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Davidson County WILL
Recvd: 12/23/08 12:08 11 pg
Fees:57.00 Taxes:0.00
20081223-0122332

# Last Will and Testament

OF

**POLLY H. BERRY**

I, **Polly H. Berry**, a resident of and domiciled in Nashville, Davidson County, Tennessee, do make, publish and declare the following to be my Last Will and Testament, hereby revoking all prior wills and codicils made by me.

## ARTICLE I

## DEFINITIONS

1.1 **Spouse.** I am a widow.

1.2 **Children.** I have two children, **Howard S. Berry** and **Holly Patterson**; and I refer to them as "my children" in this will.

1.3 **Fiduciary.** The term "fiduciary" means the Executor serving at any time under this will and includes successors.

1.4 **Singular and Gender Usage.** Any use of a specific gender includes the other, and any use of the singular includes the plural when such meaning is appropriate.

1.5 **Captions.** The captions contained in this will are inserted solely as a matter of convenience, and in no way define, limit, or describe the scope of any provision of the will or the intent thereof.

## ARTICLE II

## FIDUCIARIES

I appoint **Howard S. Berry**, currently of Nashville, Davidson County, Tennessee, and **Holly Patterson**, currently of Hendersonville, Sumner County, Tennessee, to serve as Co-Executors of my will. If one of them predeceases me, fails to qualify or ceases to serve, the remaining one may serve alone.



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## ARTICLE III

## PROVISIONS RELATIVE TO FIDUCIARIES

3.1 **Bond.** No bond is required of any fiduciary appointed under this will or by a court.

3.2 **Resignation.** Each fiduciary serving under this will may resign at any time by giving written notice of the resignation to any remaining fiduciary, to any successor fiduciary or to the court having jurisdiction to appoint a successor fiduciary.

3.3 **Appointment of Successor Fiduciary.** If there is no fiduciary serving, the beneficiaries of the estate may appoint a fiduciary to serve.

3.4 **Appointment of Additional Fiduciary.** If at any time my fiduciaries desire to have additional fiduciaries (acting unanimously if more than one), such fiduciaries shall have the power to appoint such other person or bank as such fiduciaries may desire to serve with them as co-fiduciary, including any fiduciaries that may be necessary for ancillary administration of my estate.

3.5 **Action by Beneficiaries.** Any action to be taken by the beneficiaries under this Article is valid if taken by the beneficiaries of the estate who at any time represent a majority in interest in the estate. Any beneficiary who is a minor or who is under other legal disability shall be represented by such beneficiary's parent or duly appointed guardian.

3.6 **Indemnity of Fiduciary.** It is my desire that the fiduciary exercise discretion without fear of incurring a liability or expense. Therefore, unless the fiduciary acts capriciously or arbitrarily, my estate shall indemnify the fiduciary for each monetary expense (including attorney's fees) incurred, expended or arising from the exercise of such discretion.

3.7 **Fiduciary Compensation.** My fiduciary may receive reasonable compensation for services rendered.

3.8 **Settlement of Accounts on Vacating Office.** If a fiduciary ceases to serve, except where an individual fiduciary dies,



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the fiduciary shall file with each other fiduciary, including successors, a settlement of the accounts and an inventory of the estate. The expense of the settlement and inventory shall be paid by the estate. The fiduciary ceasing to serve shall deliver the estate to the successor or remaining fiduciary.

3.9 **Nonresident Fiduciary.** Should the state of my domicile at the time of my death require at least one (1) fiduciary be a resident of the state of my domicile, the named fiduciary may appoint a fiduciary to meet this requirement.

**ARTICLE IV**

**PAYMENT OF DEBTS, EXPENSES, AND TAXES**

4.1 **Debts.** My fiduciary shall pay all my lawful debts, except as provided in Paragraph 4.2. If permitted by law, my fiduciary may pay a debt without requiring the creditor to file a claim. I suggest that my fiduciary consult with the attorney for my estate before paying any debt.

4.2 **Encumbered Property.** If any interest in property passing under this will or otherwise by reason of my death shall be encumbered by a mortgage or lien or shall be pledged to secure any obligation (whether such interest in property is owned by me individually or jointly), the devisee, legatee, joint owner, or beneficiary shall take such interest in property subject to all encumbrances existing at the time of my death and shall not be entitled to payment of such obligation from my estate. Provided, however, if the creditor files a claim against my estate so that my fiduciary must pay the debt, my fiduciary shall collect the amount my estate paid to the creditor from the recipient of the property.

4.3 **Funeral and Administration Expenses.** My fiduciary shall pay my funeral expenses, including the cost of a grave marker, and the expenses of administering my estate as soon as possible after my death, including any expenses of ancillary administration in another state.

