318
BBS
S.H.

Davidson County WILL
Recvd: 01/07/04 11:41 10pgs
Fees:52.00 Taxes:0.00
20040107-0002586

Last Will and Testament

of

FRANCES E. SIMONS

I, FRANCES E. SIMONS, of Fulton County, Georgia, do make and publish this my Last Will and Testament, hereby revoking all wills and codicils heretofore made by me.

ITEM I

Disposition of Remains and Debts

(a) I wish my body buried at Westover Cemetery, Augusta, Georgia, in the "Elliott Plot." I wish only for a graveside service officiated by a Baptist minister from The First Baptist Church, Augusta, Georgia. The costs thereof, as well as the expenses of my last illness, shall be paid out of my estate.

(b) All of my due and payable debts and any unpaid charitable pledges, whether such pledges are legally enforceable or not, shall be paid out of my estate as soon as practicable.

ITEM II

Family Relationships

As of the date of execution of this Will, I am widowed. As of the date of the execution of this Will, I have one child, FRANCES S. ELLIOTT SIMONS.

ITEM III

Specific Bequest

I give and bequeath the following specific bequests to the following persons:

(a) To my niece, CONSTANCE H. MUNOZ, the oriental four panel wooden screen currently located in my living room, the Japanese Foo Dog resting at the base of the screen currently in my living room, the oriental porcelain cup currently located on the mantle in my living room, the oriental silk painting of two cranes presently in my front foyer, the

alabaster carved bird bookends presently located on top of my china cabinet, my Japanese doll and case presently located in my den and my diamond watch with the black band.

(b) To my brother and sister-in-law, JAMES SEWELL ELLIOT, SR. and MARY GRACE ELLIOT, of Bibb County, Georgia, if they survive me, or to the survivor if only one of them survives me, the sum of One Thousand Dollars ($1,000.00).

(c) To my nephew, JAMES SEWELL ELLIOT, JR., of Bibb County, Georgia, if he survives me, my Steinway piano and seat presently in the living room of my home.

(d) To my nephew and his wife, LESTER FRANKLYN ELLIOT, II and BETSY ELLIOT, of Fulton County, Georgia, if they survive me, or to the survivor if only one of them survives me, my elongated pin with diamond solitaire and the tapestry depicting ladies dancing presently located in my living room.

(e) To my nephew, WALTER GRACE ELLIOT, of Fulton County, Georgia, if he survives me, the Paul Jacoulet oriental painting of a man in a Japanese frame presently located in my back hall of my home.

(f) To my nephew, RANDOLPH SQUIRE ELLIOT, of Winter Park, Florida, if he survives me, my black pearl ring from Japan.

(g) To my nephew, ROBERT BRUCE ELLIOT, of Bibb County, Georgia, if he survives me, my large Sanford McGrail abstract painting located in the back hall of my home.

(h) To my friend, SUSAN CALHOUN, is she survives me, my glass cordial set presently located on the sideboard in my dining room and my elephant statue presently located on top of the bookcase in my den.

(i) To my friend, JEANINE KRENSON, if she survives me, my four sterling and crystal coasters presently located in the cabinet above the laundry area in my home.

ITEM IV

Residuary Bequest

(a) All of the rest, residue and remainder of my property of every kind and description and wherever located, including any lapsed or void legacy or devise (but not including any property over which I may have the power of disposition or appointment), shall be distributed to my daughter, FRANCES S. ELLIOTT SIMONS, of Koloa, Hawaii,

if she survives me. If my daughter, FRANCES S. ELLIOTT SIMONS, should die all of the rest, residue and remainder of my property of every kind and description and wherever located, including any lapsed or void legacy or devise (but not including any property over which I may have the power of disposition or appointment), shall be distributed to my niece, CONSTANCE H. MUNOZ. If my niece, CONSTANCE H. MUNOZ should die and there should be no beneficiary to take the property or the income therefrom, then the property shall be distributed among the persons who would have been entitled thereto under the laws of descent and distribution of the State of Georgia if I had died intestate and unmarried at that time, owning such property in fee simple.

