IN RE:	*	**IN THE PROBATE COURT FOR**
THE MATTER OF THE ESTATE OF DONALD B. BOWERMAN, DECEASED	*	**COFFEE COUNTY, ALABAMA**
	*	**CASE NO.: PR-2019-** 040

PETITION FOR PROBATE OF WILL

TO THE HONORABLE STEVEN E. BLAIR, JUDGE OF SAID COURT:

COMES NOW your Petitioner **DONALD B. BOWERMAN, JR.**, and would respectfully show unto the Court as follows:

1. That **DONALD B. BOWERMAN**, who was an adult resident/ citizen of Coffee County, Alabama, died on February 20, 2019 leaving a substantial estate of real and personal property in this State.

2. The decedent left a Last Will and Testament which disposed of his entire estate.

3. Said Will was signed by the decedent on May 31, 2001, and is a self-proving Will which was witnessed by Robert Loftin, Delora Anderson and Penny Sumrall, and acknowledged before Cathy Humber, a Notary Public.

4. Your Petitioner was named as Personal Representative of the decedent's Last Will and Testament and by the terms thereof was not required to make bond, inventory, accounting, or accounting of final settlement of his proceedings as Personal Representative.

5. The heirs-at-law and next-of-kin of the Decedent, all of whom are over the age of nineteen (19) years and of sound mind, in so far as is known to the Petitioner are as follows:

DONALD B. BOWERMAN, JR. - Son
1118 Country Club Circle
Birmingham, Alabama 35244

DAVID E. BOWERMAN - Son
2001 Crystal Mist
Port St. Lucie, Florida 34983

CYNTHIA LEIGH QUISENBERRY - Daughter
102 Grayson Drive
Enterprise, Alabama 36330

SUSAN FAYE JACKSON - Daughter
1570 Kinglet Lane
Marietta, Georgia 30062

WHEREFORE, THE PREMISES CONSIDERED, Petitioner files decedent's original Will with this petition and prays the Court to set this cause for hearing after proper notice to each of the above named heirs-at-law and next-of-kin; that upon final hearing that the Will be admitted to Probate and Record as the Last Will and Testament of **DONALD B. BOWERMAN**, deceased; that Letters Testamentary be issued to Petitioner in order that he may carry out the terms of the Will.

The petitioner prays for such other and further relief as to which he may be entitled and as to the Court may seem right and proper.

[SIGNATURES TO FOLLOW ON SEPARATE PAGE]

Donald B. Bowerman Jr.

DONALD B. BOWERMAN, JR.

M. D. Marsh

M. Dale Marsh (MAR040)
Attorney for Petitioner

OF COUNSEL:
MARSH & COTTER, LLP
Post Office Box 310910
Enterprise, Alabama 36331
(334) 347-2626 Telephone
mdm@enterpriselawyers.com

STATE OF ALABAMA
Jefferson COUNTY

Before me the undersigned authority, personally appeared **DONALD B. BOWERMAN, JR.** who by me being first duly sworn, deposes and says that the matters and things alleged in the foregoing Petition are true and correct.

Donald B. Bowerman Jr.

DONALD B. BOWERMAN, JR.

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Sworn to and subscribed before me this 7th day of March, 2019.

Mary D. Price

NOTARY PUBLIC
My Commission Expires: 30 Oct 2021

CERTIFIED TO BE A TRUE COPY
ATTEST Steven E. Blair
JUDGE OF PROBATE
Probate Court, Coffee Co., AL

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Last Will and Testament

OF

DONALD B. BOWERMAN

I, **DONALD B. BOWERMAN**, a resident of Shelby County, State of Alabama, being of sound mind and disposing memory, and more than eighteen years of age, do make, publish and declare this instrument to be my Last Will and Testament, hereby revoking any and all other wills and codicils heretofore made by me.

ARTICLE 1
MY FAMILY

The provisions herein regarding my spouse refer to my wife, **EDNA E. BOWERMAN**, who is referred to as my spouse in this Will. The provisions regarding a child or children of mine refer to my children, **DONALD B. BOWERMAN, JR.**, **DAVID E. BOWERMAN**, **CYNTHIA LEIGH QUISENBERRY** and **SUSAN FAYE JACKSON**.

ARTICLE 2
PERSONAL REPRESENTATIVE AND TRUSTEE

2.01 **Appointment of Personal Representative.** I hereby designate and appoint my spouse, **EDNA E. BOWERMAN**, as Personal Representative. If my said spouse predeceases me, resigns or for any reason fails or ceases to serve as Personal Representative, then I hereby designate and appoint my son, **DONALD B. BOWERMAN, JR.**, to serve as successor Personal Representative. If my said son dies, resigns or for any reason fails or ceases to serve as Personal Representative, then I hereby designate and appoint my daughter, **CYNTHIA LEIGH QUISENBERRY**, to serve as successor Personal Representative.

2.02 **Appointment of Trustee.** I hereby designate and appoint my spouse, **EDNA E. BOWERMAN**, to serve as Trustee of any trust created hereunder.

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CERTIFIED TO BE A TRUE COPY
ATTEST Steven B. Hall
JUDGE OF PROBATE
Probate Court, Coffee Co., AL

2.03 **Waiver of Court Reports and Bond.** To the extent that such requirements can be legally waived, I direct that my Personal Representative (and any successor personal representative) and the Trustee (and any successor trustee) shall not be required to give bond or to file an inventory or appraisal of my estate or any trust created hereunder in any court, or to obtain the order or approval of any court before exercising any power or discretion granted in this Will; however, I direct my Personal Representative and the Trustee to maintain an inventory and to exhibit the same to any party in interest at any reasonable time.

