CV2008-000008

Davidson County WILL
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BY

LAST WILL AND TESTAMENT

OF

ERIN C. ABERNATHY

I, **ERIN C. ABERNATHY**, a resident and citizen of the State of Tennessee, being of sound and disposing mind and memory do make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils heretofore made by me.

At the time of execution of this Will, I am not married. I have three children, **JAMES DAVID ABERNATHY, JR., MARY JANE ABERNATHY BAIRD,** and **ROBERT WEBSTER ABERNATHY**.

ITEM I

DEBTS, COST OF ADMINISTRATION AND TAXES

I direct that all my just debts, funeral expenses and costs of administration be paid out of my general estate. I direct that all estate and inheritance taxes which may be assessed or imposed with respect to my estate and property passing outside of my estate be paid first out of my residuary estate.

ITEM II

PERSONAL EFFECTS

I may prepare a written memorandum listing certain items of tangible personal property which I wish certain persons to have. I request that my wishes, as set forth in any such memorandum which is found with this Will, be observed. If no such memorandum shall be found with this Will following my death, then all of my tangible personal property shall be distributed as provided in the balance of this Item II.

I give all my furniture, clothing, silver, china, jewelry, books, pictures, automobiles, all articles of personal or household use or ornament (including all policies

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of insurance on such tangible personal property) and other similar tangible personal property which I may own at the time of my death, to my children, in equal shares, the division and distribution of such property to be determined in the sole and absolute discretion of my Executor. I direct that any expenses incurred in safeguarding or delivering such property be paid from my estate as an administrative expense thereof.

In the event none of the foregoing survive me, I give all of said personal property as part of my residuary estate.

My Executor may sell all or any part of said property in which event the proceeds of such sale shall be distributed to the beneficiaries set forth in this ITEM II of my Will.

ITEM III

RESIDUARY

All of the rest, residue and remainder of my estate, both real and personal property, shall be distributed to my three children, **JAMES DAVID ABERNATHY, JR.**, **MARY JANE ABERNATHY BAIRD**, and **ROBERT WEBSTER ABERNATHY**, in equal shares.

ITEM IV

GENERAL FIDUCIARY POWERS

Without diminishing or restricting the powers vested by law or elsewhere in my Will, and subject to all of the provisions of my Will, I authorize and empower my Executors and Trustees, sometimes hereinafter referred to as Fiduciary or Fiduciaries, without having to obtain any judicial authorization or approval, and in the application of their best judgement and discretion on behalf of the beneficiaries of my Will, to exercise all or any of the following powers:

(1) INCORPORATION OF STATE LAW POWERS. I authorize my Fiduciaries to exercise the powers specifically enumerated in Section 35-50-110, Tennessee Code Annotated. These powers, as set out in this statute on the date of the execution of my Will, are granted, notwithstanding that this statute may have been amended or repealed at the time of my death. Insurance proceeds payable to my estate

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or which become part of my probate estate may, but need not be used by my Executor or other fiduciaries for the payment or discharge of my debts, taxes and administrative expenses.

(2) POWER TO ALLOCATE ASSETS. My Executor shall, in his or her sole discretion, make reasonable allocations of the property comprising my estate without being required to apportion each individual asset in satisfying any bequest made herein or in allocating the residue of my estate as herein directed. My Executor shall not, however, exercise the discretion given to the Executor in this paragraph in a manner that will result in increasing either the federal estate tax or state inheritance tax liability of my estate.

(3) TAX ELECTIONS AND CONSENTS. In addition to all other powers, and notwithstanding any other provision of my Will, my Executor shall have full discretion to claim the deductions allowable to my estate for debts, expenses, taxes, claims and losses, either for federal income tax or estate tax purposes, in such manner as my Executor shall deem advisable, in order to minimize the total state and federal income and death taxes payable by my estate or as a result of my death. Such allocation may be made regardless of whether its effect is to favor one beneficiary or class of beneficiaries over another, or whether such expenses shall be charged to income or principal for distribution purposes. In addition, my Executor shall also be authorized, in his sole and absolute discretion, to consent to or oppose, as a shareholder, any election by any corporation pursuant to the provisions of any federal or state tax statutes or regulations.