(b) I may leave with this Will a memorandum to my daughter requesting her to distribute to particular persons certain specific items of my tangible personal property that I may own at the time of my death. Although I recognize that such a memorandum is not legally binding, I desire and request that my daughter distribute the property so listed in accordance with the terms and provisions of such memorandum, and that all persons interested in my estate, or named or described in this Item, similarly respect my wishes in this regard.

ITEM V

Tax Payments

All transfer, estate, inheritance, succession and other death taxes which shall become payable by reason of my death, including the generation-skipping transfer tax on any direct skip created by the terms of this Will rather than by a disclaimer, but excluding any other generation-skipping transfer tax and also excluding any additional estate tax imposed pursuant to Section 2032A(c) or Section 2057 of the Internal Revenue Code of 1986, as either may be amended, and all debts and expenses of administration of my estate, whether in respect of property passing under this Will or otherwise, shall, unless otherwise expressly provided elsewhere in this Will, be paid without apportionment from the rest, residue and remainder of my estate, as I wish for the bequests made in Item III to bear no such debts, expenses or taxes. The Executor shall make claim, if and to the extent permitted by law, for death taxes assessed against my estate because of any power of appointment which I may have or because of the inclusion of any qualified terminable interest property in my gross estate, but shall not make claim against any such property which is exempt from Federal generation-skipping transfer taxes to the extent that other qualifying terminable interest property is sufficient to pay such taxes.

ITEM VI

Appointment of Fiduciaries

(a) I hereby constitute and appoint my brother, J. SEWELL ELLIOT, SR., as Executor of this Will. My brother, J. SEWELL ELLIOT, SR., shall have the power to nominate by his Last Will and Testament or while serving as Executor, at any time and from time to time, with or without resigning, one or more individuals or institutions to act as Co-Executor to serve with him or successor Executor should J. SEWELL ELLIOT, SR. die or for any other reason fail or cease to act as Executor hereunder. Any successor Executor so nominated shall also have the power to nominate, while serving as Executor at any time and from time to time, with or without resigning, one or more individuals or institutions to act as Co-Executor or successor Executor if such nomination is during his or her lifetime, provided that any such nomination shall not conflict with any nomination of one (1) or more successor Executors made by a prior Executor. Such power to nominate a Co-Executor or successor Executor shall be exercised by written notice delivered to the designated successor and the court having jurisdiction over the administration of my estate, and such nomination may be revoked by similar notice given at any time before the Executor making such nomination vacates his or her office as Executor. If any Executor should die or for any other reason fail or cease to act as Executor and no successor Executor has been nominated and appointed in accordance with the terms of this paragraph (a), then my daughter, FRANCES S. ELLIOT SIMONS, shall serve as successor Executor hereunder; and if she should die or for any other reason fail or cease to act as successor Executor, then my niece, CONSTANCE H. MUNOZ, shall serve as successor Executor hereunder.

(b) Any corporate fiduciary serving hereunder shall be deemed to include any bank or trust company into which it may hereafter be merged or consolidated.

(c) No successor Executor shall be required to inquire into or audit the acts or doings of any predecessor Executor or to make any claim against her or her estate.

(d) Any successor Executor shall have and may exercise any and all of the powers, privileges, immunities and exemptions herein conferred on my Executor as fully and to the same extent as if such successor Executor had originally been named Executor herein.

(e) Any corporate fiduciary serving hereunder shall receive as compensation for its services as Executor the fees set out in its regularly published fee schedule in effect at the time of my death, as the same may, from time to time, be amended.

(f) Any Executor of this Will may at any time resign by instrument in writing signed by such Executor and delivered to the persons then entitled to the income from my

estate or, if any such persons are then minors or otherwise under legal disability, to their parents or guardians, and, in the case of an Executor, to the court having jurisdiction over the administration of my estate.