ARTICLE 3
DEBTS AND EXPENSES

3.01 **Payment of Debts and Expenses.** I direct my Personal Representative to pay all my debts, including my funeral expenses, flowers at my funeral, a monument and/or marker for my grave, the fees and charges of administration, the expenses of my last illness, taxes assessed on my estate previous to my death and any other just and enforceable debts, as soon after my death as may be practicable. Unless specifically stated otherwise herein, I intend that any indebtedness secured by mortgage on real property owned by me at the time of my death shall not be charged to or paid from my estate, but that the devisee of such real property shall take it subject to all encumbrances existing at the time of my death.

3.02 **Debts and Expenses to be Charged Against Residue.** All debts and expenses that are provided for in Section 3.01 hereof shall be generally paid out of and charged against the residue of my estate, without apportionment. Such debts and expenses, to the extent possible, shall not be charged against or paid from property that is exempt from federal estate tax, or for which there is a federal estate tax deduction or exclusion (such as the marital and charitable deductions).

3.03 **Costs of Safeguarding Personal Property.** The reasonable costs of safeguarding, insuring, packing and storing my tangible personal property prior to the distribution and delivery of each such item to the place of residence of the devisee of such item shall be deemed to be expenses of administration of my estate.

ARTICLE 4
DEVISES OF PERSONAL PROPERTY

4.01 **Devise of Personal Property.** I devise all of my tangible personal property, together with any assignable insurance policies thereon, including any household furniture and furnishings, automobiles, books, jewelry, art objects, hobby equipment and collections, wearing apparel, and other articles of household or personal use or ornament, any club memberships, stadium certificates and interests in transportation companies, but excluding coins held for investment and paper currency (my "Personal Property"), to my spouse. If my spouse predeceases me, then I devise my Personal Property to my children as are living on the thirtieth day after the date of my death, in shares of substantially equal value, the lineal and adopted lineal descendants of any deceased child of mine to take the share such deceased child would have taken, if living, *per stirpes*. Such property shall be divided in such manner as the beneficiaries shall agree, or if they fail to agree upon a division within six (6) months after the date of my death, then as my Personal Representative shall determine. The household furniture and furnishings used in and about our home are the property of my spouse, as is the automobile customarily used by her.

4.02 **Memorandum of Disposition of Personal Property.** I may leave a memorandum, which is not to be a part of this Will, containing suggestions for the division or the ultimate disposition of certain of the Personal Property devised under this Article, but such memorandum shall not affect the absolute nature of this devise. I request, but do not require, that my wishes as set forth in any such memorandum be honored. If my Personal Representative, after reasonable inquiry, does not find such a memorandum within three (3) months of the date of my death, then my Personal Representative may assume that such a memorandum does not exist and shall distribute my Personal Property in accordance with the provisions as set forth in Section 4.01 hereof. I hereby vest in my

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Personal Representative full power and authority to determine what objects of property are included in this Article.

4.03 **Personal Property Devised to Minors.** If any property devised under this Article is distributable to an individual who has not attained the age of nineteen (19) years, then my Personal Representative may, in my Personal Representative's sole discretion, deliver the same directly to such individual or to the parent, guardian, or other person having custody of such individual. The person having legal custody of such individual (i) shall represent such individual in any division of the property; (ii) may give a binding receipt for and hold such individual's share for his or her benefit; (iii) may sell any part or all of such individual's share and (iv) may deliver the share or sale proceeds to such individual before or when the individual reaches legal age, all as that person considers advisable.

ARTICLE 5
RESIDUARY ESTATE

5.01 **Division of Residuary Estate.** I devise the rest, residue and remainder of my property, of whatever kind and character and wherever situated, which I may own at the time of my death, including but not being limited to property that I may acquire or become entitled to after the execution of this Will and all lapsed devises (the "Residue"), to my spouse, if she survives me, to be hers absolutely (the "Marital Devise").

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5.02 **Devise to My Children If My Spouse Predeceases Me.** If my spouse predeceases me, then I devise the Residue to my children, in equal shares, the lineal and adopted lineal descendants of any child who predeceases me to take the share such deceased child would have taken if living, *per stirpes* and not *per capita*, subject to the provisions of Section 6.03 hereof.

5.03 **Devise of Residue if I am not Survived by My Spouse or Descendants.** If upon my death, neither my spouse nor any descendants of mine are then living, then my Personal Representative shall apportion the Residue into two equal shares. My Personal Representative shall then transfer and pay over one share of the Residue to such persons

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who would be entitled to inherit said property and in the proportions as they would be entitled to inherit the same from me under the laws of Alabama had I died intestate as a resident of Alabama and had owned such property. My Personal Representative shall transfer and pay over the remaining share of the Residue to such persons who would be entitled to inherit said property and in the proportions as they would be entitled to inherit the same from my spouse under the laws of Alabama had my spouse died intestate as a resident of Alabama and had owned such property.

5.04 **Effect of Qualified Disclaimer by My Spouse.** If my spouse makes a qualified disclaimer of any part or all of the Marital Devise, then such disclaimed property shall not pass under Section 5.01 hereof, but shall pass to the Trustee of the Disclaimer Trust (sometimes referred to herein as the "Trust"), to be held and disposed of in accordance with the provisions of Article 6 hereof.