(4) GENERATION-SKIPPING TRANSFER TAX ELECTIONS. My Executor shall also be authorized, in his or her sole discretion and without court approval, to allocate any federal exemptions from the federal generation-skipping transfer tax to any property with respect to which I am the transferor for purposes of this tax, regardless of whether such property is included in my probate estate, or to exclude any such property from such allocation.

(5) WAIVER OF INVENTORY AND ACCOUNTING. Pursuant to Tennessee Code Annotated, Sections 30-2-301 and 30-2-601, I excuse the requirements for making and filing an inventory and all court accountings of my probate estate. However, my Executor shall compile and furnish an inventory and an accounting of my estate to any beneficiary who may so request. The Trustees of any trust created under this Will shall not be required to file any accountings or inventories with any court. However, the Trustee shall comply and furnish an inventory and accounting of the trust to any current income beneficiary who may so request.

(6) RIGHTS AND DUTIES OF SUCCESSOR FIDUCIARY AND APPORTIONMENT OF RESPONSIBILITIES. Any successor Fiduciary, whether individual

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or corporate, shall succeed to all of the rights and duties of his or her predecessor, but shall not be accountable for any of the acts or transactions of such predecessor. Further, if there is more than one Fiduciary serving, they may apportion their responsibilities among themselves in any manner they deem advisable, including but not limited to the authority to sign checks of the estate or trust.

(7) AUTHORITY TO ADMINISTER REAL PROPERTY. The Executors shall have full authority and discretion to convey, improve, lease, encumber, or in any other manner deal with and administer any real property comprising an asset of my Estate, without the approval of any court, and without the joinder of any beneficiary, or the disclosure of the identity of any beneficiaries. Furthermore, for purposes of Tennessee Code Annotated, Section 31-2-103, all such real property shall be deemed to be personal property following my death, subject to sale by the Executors acting without joinder of any beneficiary or court approval, for the purpose of facilitating the distribution of my estate among the beneficiaries and of my Will, as well as for the purpose of paying taxes, administrative expenses, and any other expenses or debts of my estate, without first being required to exhaust all other personal property of my estate. Any real estate conveyed to or owned by any trust created under this Will may be sold, mortgaged, leased, transferred, encumbered, conveyed, or otherwise dealt with in any manner by the trustee of the trust without the joinder of any beneficiary and without the approval of any court. I specifically authorize, but do not require, my Executors, in their sole discretion, to pay all of the expenses of maintenance and repair of any real property of my estate during administration of my estate.

(8) PAYMENTS TO INCAPACITATED BENEFICIARIES AND THIRD PARTIES. Payment of any property under this Will or any trusts created hereunder to a beneficiary who is under some legal, mental or physical disability, unless otherwise provided for under the terms of this will, may be made by the Trustees or Executors directly to such beneficiary or, in the sole discretion of the Trustees or Executors, may be made to such beneficiary's conservator or legal guardian in whatever jurisdiction appointed, or to a custodian for the beneficiary's benefit under the applicable state Uniform Transfer to Minors Act; and the receipt of the one to whom payment is made shall be a full release and discharge in respect of any property so paid or applied, even though the recipient may be a Trustee hereunder. Further, the Executors or Trustees shall be authorized to make any payments of income or principal to third parties for the benefit of any beneficiary who would be entitled to receive such payments directly. However, it is my intention that a beneficiary's interest in any trust created hereunder shall in no way affect his or her entitlement to any disability benefits, governmental benefits (including Social Security benefits, Medicare and Medicaid), or benefits from any private agency providing services or benefits to elderly, handicapped or disadvantaged persons. Rather, it is my intention

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that the assets of a trust shall be used only to supplement all such benefits available to a beneficiary.

