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LAST WILL AND TESTAMENT

OF

BETTY M. KATES

I, **BETTY M. KATES**, of Davidson County, Tennessee, being of sound and disposing mind and memory, make, publish and declare this to be my Last Will and Testament, and revoke all Wills and Codicils I have previously made.

ITEM I

1.1 I direct my personal representative to pay from my estate all of my legal debts, except as otherwise provided in Paragraph 1.3, funeral expenses and the costs of administering my estate.

1.2 All transfer, estate, inheritance, succession and other death taxes which shall become payable by reason of my death, whether in respect of property passing under this Will or otherwise [exclusive of any tax imposed as a result of section 2041 or 2044 or Chapter 13 or Chapter 14 of the Internal Revenue Code of 1986, as amended ("Code"), or a corresponding provision of state law], shall be paid out of my residuary estate as an administration expense, without apportionment; except in no event shall any such taxes be paid from property which qualifies for the federal estate tax marital or charitable deduction.

1.3 In the event that any property or interest in property passing under this Will or by operation of law or otherwise by reason of my death (other than as part of my residuary estate) shall be encumbered by a mortgage or lien or shall be pledged to secure any obligation (whether the property or interest in property so encumbered or pledged shall be owned by me jointly or individually), it is my intention that such indebtedness shall not be charged to or paid from my estate, but that the devisee, legatee, joint owner taking by survivorship or beneficiary receiving such property or interest in property shall take it subject to all encumbrances existing at the time of my death.

ITEM II

2.1 I am married to **CHARLES R. KATES** whom I hereinafter refer to as my spouse. We have one child, **DANIELLE A. KATES ("DANIELLE")**. I have two children from a prior marriage: **SAMUEL CRAIN ("SAMUEL")** and **MELODI CRAIN ("MELODI")**. Unless otherwise specified in a particular paragraph, when I use the term "my child," "a child of mine," "my children," "children of mine" or a phrase having a similar meaning I am referring to all of the three above named children. Similarly, unless otherwise specified in a particular paragraph, when I use the term "my issue," "issue of mine" or a phrase having a similar meaning, I am referring to all of the three above named children, and their respective issue.

2.2 I may prepare a letter or other written document either in my own handwriting or signed by me or both addressing the distribution of certain items of my tangible personal property. If I prepare this document I will keep it with my Will. If my personal representative finds this document, it is my desire that the wishes expressed in such document be carried out. Unless otherwise provided in the document, any bequest is contingent upon my owning the item or items bequeathed at my death and upon the recipient surviving me.

2.3 I bequeath in fee simple to my spouse, if my spouse shall survive me, all of my tangible personal property and effects which I own at my death, other than those items that pass pursuant to Paragraph 2.2 above.

2.4 If my spouse shall predecease me, then all of my tangible personal property and effects which I own at my death, other than those items that pass pursuant to Paragraph 2.2 above, shall pass in fee simple, per stirpes and free of trust to those of my issue who shall survive me.

2.5 If my spouse shall survive me, I give and bequeath to my spouse a sum equal to the minimum amount necessary to reduce my federal estate tax to the lowest possible amount (provided use of the state death tax credit does not require an increase in the state estate taxes paid) after taking into consideration my adjusted taxable gifts and the value for federal estate tax purposes of the aggregate of all items in my gross estate which (whether by reason of any other provision of this Will other than this paragraph or otherwise than hereunder) pass or have passed to my spouse in a form which qualifies for the estate tax marital deduction. For the purpose of establishing the sum disposed of by this paragraph the values finally fixed in the federal estate tax proceeding relating to my estate shall be used. I recognize that no sum may be disposed of by this paragraph and that the sum so disposed of may be affected by the action of my legal representatives in exercising certain tax elections. If my spouse shall predecease me, this bequest shall be null and void.

2.6 Only assets which qualify for the estate tax marital deduction shall be allotted to the pecuniary estate tax marital deduction bequest passing to my spouse, which bequest shall vest immediately upon my death. My personal representative is authorized to satisfy this bequest in cash or in kind or partly in cash or partly in kind and in installments or at one time. Any assets transferred in kind to satisfy this bequest shall be valued for that purpose at their fair market values determined as of the dates of their respective transfers. In order to implement this bequest, my personal representative shall distribute assets, including cash, having an aggregate fair market value at the date or dates of distribution amounting to no less than the amount of this bequest as finally determined for federal estate tax purposes. So long as any part of this bequest shall remain unpaid, my spouse shall be entitled to receive from my personal representative the income of my estate from the date of my death upon such unpaid part; provided, however, that if my personal representative shall determine that my spouse would, but for the foregoing provision, be entitled to receive as interest a greater amount, my personal representative shall pay such greater amount to my spouse. I direct that any income taxes paid by my personal representative in respect of the income attributable to this bequest shall be charged to and deducted from the amount payable under this paragraph in such equitable manner as my personal representative shall determine.