ARTICLE 6
DISPOSITION OF DISCLAIMER TRUST

6.01 **Sprinkle Trust for Benefit of My Spouse and Descendants.** During the lifetime of my spouse, the Trustee shall from time to time pay to or use and apply for the health, education, support or maintenance of such one or more or all or none of my spouse, my children and my other descendants as are living at the time of such payment, so much of the net income of the Disclaimer Trust and principal thereof, in such amounts and proportions, equal or unequal, as the Trustee shall deem necessary for such purposes, taking into account other resources available to each such person and known to the Trustee. The Trustee (i) may pay all or part or none of the net income or principal of the Disclaimer Trust or both; (ii) may make unequal payments; (iii) may from time to time exclude one or more of such persons from payments hereunder; (iv) may make payments to any such person even though payments could be made to the parent or ancestor of such person and (v) may make payments to any such person who is living at the time of such payments even though such person is not living at the time of the creation of the

Disclaimer Trust. Any part of the net income of the Disclaimer Trust not so paid shall be accumulated, added to, and become a part of the principal of the Disclaimer Trust.

6.02 **Apportionment of Disclaimer Trust Upon the Death of My Spouse**. Upon the death of my spouse (if my spouse has executed a disclaimer pursuant to the provisions of Section 5.03 hereof), the Trustee shall apportion the Disclaimer Trust into as many shares as there are children of mine then living, and one share for the then living descendants, collectively, of each deceased child of mine (a "Child's Share"). The Trustee shall transfer and pay over, a Child's Share to such living child, outright and free of trust. The Trustee shall transfer and pay over, subject to Section 6.03 hereof, any share set aside for the living descendants of a deceased child of mine to such descendants, *per stirpes*.

6.03 **Trust for Descendant of a Deceased Child of Mine or of Me.** If any part or share of the Disclaimer Trust becomes distributable to a descendant of a deceased child of mine or of me and for whom no other share is then being held in trust, then though his or her share shall be vested in him or her, the Trustee shall continue to hold the same in trust with all of the powers and authority given to the Trustee with respect to other trust property held hereunder, until such descendant attains the age of twenty-one (21) years. Until such descendant attains the age of twenty-one (21) years, the Trustee shall use and apply for his or her health, education, support or maintenance such part of the net income and principal of such trust or share as the Trustee may deem necessary for said purposes, accumulating and adding to principal any income not so used, or distributing the same in such manner as the Trustee may deem to be in the best interests of such descendant.

6.04 **Distribution of Disclaimer Trust if I am not Survived by My Spouse or Descendants.** If at any time at or after my death, neither my spouse nor any descendants of mine are then living to whom any part of the income or principal of the Disclaimer Trust may be distributed, then the Trustee shall apportion the Disclaimer Trust into two equal shares. The Trustee shall then transfer and pay over one share of the Disclaimer Trust property to such persons who would be entitled to inherit said property and in the proportions as they would be entitled to inherit the same from me under the laws of

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Alabama had I died intestate as a resident of Alabama and had owned such property. The Trustee shall transfer and pay over the remaining share of the Disclaimer Trust property to such persons who would be entitled to inherit said property and in the proportions as they would be entitled to inherit the same from my spouse under the laws of Alabama had my spouse died intestate as a resident of Alabama and had owned such property.

ARTICLE 7
POWERS, DUTIES AND RIGHTS OF THE TRUSTEE

7.01 **General Powers.** In the management, care and disposition of any trust created hereunder (the "Trust"), the Trustee (and all successor Trustees) shall have, in addition to all general powers of trustees provided by law, all of the powers and authority the Trustee would have if the Trustee were the absolute owner thereof, including, but without limitation, the following powers, all of which may be exercised in the sole discretion of the Trustee (and all successor Trustees) and without order or approval or report to any court:

(a) To collect the income therefrom.

(b) To compromise, adjust, settle or abandon, in the discretion of the Trustee, any claim in favor of or against the Trust.

(c) To hold any property or securities originally received by the Trustee as a part of the Trust or to which the Trustee may become entitled by virtue of incorporation, liquidation, reorganization, merger, consolidation or change of charter or name, including any stock or interest in any family corporation, enterprise, partnership (whether general, limited or special), limited liability company, shares of regulated investment companies or trusts (whether open-end or closed-end), or any stock in any corporate trustee or the parent or other affiliated corporation of any corporate trustee serving hereunder, without regard to any statutory or constitutional limitations applicable to the investment of funds and though retention might violate principles of investment diversification, so long as the Trustee shall consider the retention for the best interests of the Trust.

(d) To retain, sell, auction, convey or exchange (at public or private sale); to lease or rent for a period beyond the possible termination of the Trust (or for a shorter period) for improvement or otherwise; to grant

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options for or in connection with such purposes; and to otherwise dispose of any portion of the Trust, in such manner and upon such terms and conditions as the Trustee may approve.

(e) To invest and reinvest the Trust and the proceeds from the sale or disposal of any portion thereof in such loans, bonds, common or preferred stocks, notes, mortgages, common trust funds, securities, shares of regulated investment companies or trusts, partnerships (whether general, limited or special), limited liability companies or other property, real or personal; to purchase or sell options for such purposes; to exercise options, rights or warrants; and to purchase securities or other property as to the Trustee may seem suitable, whether so called "legal" investments of trust funds or not.

(f) To hold, retain or acquire property or securities which, in the opinion of the Trustee, is for the best interests of the Trust, without regard to any statutory or constitutional limitation applicable to the investment of trust funds.

(g) To vote any corporate stock held hereunder in person, or by special, limited or general proxy, with or without power of substitution; to refrain from voting the same; to waive notice of any meeting and to give any consent for or with respect thereto; and to enter into or oppose, alone, or with others, voting trusts, mergers, consolidations, foreclosures, liquidations, reorganizations, or other changes in the financial structure of any corporation.