(g) If a vacancy occurs in the office of Executor of this Will and there is no other provision for appointing a successor, the persons who are then beneficiaries of my estate (or, if any such beneficiaries are then minors or otherwise under legal disability, their parents or guardians), shall, within sixty (60) days after such office becomes vacant, appoint a successor Executor by written instrument delivered to the retiring Executor, to the Executor being appointed and to the court having jurisdiction over the administration of my estate. Should such persons fail or refuse to appoint a successor within sixty (60) days, then such successor may be appointed by any court having jurisdiction over my estate upon application of any person interested in my estate, or upon application of the retiring Executor. Any successor Executor appointed hereunder shall be a bank or trust company with trust powers and then administering trust assets of at least One Hundred Million Dollars ($100,000,000).

ITEM VII

Definitions and Interpretation

As used herein, the neuter shall include the masculine and feminine, the masculine and feminine shall include each other, and the singular shall include the plural, and vice versa, wherever the context so requires. As used herein, the term "Executor" shall be deemed to include any and all persons serving in such capacities. Whenever the term "Code" is used herein, it shall mean the Internal Revenue Code of 1986, as it may be amended from time to time.

ITEM VIII

Powers of Executor

(a) In the management, care and disposition of my estate, I confer upon the Executor of this Will, and its successors in office, the power to do all things and to execute such instruments as may be deemed necessary or proper, including the powers set out in the Official Code of Georgia Annotated Section 53-12-232, as amended to the date of execution of this Will, which powers are incorporated by reference herein. All such powers may be exercised without order of or report to any court.

(c) The Executor shall not be required to file any inventory or appraisal or any annual or other returns or reports to any court or to give bond.

(d) Whenever the Executor is directed to distribute any property in fee simple to a person who is then under twenty-one (21) years of age, the Executor, acting as Trustee, may hold such property in trust for such person until he or she becomes twenty-one (21) years of age, and in the meantime shall use such part of the income and the principal of the trust as the Executor, acting as Trustee, may deem necessary to provide for the proper support and education of such person. If such person should die before becoming twenty-one (21) years of age, the property then remaining in the trust shall be distributed to the personal representative of such person's estate. The Trustee shall have and may exercise any and all of the powers, privileges, immunities, and exemptions conferred herein upon my Executor.

(e) The Executor may pay from my estate all charges which the Executor deems necessary or appropriate to comply with laws regulating environmental conditions and to remedy or ameliorate any such conditions which adversely affect my estate, and to pay any liabilities, fines or penalties incurred by the Executor personally on account of such conditions, other than any such charges that are directly caused by its own gross negligence or willful misconduct, and to apportion all of such charges among the several bequests and trusts hereunder and the interests of the beneficiaries herein in such manner as the Executor deems fair, prudent and equitable under all other circumstances.

(f) If the Executor hereunder determines that its services in such capacity may expose it to liability under any laws regulating environmental conditions, it may resign upon written notice to the adult beneficiaries of my estate or the adult income beneficiaries of such trust and, in the case of the Executor, to the court having jurisdiction over the probate of my estate. If the Executor hereunder resigns as above provided, then a majority of such adult beneficiaries shall, within sixty (60) days after such resignation becomes effective, appoint a successor Executor by written instrument delivered to the predecessor Executor, to the Executor being appointed and, to the court having jurisdiction over the probate of my estate. Should a majority of such adult beneficiaries fail or refuse to appoint such successor or if there are no such beneficiaries who can act, then the successor Executor shall be appointed by any court having jurisdiction over my estate upon application of any person interested in my estate, or upon application of the resigning Executor.

[THE REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal to this my Will, this 15th day of June, 2001.

Frances E. Simons (SEAL)
FRANCES E. SIMONS

Signed, sealed, published and declared by FRANCES E. SIMONS as and for her Last Will and Testament in our presence and we, at her request and in her presence, and in the presence of each other, have hereunto subscribed our names as witnesses the day and year above set out.