4.4 **Taxes.** All estate and inheritance taxes including interest and penalties, if any, together with all administration expenses, payable in any jurisdiction by reason of my death,



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(including those taxes and expenses payable with respect to assets which do not pass under this will,) shall be paid out of and charged generally against the principal of my residuary estate, without apportionment. I waive any right of reimbursement for, recovery of, or contribution toward the payment of those taxes and administration expenses, except my Executor shall, to the maximum extent permitted by law, seek reimbursement for, recovery of, or contribution toward the payment of any increase in federal or state estate tax attributable to property in which I have a qualifying income interest for life or over which I have a power of appointment, or which is included in my gross estate by reason of Section 2036 of the Internal Revenue Code of 1986, as from time to time amended, and which is not otherwise paid or payable. Any generation-skipping tax resulting from a transfer occurring under this will shall be charged to the property constituting the transfer in the manner provided by applicable law. My Executor may make such tax elections as deemed appropriate by my Executor.

**ARTICLE V**

**SPECIFIC BEQUESTS**

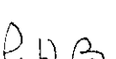
**AND**

**DISTRIBUTION OF TANGIBLE PERSONAL PROPERTY**

5.1 **Specific Bequests.**

I give and bequeath certain items of my personal and household effects to those persons designated in a separate writing that may be in existence at the time of my death, which will be written entirely in my own handwriting and signed and dated by me, and which shall describe these items and the legatees with reasonable certainty. If no separate writing or list is found within thirty (30) days after my Executor's qualification, it shall be presumed that no such writing exists, and any subsequently discovered writing or list shall be ignored. In the event any person named in such separate writing shall predecease me, then the bequest made to such person shall lapse and become null and void. If any item is not found among my possessions after my death, my executor is to




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consider that the item has been disposed or destroyed prior to my death and may then disregard the gift of such item.

5.2 **Remaining Tangible Personal Property.** I give all my remaining tangible personal property that I own at my death that are not specifically bequeathed in a separate writing, including any household furniture and furnishings, automobiles, books, pictures, jewelry, art objects, hobby equipment and collections, wearing apparel, and other articles of household or personal use or ornament, to my children, or if one predeceases me, to the survivor.

5.3 **Expenses.** All the cost of safeguarding, insuring, taking, and storing my tangible personal property before its distribution and of delivering each item to the place of residence of the beneficiary of that item shall be deemed to be expenses of administration of my estate.

5.4 **Disputes.** My Executor shall have the absolute discretion to resolve any disputes regarding the division of personal property.

**ARTICLE VI**

**SPECIFIC DEVISE AND**

**DISTRIBUTION OF RESIDUARY ESTATE**

6.1 **Specific Devise.** I give, bequeath and devise to my son, **Howard S. Berry**, my real property located at 100 Diane Court, Nashville, Davidson County, Tennessee. If my son predeceases me, this devise shall lapse and the real property shall become part of my residuary estate.

6.2 **Residuary Estate.** All the rest, residue and remainder of my property real and personal, and wheresoever situated, including all lapsed bequest and devises, but not including any property over which I have power of appointment, I give, bequeath and devise in substantially equal shares to my children, **Howard S. Berry** and **Holly Patterson,** or if one predeceases me, all to the survivor. If both of my children predecease me, I give bequeath and devise my residuary estate to my surviving grandchildren.



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## ARTICLE VII

## MISCELLANEOUS PROVISIONS

7.1 **Disposition of Assets.** I authorize the Executor, without the order of any court, to sell any of my real estate or personal property not specifically given by me at public or private sale, without the joinder of any beneficiary, in the manner and on the terms and for the price as may seem best; and on each sale of real estate, the proceeds are to be treated as forming part of my estate to pay administrative costs, taxes, and any remaining amounts shall become part of my residuary estate.

7.2 **Waiver of Inventory Reports and Appraisal.** I authorize my Executor to administer and settle my estate without the necessity of filing an inventory, making any report, accounting, or final settlement with any court to the extent permitted by law. I expressly waive appraisal of my estate in the event an appraisal is required by law. The fiduciary's only responsibility for statements and accountings shall be to furnish a complete final accounting to the beneficiaries of my residuary estate if such beneficiaries are different than my fiduciary.

7.3 **Discretionary Powers.** In addition to and not in limitation of all common law, any fiduciary appointed under this will has each power, duty, and discretion which is set forth in this will, as well as each duty, power or discretion contained in Tennessee Code Annotated, Section 35-50-110 as it exists at the time of the execution of this will, which section is incorporated herein by reference, the Executor is granted the specific discretionary power to make distribution in cash, or in kind, or partly in each, even if shares are composed differently and to allocate different kinds of disproportionate shares of property or undivided interests in property among the beneficiaries and to determine the value of any property distributed in kind.