(h) To continue or dispose of any business enterprise without liability for such action, whether such enterprise be in the form of a sole proprietorship, partnership, corporation, limited liability company or otherwise; 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 the Trust; to appoint directors and employ officers, managers, employees or agents (including any trustee or directors, officers or employees thereof); 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 reasonable compensation.

(i) To subdivide or otherwise develop, and to change the use or purpose of, any real estate constituting a part of the Trust into residential, recreational, commercial, cemetery, or other usage; to construct, alter, remodel, repair or raze any building or other improvement located thereon; and to release, partition, vacate, abandon, grant easements in or over, dedicate or adjust the boundaries as to any such property.

(j) 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 of production in connection therewith; to clear, drain, ditch, make roads, fence and plant part or all of such real estate; 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 the Trust or for a shorter period; to employ the methods of carrying on agriculture, animal husbandry and silviculture that are in use in the vicinity of any of such real estate or which the Trustee may deem 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 Trustee may approve; and in general to take any action that the Trustee may deem necessary or desirable in such operation of farms and woodlands.

(k) 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 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 other instruments or agreements in connection therewith as the Trustee may deem necessary or desirable.

(l) To borrow money for such time and upon such terms as the Trustee may deem appropriate, without security or on mortgage of any real estate or upon pledge of any personal property held hereunder; and to execute any mortgage or collateral agreements as necessary.

(m) To advance money to any trust created hereunder for any purpose of such trust, and to repay the money so advanced with reasonable interest thereon from such trust or from any funds belonging thereto.

(n) To hold money in the custody of the Trustee while awaiting distribution or investment pursuant to the terms hereof, even though such money be commingled with the funds of the Trustee (in which case the Trustee shall keep a separate account of the same), and the Trustee shall not be required to pay interest thereon.

(o) To appoint, employ, remove and compensate such attorneys, tax advisors, accountants, investment advisors, appraisers, other agents and representatives, individual and corporate, as the Trustee may deem necessary or desirable for the administration of the Trust, and to treat as an expense of the Trust any compensation so paid.

(p) To hold property or securities in bearer form, in the name of the Trustee, or in the name of the nominee of the Trustee, without disclosing any fiduciary relation.

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

(r) To determine whether any money or property coming into the hands of the Trustee shall be treated as a part of the principal of the Trust or a part of the income therefrom; to apportion between principal and income any loss or expenditure in connection with the Trust as the Trustee may deem just and equitable; provided that such powers shall not apply to any trust for the benefit of my spouse and shall in all events be exercised in accordance with the provisions of the Alabama Principal and Income Act. Notwithstanding the foregoing, any proceeds received by the Trustee from any "retirement plan," meaning any qualified pension plan, profit sharing plan, stock bonus plan, 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 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 Trustee shall be treated by the Trustee as income when received.

(s) To pay any expense reasonably necessary for the administration of the Trust, and to charge such expense to income or to principal, in accordance with the Alabama Principal and Income Act.

(t) To pay the funeral and burial expenses of any beneficiary from the principal of the trust from which income has been payable to such beneficiary.

(u) To enter into or continue any partnership agreement or arrangement with others or to accept the assignment or otherwise acquire, hold and dispose of interests in partnerships, and in doing so to become either a general or limited partner.

(v) To merge and consolidate at any time after the death of the last to die of me and my spouse all the Trust property with the trust property of any trust created by my spouse during the lifetime of my spouse or by Will and held by the same Trustee for the benefit of the same persons who are beneficiaries hereunder, upon substantially the same terms and conditions as those set forth herein, and thereafter to administer the trust property as a single trust hereunder.

(w) To combine or otherwise merge two or more trusts or shares hereunder into a single trust or share if they have the same provisions and beneficiaries, or to hold and administer such trusts or shares as separate trusts or shares.

(x) To hold, as a matter of administrative convenience, any two or more trusts for the same beneficiary or beneficiaries as a single trust, without physically dividing the same until actual division becomes necessary in order to make a distribution, making division thereof only upon books of account by proper entries and allocating to each trust its proportionate share of receipts and expenditures; but such failure to make division shall not change the beneficial interest of any person nor defer the vesting of any estate that would otherwise vest.

(y) To make transfers pursuant to the Uniform Transfers (or Gifts) to Minors Act effective in the state of residence of such beneficiary to whom such transfer may be made.

(z) To deal with the fiduciary or fiduciaries of any other trust or estate, even though the Trustee may also be the fiduciary or one of the fiduciaries of the other trust or estate.

(aa) 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 the Trustee's 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 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.

7.02 **Duration of Powers.** The powers granted in this Article may be exercised even after termination of all trusts hereunder until actual distribution of all trust principal, but not beyond the period permitted by any applicable rule of law relating to perpetuities.

7.03 **Accrual of Income from Date of My Death Until Establishment of Trusts.** The income of any trust created hereunder at my death shall accrue from the date of my death, and until the trusts are established, I authorize the Trustee in the absolute discretion of the Trustee, to pay to the respective income beneficiary from the Trust, as advance payments of income, such sums as, in the sole judgment of the Trustee, are not in excess of the net income which such income beneficiaries would have been entitled to receive from the trusts had they been established. If any such sum is paid from the principal of the Trust, it shall be a temporary advance to be restored to the principal from income otherwise payable to the beneficiary to whom the advance is made.

7.04 **Form of Distributions.** The Trustee shall have discretion to select property and any undivided interest therein to be allocated to any separate trust created in this Will. Such distributions shall be made in the sole discretion of the Trustee in cash, in kind, or partly in cash and partly in kind, on a *pro rata* basis or on a non-*pro rata* basis, including undivided interests in property, without regard to the basis for income tax purposes of any property so distributed or divided in kind. The Trustee may choose which assets shall be used to fund such distributions or separate shares or trusts, without being required to fund a distribution, share or trust with a *pro rata* portion of each asset.

