Goodwin

PUBLISHED AND DECLARED by the said MARGARET U. BETHUNE as and for her Last Will and Testament in our presence, and signed in our presence, in her presence and at her direction by W. Clark Goodwin; and we, in her presence, and at her request and in the presence of each other, hereto subscribe our names as witnesses on the date and year above written.

James R. Harts
1600 SouthTrust Tower
Birmingham, Alabama 35203

D. W. Moore
1600 SouthTrust Tower
Birmingham, Alabama 35203


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I, MARGARET U. BETHUNE, the testatrix, acting through W. Clark Goodwin, sign my name to this instrument on December 15, 1997, and being first duly sworn, do hereby declare to the undersigned authority that I willingly direct him to sign and execute this instrument as my last will, 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.

Margaret U. Bethune
MARGARET U. BETHUNE

By W. Clark Goodwin

We, James D. Hicks and Aene W. Mitchell, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testatrix directed W. Clark Goodwin to sign and execute this instrument as her last will and that she did so willingly, and that each of us, in the presence and hearing of the testatrix, hereby signs this will as witness to W. Clark Goodwin's signing on the testatrix' behalf and at her direction, and that to the best of our knowledge the testatrix is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

James D. Hicks
Witness

A. W. Mitchell
Witness

STATE OF ALABAMA)

COUNTY OF JEFFERSON)


Subscribed, sworn to and acknowledged before me by MARGARET U. BETHUNE, the testatrix, and subscribed and sworn to before me by the above-named witnesses, on Dec. 15, 1997.

SEAL

Kimberly Smith
Notary Public

My Commission Expires: 2/28/99

FILED IN OFFICE THIS THE 8th DAY
OF Nov, 20 02
FOR PROBATE AND RECORD.
Michael J. Bolin
JUDGE OF PROBATE


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CERTIFICATE TO COPIES

PROBATE - 67

The State of Alabama
JEFFERSON COUNTY

PROBATE COURT

I, WANDA L. MCDANIEL, 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 _____

LETTERS TESTAMENTARY

PETITION FOR PROBATE OF WILL

LAST WILL AND TESTAMENT

in the matter of **THE ESTATE OF:**

MARGARET U. BETHUNE

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 NOVEMBER, 20 07

Wanda L. McDaniel

Chief Clerk