(9) EMPLOYMENT AND COMPENSATION OF AGENTS. The Executors and/or Trustees shall be specifically authorized, in their sole discretion, to employ and to pay the compensation of such agents, accountants, custodians, experts and counsel, legal, investment or otherwise, as they shall deem advisable, and to delegate discretionary powers to, and rely upon information furnished by, such individuals or entities. Compensation paid for such services, as well as other administrative expenses and compensation which may be paid to the Trustees and/or Executors for their services, shall be paid out of trust or estate assets, as applicable, in such manner as the Trustees and Executors shall deem advisable.

ITEM V

DISTRIBUTIONS TO BENEFICIARIES UNDER AGE 21

Unless otherwise provided for under other provisions of this Will, shares passing under the terms of this Will or any trust created under this Will to any beneficiary who has not attained the age of twenty-one (21) years shall be retained in trust pending his or her respective attainment of this age, during which time the Trustee may pay to such beneficiary or apply for his or her benefit so much of the net income and principal of his or her respective share as the Trustee shall deem advisable, to provide adequately and properly for the maintenance, support, health and education of said beneficiary. Any income not so distributed shall be accumulated, added to the principal of said beneficiary's share, and reinvested thereafter. As each said beneficiary respectively attains the age of twenty-one (21) years, he or she shall receive outright the entire balance of his or her share. Should any beneficiary die prior to attaining the age of twenty-one (21) years, that beneficiary's share shall be distributed pro rata among his or her children. In the event a beneficiary dies prior to attaining the age of twenty-one (21) years, without children surviving, the beneficiary's share shall be distributed to his or her estate. If the amount to be placed in a particular trust under this Article is $50,000 or less, then the Trustee may elect not to fund the trust or may terminate it and distribute the assets to a custodian (chosen by the Trustee) under the Tennessee Uniform Transfers to Minors.

ITEM VI

FIDUCIARIES

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I appoint **JAMES DAVID ABERNATHY, JR.** as Executor of my Last Will and Testament. If said party shall be unable or refuse to serve for any reason, then I appoint **MARY JANE BAIRD AND ROBERT WEBSTER ABERNATHY** as co-Executors.

If I have appointed a fiduciary who is not a resident of the State of which I am a resident of at the time of my death, then I empower those persons whom I have so appointed to appoint a duly qualified person or corporation who is a resident of said State to act as co-fiduciary with that person or those persons whom I have so appointed.

I direct that all fiduciaries named in this Will and all successors or substitutes appointed pursuant to the terms of this Will be not required to execute bond.

I further direct that my fiduciaries not be required to make reports to any court, but said fiduciaries shall render to the income beneficiaries of all trusts created hereunder statements of account of receipts and disbursements at least annually. Statements to minor beneficiaries shall be sent to the legal guardian, if any, otherwise to the parent or any other person with whom the beneficiary may be residing.

If a fiduciary named herein shall resign, or for any other reason cease to act as fiduciary hereunder, or if there is not a fiduciary or successor fiduciary appointed in this will, then the beneficiary or a majority of the beneficiaries to whom or to whose use the current net income of the trust or estate is at the time authorized, required or permitted to be paid or applied and who shall at the time be at least eighteen (18) years of age, and not incapacitated, may, by written instrument delivered to their appointee, appoint as successor Trustee or Executor, as the case may be, any person or bank having power to act as such fiduciary and organized under the laws of the United States and having capital and surplus of not less than One Hundred Million Dollars ($100,000,000.00). If no beneficiary is qualified to appoint a substitute, a majority of the conservators and/or guardians of the said beneficiaries shall be authorized to make such appointment.

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IN WITNESS WHEREOF, I have hereunto subscribed my name in Nashville, Tennessee, this 3 day of August, 2004, to this my Last Will and Testament, and have also initialed each of the pages for identification.

Erin C. Abernathy
ERIN C. ABERNATHY

Signed, published and declared as the Last Will and Testament of **ERIN C. ABERNATHY**, in the presence of us, the undersigned, who at the request of and in the sight and presence of **ERIN C. ABERNATHY**, and in the sight and presence of each other, have subscribed our names thereto as attesting witnesses on this the 3rd day of August, 2004.