7.05 **Facility of Payment.** If at any time a beneficiary eligible to receive net income or principal distributions is under a legal disability, or in the opinion of the Trustee is incapable of properly managing his or her financial affairs, then the Trustee may make such distributions directly to such beneficiary, to a lawful guardian of such beneficiary, to a custodian selected by the Trustee for such beneficiary pursuant to a Uniform Transfers (or Gifts) to Minors Act or similar applicable law, or may otherwise expend the amounts to be distributed for the benefit of such beneficiary in such manner as the Trustee may consider advisable. The term "lawful guardian" means successively in the order named: (i) the court-appointed conservator of the estate of such beneficiary, (ii) a parent of such beneficiary or (iii) the individual having personal custody (whether or not a court-appointed guardian) where no conservator of the estate of the beneficiary has been appointed.

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7.06 **Limitation on Trustee's Powers.** Notwithstanding any other provision of this Will, the general discretionary powers of a trustee hereunder are limited so that (i) no such trustee shall participate in any decision regarding a discretionary distribution to such trustee personally, except to the extent governed by and made pursuant to a standard under this Will that constitutes an ascertainable standard within the meaning of Section 2041 and Section 2514 of the Code and (ii) no such trustee may use income or principal of any trust created hereunder to discharge the legal obligation of such trustee individually to support or educate a beneficiary hereunder.

7.07 **Accountings by Trustee.** The Trustee shall furnish annual statements, based upon a calendar year accounting period, to each current income beneficiary who is of legal majority and capacity and to the legal representative or adult having custody of any current income beneficiary who is not of legal majority and capacity, showing the property held in trust for the benefit of that person at the close of the accounting period and all receipts and disbursements made during that period.

7.08 **Requirement to Deal at Arm's Length.** No powers of the Trustee enumerated herein or now or hereafter conferred upon trustees generally shall be construed to enable any person to purchase, exchange or otherwise deal with or dispose of all or any part of the principal or income of the trusts created hereunder for less than adequate consideration in money or money's worth, or to enable any person to borrow any part of the principal or income of the Trust, directly or indirectly, without adequate interest and security. No person, other than the Trustee, shall have or exercise the power to vote or direct the voting of any stock or other securities of the Trust, to control the investment of the Trust, to veto proposed investments or reinvestments, or to acquire or exchange any property of the trusts created hereunder by substituting other property of an equivalent value.

7.09 **Compensation of Trustee.** The Trustee is entitled to receive reasonable compensation for the Trustee's services rendered in the administration of the Trust. Reasonable compensation for a corporate trustee will be based upon such corporate trustee's published fee schedule in effect at the time such corporate trustee's services are rendered.

7.10 **Third Party Protections.** No corporation, transfer agent or other person dealing with the Trustee shall be obligated to follow the application of any money or property delivered to the Trustee or to examine the terms upon which any property is held by the Trustee. Any such corporation, transfer agent or other person may deal with any such property and with the Trustee as if the Trustee were the owner thereof, free of any trust, and the certificate of the Trustee that the Trustee is acting in compliance with this Will shall fully protect all persons dealing with the Trustee.

7.11 **Discharge of Liability.** Upon making any payment or transfer hereunder, the Trustee shall be discharged as to such payment or transfer without liability for the subsequent application thereof, and when final payment or transfer is made from the principal of any trust created hereunder, such trust shall terminate and the Trustee shall be fully discharged as to such trust.

ARTICLE 8
SUCCESSOR TRUSTEES

8.01 **Right of Trustee to Resign and Designation of Successor Trustees.** Any Trustee may resign upon ninety (90) days written notice to the current income beneficiaries. No resignation by a sole Trustee shall be effective until a successor Trustee has accepted appointment and has qualified to serve as Trustee. If **EDNA B. BOWERMAN** resigns or otherwise ceases to serve as Trustee, then my son, **DONALD B. BOWERMAN, JR.,** shall serve as the successor Trustee.

8.02 **Authority of Individual Trustee to Appoint Successor Trustees.** Notwithstanding the designation of successor Trustees in Section 8.01 hereof, I intend for the person currently serving as Trustee to be able to appoint a successor Trustee. Accordingly, **EDNA B. BOWERMAN,** may at any time while she is serving as Trustee of any trust created hereunder, designate and appoint a person or persons who are to succeed her as Trustee. The successor Trustee, whether designated by me herein or a predecessor Trustee hereafter, may at any time while serving in such capacity, terminate the appointment of the Trustee who is to succeed him or her, including any successor Trustee designated by me herein or a predecessor Trustee hereafter, and may then designate another Trustee to succeed him or her. If more than one person is serving as Trustee, then the Trustees shall take such action jointly. If only one person is serving as Trustee, then the Trustee shall take such action alone. The termination of the appointment of a Trustee and the designation of a successor Trustee shall be in writing, such writing to be executed with all of the formalities of a deed and duly recorded in a court of competent jurisdiction. A designation of successor Trustees may be revoked in like manner, and subsequent designations may thereafter be made. The designations of successor Trustees may include the designation of successors to the successor Trustees. While serving, each successor Trustee shall have the power to designate his or her successor Trustees by a writing executed and recorded as provided by this Section.