7.4 **Ancillary Administration.** If I own real estate located outside the state of my domicile or if ancillary administration of my estate is needed for any other reason, I appoint my domiciliary Executor to qualify in such other jurisdiction as my Executor in



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such jurisdiction. If my domiciliary Executor is unable or unwilling to qualify, I appoint as my Executor in such other jurisdiction the person or persons selected by my domiciliary Executor. The ancillary administrator is not required to post bond, file inventories or make reports to any court and has the same powers as my domiciliary Executor. As quickly as the ancillary administrator completes the ancillary administration, the net assets from the ancillary administration are to be delivered to my domiciliary Executor.

7.5 **Real Estate.** Any real property which I own at my death is to be part of my probate estate and treated as personalty for administrative purposes.

7.6 **Life Insurance.** The proceeds of any life insurance payable to my Executor or my estate are free from the claims of creditors. The proceeds paid to my Executor are to be held and distributed as provided by the terms of this will. My Executor may use any portion of such proceeds as my Executor deems advisable for the payment of debts, expenses and taxes, but only if my Executor thinks such use of the proceeds is in the best interest of my spouse or children.

7.7 **Casualty Insurance.** Each insurance policy covering an item of property passing under this document passes with the property. The recipient is not to be charged for any unearned premium already paid. If an item of property passing under this will has been destroyed or damaged, and such item of property was specifically listed on the insurance policy, the insurance proceeds recovered or recoverable are to be paid in place of the destroyed item and in addition to the damaged item. However, this shall not apply if an item has been disposed of or destroyed prior to my death.

7.8 **Spendthrift Provision.** Prior to distribution, no interest of any beneficiary in the corpus or income of my estate, as distributed in any Article of this will, shall be subject to assignment, alienation, pledge, attachment, or claims of creditors



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of such beneficiary, including the claims of any divorced spouse for alimony or support payments, and may not otherwise be voluntarily or involuntarily alienated or encumbered by any beneficiary and the same shall not be subject to be taken by beneficiary's creditors by any process whatsoever.

7.9 **Construction.** I direct that should any clause in this will be construed contrary to state laws such clause shall be construed to conform to state law in the implementing of this my Last Will and Testament according to my expressed desires.



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IN WITNESS WHEREOF, I have hereunto subscribed my name to this my Last Will and Testament, consisting of this and eight (8) preceding typewritten pages and for the purpose of identification have initialed each such page, all in the sight and presence of the persons witnessing it at my request on this 23 day of March, 2000, at Nashville, Tennessee. In accordance with Tennessee Code Annotated, Section 32-2-110. I have requested these witnesses to make the Affidavit which is attached to this Last Will and Testament.

Polly H. Berry
Polly H. Berry, Testatrix

**ATTESTATION CLAUSE**

On the date last above written, we saw **Polly H. Berry** in our presence, sign the foregoing instrument at its end. She then declared it to be her Last Will and Testament and requested us to act as witnesses to it. We then, in her presence and in the presence of each other, signed our names as attesting witnesses, believing her at all times herein mentioned to be of sound mind and memory and not acting under constraint of any kind.

_____ Residing at Suite 300, 101 Church St.
Nashville, TN 37201

_____ Residing at [illegible]



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**AFFIDAVIT OF WITNESSES**

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

Alicia M. Riggans and Phyllis Holley

being severally duly sworn, depose and say that:

We are acquainted with **Polly H. Berry**, who executed this annexed Last Will and Testament, consisting of nine (9) pages, dated March 23, 2000, at Nashville, Tennessee, by subscribing her name at the end thereof in the presence and sight of each of us.

At the time of subscribing such Last Will and Testament, **Polly H. Berry** declared the instrument so subscribed by her to be her Last Will and Testament and we thereupon signed our names as witnesses at the end of such instrument at her request and in her presence and sight, and in the presence and sight of each other.

At the time of executing such Last Will and Testament, **Polly H. Berry** was over the age of eighteen (18) and in our opinion was of sound mind, memory and understanding and not under any restraint or in any respect incompetent to make a Last Will and Testament.

This Affidavit is made at the request of **Polly H. Berry**.

The annexed Last Will and Testament was examined by the undersigned at the time this affidavit was made.

**SWORN TO AND SUBSCRIBED** before me, this 23 day of March, 2000.

Colleen C MacGa
Notary Public

My Commission Expires: 1/25/03.

**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 23 day of SEPTEMBER , 2008 , in Case Number 08P1516 between BERRY, HOWARD S ET.AL Petitioner, and BERRY, POLLY H 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 04 day of DECEMBER 2008

**RICHARD R. ROOKER,** Clerk,

SEAL 

By _____
Deputy Clerk