WITNESSES:

ADDRESSES:

WACHOVIA BANK, N.A.
WEST PACES FERRY BRANCH
3393 NORTHSIDE PARKWAY
ATLANTA, GA 30327

WACHOVIA BANK, N.A.
WEST PACES FERRY BRANCH
3393 NORTHSIDE PARKWAY
ATLANTA, GA 30327

STATE OF GEORGIA

COUNTY OF Fulton

AFFIDAVIT

Before me, the undersigned authority, on this day personally appeared the persons named below as testatrix and witnesses, known to me to be the testatrix and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of such persons being by me duly sworn, the testatrix, declared to me and to the witnesses in my presence that such instrument is her Last Will and Testament and that she had willingly made and executed it as her free act and deed for the purposes therein expressed. The witnesses, each on his or her oath, stated to me in the presence and hearing of the testatrix that the testatrix had declared to them that the instrument is her Last Will and Testament and that she executed same as such and wanted each of them to sign it as a witness; and upon his or her oath each witness stated further that he or she did sign the same as witness in the presence of the testatrix and at her request, that she was at that time fourteen (14) years of age or over and was of sound mind and that each of said witnesses was then at least fourteen (14) years of age.

Frances E. Simons
FRANCES E. SIMONS

Witness

Witness

Sworn to and subscribed before me by the above-named testatrix, and sworn to and subscribed before me by the above-named witnesses, this 15th day of June, 2001.

(SEAL)

Karen Hatcher
Notary Public

Date of Expiration of Commission

Karen Hatcher
Notary Public-Cobb County, Georgia
My Commission Expires April 22, 2004

661515 v4

STATE OF GEORGIA
PROBATE COURT OF
FULTON COUNTY

SS.

I, Pearlie E. Bashir, Clerk, Probate Court of said County, do hereby certify that I have compared the foregoing copy of Last Will and Testament of Frances Elliott Simons, deceased; Petition To Probate Will In Solemn Form and Order; Executor's Oath; Letters Testamentary (Relieved of filing return) issued to J. Sewell Elliott, Sr. with the original record and files thereof, now remaining in this office, and the same is a correct transcript therefrom, and of the whole of such original record and file, and that said Court is a Court of Record.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Probate Court this the 9th day of October, 20 03.

Clerk, Probate Court

STATE OF GEORGIA
PROBATE COURT OF
FULTON COUNTY

SS.

I, Pinkie T. Toomer, Judge of the Probate Court of said County, and presiding Magistrate of the Probate Court thereof, do hereby certify that the above attestation, subscribed by Pearlie E. Bashir as Clerk of said Court, is sufficient and in due form of law, and that his signature thereto is genuine, and that full faith and credit are due to all of his official acts.

WITNESS my hand and official signature, this 9th day of October, 20 03.

Judge of the Probate Court

STATE OF GEORGIA
PROBATE COURT OF
FULTON COUNTY

SS.

I, Pearlie E. Bashir, Clerk, Probate Court of said County, do hereby certify that Pinkie T. Toomer, whose name is subscribed to the preceding Certificate, is the presiding Magistrate of the Probate Court of the County of Fulton; duly elected, sworn and qualified, and that the signature of said Magistrate to said Certificate is genuine.

WITNESS my hand and official signature, this 9th day of October, 20 03.

Clerk, Probate Court

Revised 11/99

STATE OF TENNESSEE

I, **RICHARD R. ROOKER,** Clerk of the Circuit Court for Davidson County, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the Last Will and Testament heretofore entered in the SEVENTH Circuit Court for Davidson County, Tennessee, on the 22 day of OCTOBER , 2003 , in the Case Number 03P1669 SIMONS, FRANCES E. deceased,
as same remains of record in Vol. 5516 , Page 1291120 of the Minutes of said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the 18 day of DECEMBER in the year two thousand three and in the 227th year of American Independence.

RICHARD R. ROOKER, Clerk,

By _____ Deputy Clerk

SEAL

RICHARD R. ROOKER
CIRCUIT COURT CLERK