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8.03 **Appointment of Successor Trustee by Income Beneficiaries.** If any Trustee or successor Trustee appointed as provided in this Article ceases to act as Trustee for any reason, and the Trustee has failed to name a successor Trustee as authorized in Section 8.02 hereof, then any individual, bank or trust company (subject to Section 8.04 hereof), within or outside the state of Alabama, may be appointed as successor Trustee and the accounts of the Trustee may be approved by a majority in number of the beneficiaries to whom the current trust net income may or must then be distributed. If any person so entitled to act is then under a legal disability, then the instrument of appointment or approval may be signed on his or her behalf by (i) the duly appointed guardian of his or her estate, (ii) either parent or (iii) the guardian of the person (which guardian need not be court appointed) for whose estate no conservator has been appointed.

8.04 **Successor Corporate Trustees.** A successor corporate trustee appointed pursuant to the provisions of this Article shall be a bank or trust company qualified to act as such in any state and authorized to accept and administer trusts, which itself has or which is part of a holding company which has a net capital and surplus of not less than Fifty Million Dollars ($50,000,000) in the aggregate. If a corporate trustee serving hereunder becomes a part of any other corporation or entity or is merged or consolidated with any other corporation or entity into a new corporation or entity, then such corporation or entity of which it becomes a part shall, without any further act on the part of the parties hereto, be substituted in place and stead of the then serving corporate trustee. Such successor corporation or entity shall have all of the rights, powers and authorities given to the corporate trustee then serving hereunder, and shall be subject to all of the duties, liabilities and responsibilities hereunder.

8.05 **Power of Beneficiaries to Replace Corporate Trustee.** A corporate trustee may be fired for "due cause" and a new corporate trustee appointed (subject to Section 8.04 hereof) by a majority in number of the then living beneficiaries of any trust created hereunder to whom the net income or principal of such trust may at any time be distributed. Written notice to the then serving corporate trustee shall be delivered to such corporate trustee at least sixty (60) days before the appointment of the successor corporate trustee is to take effect. Such writing shall be executed with all of the formalities of a deed and duly recorded in a court of competent jurisdiction, and shall designate therein the successor corporate trustee, which shall have the same rights, powers, and duties thereafter as herein given to the predecessor corporate trustee. If any person so entitled to act is under a legal disability, then the instrument of appointment or approval may be signed on his or her behalf by (i) the duly appointed guardian of his or her estate, (ii) either parent or (iii) the guardian of the person (which guardian need not be court appointed) for whose estate no conservator has been appointed. After receipt of said notice, the corporate trustee to be replaced shall deliver to the substituted corporate trustee all such trust property remaining in its possession belonging to such trust, and shall execute all instruments necessary to pass title from itself as corporate trustee to the substituted corporate trustee. Upon the completion of said transfer in accordance with the provisions hereof, the replaced corporate trustee shall stand discharged as a trustee hereunder. Similar subsequent changes in the corporate trustee may be made under the same conditions and following the same procedure. For purposes of this Section 8.05, "due cause" shall include, but not be limited to, (i) a change in corporate ownership of the corporate trustee; (ii) failure of the corporate trustee to achieve a reasonable return for the investments in the Trust, as measured by the investment policy established for the assets held in the Trust; (iii) a fee schedule charged by the corporate trustee that is in excess of the fee schedules charged by similar corporate trustees or (iv) a determination by the beneficiaries that the corporate trustee is providing a level of service and quality of investment performance below that which is being offered by other similar corporate trustees. "Due cause" shall not include a disagreement between any beneficiary and the corporate trustee as to the corporate trustee's discretionary authority herein to distribute net income or principal to or among the beneficiaries.

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8.06 **Rights of Successor Trustee.** Any successor trustee shall be vested with all of the duties, rights, powers (whether discretionary or otherwise) and exemptions as if originally named as Trustee. A successor trustee shall neither be liable or responsible in any way for the actions or defaults of any predecessor trustee, nor have any loss or expense from or occasioned by anything done or neglected to be done by any predecessor trustee, but such successor trustee shall be liable only for its own actions and defaults with respect to property actually received as such trustee. Any successor trustee appointed hereunder may accept the account rendered and the assets and property delivered to it by the predecessor trustee as a full and complete discharge of the predecessor trustee, and shall incur no liability or responsibility to any beneficiary by reason of so doing, all without 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.

8.07 **Examination of Accountings.** No Trustee is required to question any actions, omissions, accountings, or other records of any prior Trustee, or of the fiduciary of any other estate or trust from which assets are given or devised to any trust created pursuant to this Will. Any beneficiary who requests such an examination shall pay all fiduciary and legal charges and expenses incurred in such examination, and the Trustee may offset those costs directly against any payment otherwise to be made to such beneficiary pursuant to this Will.

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ARTICLE 9
POWERS, DUTIES AND RIGHTS OF MY PERSONAL REPRESENTATIVE

9.01 **General Powers.** I hereby vest in my Personal Representative the same full powers of management, control and disposition, rights, immunities and duties over my estate as are given to the Trustee with respect to the trusts created hereunder.

9.02 **Power of Spouse to Appoint Co-Personal Representative.** I hereby authorize and empower my spouse to appoint in writing one or more co-personal representatives to serve with my spouse hereunder. My spouse shall have the power and authority to remove such co-personal representative serving hereunder by giving written notice to said fiduciary.

9.03 **Form of Distributions.** My Personal Representative shall have discretion to select property and any undivided interest therein to be distributed in satisfaction of any general devise provided for herein. Such distributions shall be made in the sole discretion of my Personal Representative in cash, in kind, or partly in cash and partly in kind, on a *pro rata* basis or on a non-*pro rata* basis, including undivided interests in property, without regard to the basis for income tax purposes of any property so distributed or divided in kind.