P. Amy Bailey
WITNESS

437 Victorian Ave. Nashville Tn
ADDRESS

Pamela Smith
WITNESS

Nashville TN
ADDRESS

Lesa H. Sharp
WITNESS

126 Jackson Park Dr. Franklin TN
ADDRESS

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STATE OF TENNESSEE *
COUNTY OF DAVIDSON *

We, the undersigned, after first being duly sworn or affirming, make oath or affirm that the foregoing Last Will and Testament consisting of 7 pages, this page not included, on the 3rd day of August, 2004, was signed by **ERIN C. ABERNATHY**, as and for and at that time acknowledged, published and declared as the Last Will and Testament of **ERIN C. ABERNATHY**, in the sight and presence of we the undersigned and we in each other's presence have subscribed our names as attesting witnesses on this the 3rd day of August, 2004, and we further make oath or affirm that **ERIN C. ABERNATHY** was of sound mind and disposing memory and not acting under the fraud, menace or influence of any person and was more than eighteen (18) years of age; and that each of the witnesses is more than eighteen (18) years of age.

J. Clay Bailey

Pamela Smith

Leon N. Shore

STATE OF TENNESSEE
COUNTY OF DAVIDSON

On this 3 day of August, 2004, before me personally appeared J. Clay Bailey, Pamela Smith, and Leon N. Shore, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

WITNESS my hand, at office, this 3 day of August, 2004.

NOTARY PUBLIC

MARGARET L. SAYLOR
NOTARY PUBLIC
AT
LARGE
DAVIDSON COUNTY, TENN.

MY COMMISSION EXPIRES: 10/2/06.

H:\LHS\Wills

STATE OF MISSISSIPPI

CHANCERY COURT OF SUNFLOWER COUNTY 9TH JUDICIAL DISTRICT

I, PAULA S. SYKES , Chancery Clerk of SUNFLOWER County, Mississippi, and keeper of the records and seal thereof, hereby certify that the documents attached hereto one true copies of the file IN THE MATTER OF THE ESTATE OF ERIN C. ABERNATHY, DECEASED, being a total of 28 pages, as the same appears of record on file in Chancery Cause No. CV2008-000008 in Indianola, Mississippi.

(SEAL)

Paula S. Sykes
Chancery Clerk

I, Jane R. Weathersby, Chancellor of the Sunflower Chancery Court, 9 th Judicial District of the State of Mississippi, do hereby certify that Paula S. Sykes whose name is above written and subscribed, is and was at the date thereof Clerk of said court, duly elected and sworn, and keeper of the records and seal thereof, and that the above certificate by her made, and her attestation or record thereof, is in due form of law.

January 18, 2008.

Jane R. Weathersby
Chancellor

I, Paula S. Sykes, Chancery Clerk of Sunflower County,Mississippi, and keeper of the seal thereof, do hereby certify that the Honorable Jane R. Weathersby, whose name is within written and subscribed was on the 18 day of January 18,2008, and now is Chancellor of said Court and duly holds that office according to the laws of the State of Mississippi, and that I am well acquainted with her handwriting and official signature and know and certify the same within written to be his.

In testimony whereof I hereby sign my name and affix the seal of said court at the City of Indianola in said state on this 18 day of January ,2008.

(SEAL)

Paula S. Sykes
Chancery Clerk

By _____ ,D.C.

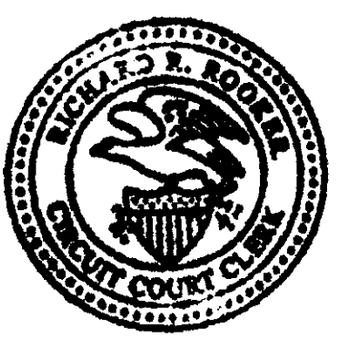
STATE OF TENNESSEE

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 01 day of MARCH , 2008 , in Case Number 08P533 between ABERNATHY JR., JAMES DAVID Petitioner, and ABERNATHY, ERIN C. Respondent, as same remains in the records of said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the 02 day of APRIL 2008

RICHARD R. ROOKER, Clerk,

SEAL



By _____

Deputy Clerk