9.04 **Authority to Make Tax Elections.** My Personal Representative shall make such elections and decisions concerning taxes involving my estate as my Personal Representative shall consider advisable, without regard to, or adjustments between, principal and income or the relative interests of beneficiaries. Such elections shall include, but not be limited to, (i) the decision as to whether any deduction shall be taken as an income tax deduction or an estate tax deduction; (ii) the decision to elect for property to be treated as qualified terminable interest property; (iii) the decision to elect or not to elect the alternate valuation date for federal estate tax purposes and (iv) the decision to consent for federal gift tax purposes that gifts made by my spouse shall be treated as having been made one-half (½) by my spouse and one-half (½) by me.

9.05 **Authority to File Income Tax Returns.** I authorize my Personal Representative to join with my spouse or the personal representative of my spouse's estate to file joint income tax returns for any periods for which such returns may be filed. I further authorize my Personal Representative to agree with my spouse or the personal representative of my spouse's estate (i) as to how the liability for the income tax, including interest or penalties thereon, arising out of the filing of such joint income tax returns shall be borne as between my estate and my spouse or my spouse's estate; (ii) as to whom (as between my spouse and my spouse's estate and my estate) shall be entitled to any refund or credit of any such income tax and the interest thereon and (iii) as to whom (as between my spouse and my spouse's estate and my estate) shall be entitled to the benefit, refund

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or credit of any amount paid on account of any declaration of estimated income tax filed by me or by my spouse.

9.06 **Facility of Payment.** If any portion of my estate is distributable to a devisee who is under a legal disability, or in the opinion of my Personal Representative is incapable of properly managing his or her financial affairs, then my Personal Representative may make such distributions directly to such devisee, to a lawful guardian of such devisee, to a custodian selected by my Personal Representative for such devisee pursuant to a Uniform Transfers (or Gifts) to Minors Act or similar applicable law, or may otherwise expend the amounts to be distributed for the benefit of such devisee in such manner as my Personal Representative may consider advisable. The term "lawful guardian" means successively in the order named: (i) the court-appointed conservator of the estate of such devisee, (ii) a parent of such devisee or (iii) the individual having personal custody (whether or not a court-appointed guardian) where no conservator of the estate of the devisee has been appointed.

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9.07 **Compensation of Personal Representative.** My Personal Representative is entitled to receive reasonable compensation for my Personal Representative's services rendered in the administration of my estate. Reasonable compensation for a corporate personal representative will be based upon such corporate personal representative's published fee schedule in effect at the time such corporate personal representative's services are rendered. Such compensation may be paid without prior approval of any court. I do not intend, however, for this provision to preclude a review of the reasonableness of such compensation by a court of competent jurisdiction in an appropriate proceeding.

9.08 **Discharge of Liability.** Upon making any payment or transfer hereunder, my Personal Representative shall be discharged as to such payment or transfer without liability for the subsequent application thereof.

ARTICLE 10
PROVISIONS CONCERNING ESTATE TAXES

If my spouse survives me and exercises her right to disclaim any property passing to her pursuant to Section 5.03 hereof, then all federal and state estate and inheritance taxes, but excluding the federal generation-skipping transfer tax (including penalties and interest, if any) payable by reason of my death shall be paid from the Disclaimer Trust Share, and to the extent possible, none of such taxes shall be paid out of the property designated as the Marital Devise or property otherwise qualifying for the federal or state marital deduction. If my spouse predeceases me, then all such taxes shall be paid from the Residue. I waive any right of reimbursement for, recovery of, or contribution toward the payment of those taxes, except that, to the maximum extent permitted by law, my Personal Representative shall seek reimbursement for, recovery of, or contribution toward the payment of estate taxes attributable to (i) property in which I have a qualifying income interest for life, (ii) property over which I have a power of appointment or (iii) property which is included in my gross estate pursuant to Section 2036 of the Code, and which taxes are not otherwise paid or payable.

ARTICLE 11
GENERAL, ADMINISTRATIVE AND INTERPRETIVE PROVISIONS

11.01 **Spendthrift Protection.** Except as otherwise specifically provided in entity, the Trustee shall not recognize any transfer, mortgage, pledge, hypothecation, anticipation, order or assignment by any beneficiary of such beneficiary's interest in any trust hereunder. The net income and principal of any such trust shall not be subject in any manner to transfer by operation of law except as specifically provided herein, and shall be exempt from the claims of creditors or other claimants, and any orders, decrees, levies, attachments, garnishments, executions and other legal and equitable processes or proceedings to the fullest extent permissible by law. The provisions of this Section shall not prevent the Trustee from making any such payment by depositing the payment in a bank or banking institution to the credit of such beneficiary or from making such payment in any other manner expressly provided for in entity. No power of appointment or power of withdrawal shall be subject to involuntary exercise, but this provision shall not prevent or limit the voluntary exercise of, or transfer pursuant to the voluntary exercise of, any power of appointment or power of withdrawal granted hereunder. Notwithstanding the foregoing, my Personal Representative may not take any action pursuant to this Section which would in any way jeopardize any federal or state marital deduction for property passing at my death.

11.02 **Rule Against Perpetuities.** If a trust created hereunder does not terminate pursuant to the foregoing provisions prior to the expiration of twenty-one (21) years after the death of the last to die of the issue of my parents and my spouse's parents who were living on the date my power to revoke my Will terminated, then such trust shall terminate upon the expiration of such twenty-one (21) year period, and whatever property then remaining in such trust shall be distributed to the person for whose current benefit such trust then subsists. If such trust has more than one current beneficiary, then the Trustee shall distribute the trust property equally among the current beneficiaries of the trust who are non-skip persons (as defined in Section 2613(b) of the Code), or if all of the current beneficiaries are skip persons (as defined in Section 2613(a) of the Code), then the Trustee shall distribute the trust property equally among the current beneficiaries of such trust. The foregoing provisions of this Section shall not apply to (i) any trust to which the rule of perpetuities does not apply under applicable state law and (ii) any trust to which the rule against perpetuities does not apply if the trust so specifies, it being my intent that the rule of perpetuities shall only apply where required by applicable law.

11.03 **Simultaneous Death.** If my spouse and I die simultaneously or in circumstances which make it difficult to determine which of us died first, then I direct that my spouse shall be deemed to have survived me for purposes of this Will. If any other devisee under this Will and I die simultaneously or in circumstances which make it difficult to determine which of us died first, then I direct that such devisee shall be deemed to have predeceased me for the purpose of this Will, and I further direct 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.

11.04 **90-Day Survivorship Requirement.** Notwithstanding the assumptions regarding survivorship as set forth herein, for all purposes of this Will, a descendant of mine who dies no later than ninety (90) days after the date of my death shall be treated as having predeceased me.

12.05 **Ancillary Probate.** If it becomes necessary to have administration of my estate or of any trust or share thereof in any state other than Alabama and my Personal Representative does not qualify to serve, then my Personal Representative may nominate and appoint any person or organization as an ancillary administrator thereof, and may compensate such ancillary administrator for such services. Such ancillary administrator shall complete its administration and make such disposition of the property so administered as my Personal Representative may require, and in so doing shall have the same rights, powers, duties and discretion conferred upon my Personal Representative herein.

11.06 **Accrued and Undistributed Income.** All net income accrued or undistributed at the termination of any interest shall be prorated between the beneficiary whose interest has terminated and the next beneficiary in interest, in accordance with the Alabama Principal and Income Act.

11.07 **Definition of Children, Descendants and Adopted Persons.** As used herein, the terms "child" and "children" are intended to include any persons heretofore or hereafter born to or adopted by me. "Descendants" and "lineal descendants" are intended to include any persons heretofore or hereafter born to or adopted by any child or descendant of mine. Any adopted person and his or her descendants shall be considered descendants of the adoptive parents and of the ancestors of such adoptive parents for all purposes hereunder, whether such adoption occurs before or after the execution of this

Will; provided that such adoption occurs prior to the adopted person attaining fourteen (14) years of age.

11.08 **Definition of Education.** As used throughout this Will, the term "education" includes high school, college, graduate or professional education or specialized or vocational training.

11.09 **Reference to Internal Revenue Code.** As used herein, the term "Code" means the Internal Revenue Code of 1986, as amended from time to time, including any successor statute.

11.10 **Provisions for My Spouse.** The provisions made for my spouse in this Will are in lieu of the homestead allowance, exempt property allowance, family allowance and any and all other rights in my estate, statutory or otherwise.

11.11 **Partial Invalidity.** The invalidity of any devise, term, condition or provision hereof, or the invalidity of any limitation over or interest intended to be given or made hereunder (whether in whole or in part), shall not be considered materially to disturb the plan of distribution created hereunder or to affect the validity of any other devise, term, condition, provision, limitation over or interest given or created hereunder.

11.12 **Construction.** Reference in this Will to any gender includes either masculine, feminine or neuter, as appropriate, and reference to any number includes both singular and plural where the context so permits or requires. Use of descriptive titles for articles and sections in this Will is for the purposes of convenience only and is not intended to restrict the application of those provisions nor the construction of this Will.

[THIS SPACE LEFT BLANK INTENTIONALLY]

I, **DONALD B. BOWERMAN**, the Testator, sign my name to this instrument this 31 day of MAY, 2001, 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.

Donald B. Bowerman

DONALD B. BOWERMAN

We, the undersigned 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, 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.

WITNESSES:

1901 Sixth Avenue North, Suite 2600
Birmingham, Alabama 35203

Debora Anderson

1901 Sixth Avenue North, Suite 2600
Birmingham, Alabama 35203

Penny Hunnell

1901 Sixth Avenue North, Suite 2600
Birmingham, Alabama 35203

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STATE OF ALABAMA }
:
JEFFERSON COUNTY }

Subscribed, sworn and acknowledged before me by **DONALD B. BOWERMAN,** the Testator, and subscribed and sworn before me by Robert Loftin, Delora Anderson and Penny Sumrall, witnesses, this 31 day of May, 2001.

Cathy Humber
Notary Public
My Commission Expires: 12/02/01

CATHY HUMBER NOTARY PUBLIC ALABAMA
[SEAL]

<u>This Document Prepared by:</u>
Robert L. Loftin, III
BALCH & BINGHAM LLP
1901 Sixth Avenue North, Suite 2600
Birmingham, Alabama 35203
205-251-8100

IN RE:	*	**IN THE PROBATE COURT FOR**
THE MATTER OF THE ESTATE OF DONALD B. BOWERMAN, DECEASED	*	**COFFEE COUNTY, ALABAMA**
	*	**CASE NO.: PR-2019- 40**

CERTIFICATE TO THE PROBATE OF WILL

In the matter of the application of **DONALD B. BOWERMAN, JR.** to admit to probate an instrument purporting to be the Last Will & Testament of **DONALD B. BOWERMAN**, deceased.

I Steven E. Blair, Judge of Probate Court of Coffee County, Alabama do hereby certify that the within will has been duly provided, probated and admitted to record and that said Will together with the proof is recorded in the book of Wills 35 Page 286 at Enterprise, Coffee County, Alabama.

This the 29th day of March, 2019.

Steven E. Blair
Judge of Probate
Coffee County, Alabama

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