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ITEM III

3.1 All of the rest, residue and remainder of the property which I own or have the right to dispose of at my death, whether real, personal or mixed, tangible or intangible, of whatsoever nature and wheresoever situated, including all lapsed legacies and devises and any property over or concerning which I may have any power of appointment (but excluding any power of appointment granted me by my spouse, which power of appointment I expressly decline to exercise), all of which property is herein referred to as my "residuary estate," I give, bequeath, devise and appoint in the manner and shares hereinafter provided.

3.2 If my spouse shall survive me, then at my death all of my residuary estate shall pass in trust to my trustee as the corpus of a trust (hereinafter called the "**KATES FAMILY TRUST**"), which shall be held, administered and distributed by the trustee upon the following trusts, terms and conditions:

(a) The trustee may accumulate the net income of the **KATES FAMILY TRUST** and add it to corpus or pay or apply so much of its income and corpus to or for the benefit of my spouse and my issue in such amounts and proportions as may be deemed advisable from time to time to provide for their support in their accustomed manners of living and for their maintenance, health and education. In exercising its discretion as to the amount (if any) of income and corpus which may be paid to or for the benefit of my spouse or any other beneficiary, the trustee may, but need not, take into consideration any other income or property which is available to such beneficiary from any other source. These standards for distribution are intended to grant a liberal degree of fiduciary discretion to the trustee to make income and corpus available to or for the benefit of the beneficiaries for reasonable purposes, it not being intended hereby to grant any beneficiary a non-fiduciary inter vivos power to withdraw or appoint trust assets. Any death benefits under an employees' trust or custodial account (or under a contract purchased by an employees' trust or custodial account) forming part of a pension, stock bonus, or profit-sharing plan or under an Individual Retirement Account, or under a tax sheltered annuity and which pass to the **KATES FAMILY TRUST** by reason of a disclaimer by my spouse shall be held thereunder in a separate trust having identical terms as those contained in the **KATES FAMILY TRUST**, except that my spouse shall not have a testamentary special power of appointment at my spouse's death.

(b) The trustee shall not be required to equalize payments of income or encroachments upon corpus, made as provided above, among the beneficiaries to whom such payments or encroachments may be made, and may pay income or corpus to or for the benefit of one or more of such beneficiaries without being required to make like payments or compensating distributions at any time to or for the benefit of the other beneficiaries. None of such payments or encroachments shall be treated as advancements and none shall be used to meet, fulfill or discharge anyone's personal legal obligations to a beneficiary. The trustee shall look primarily to the needs of my spouse and shall first confer with my spouse, if not then incapacitated, prior to making any distribution to or for the benefit of an issue of mine who is a beneficiary of this trust.

(c) In each taxable year of the **KATES FAMILY TRUST** for federal income tax purposes, my spouse shall have the right, in my spouse's absolute discretion, to withdraw from its corpus an amount or amounts not exceeding $5,000 in the aggregate and, in addition, if my spouse shall be living on the last day of such year, to withdraw an amount, if any, by which 5% of the then market value of the net corpus of the **KATES FAMILY TRUST** (not reduced by any income taxes chargeable to corpus) exceeds the amount or amounts previously withdrawn by my spouse in such year. In the case of a withdrawal of an amount or amounts not exceeding $5,000 in the aggregate for a particular year, payment shall be made within 30 days after delivery to the trustee of an instrument of withdrawal signed by my spouse and, in the case of any other withdrawal, payment shall be made to my spouse within 30 days after the close of the taxable year as to which the right is exercised by a similar instrument delivered to the trustee prior to such close. The total amount which may be withdrawn by my spouse shall not be cumulative and the right shall be exercised by written instrument delivered to the trustee during the taxable year as to which the right is exercised. To the extent possible, these withdrawals shall not be paid from taxable gains realized from the sale of trust assets by the trustee during the year of withdrawal.

(d) My spouse shall have a testamentary special power of appointment to donate and appoint at my spouse's death the then remaining balance of the **KATES FAMILY TRUST** at such time to or for the benefit of such one or more of my issue, in such manner and in such proportions, whether outright, in trust or otherwise, as my spouse may desire; provided, however, if at my spouse's death none of my issue shall be living, my spouse, pursuant to this testamentary special power of appointment, may donate and appoint at my spouse's death that remaining balance to or for the benefit of such one or more persons, corporations or other entities, in such manner and in such proportions, whether outright, in trust or otherwise, as my spouse may desire. Under no circumstances may that remaining balance be appointed to my spouse, my spouse's creditors, my spouse's estate or the creditors of my spouse's estate. This testamentary special power of appointment may be renounced or released, in whole or in part, by my spouse, by an acknowledged, written instrument executed by my spouse and delivered to the trustee during my spouse's lifetime, or in any other manner permitted by law. This testamentary special power of appointment is an exclusive power, which may be exercised in favor of one or more objects of that power to the exclusion of any others. If this testamentary special power of appointment is exercised in further trust, my spouse is authorized: to select a new situs for any such trust and to provide that the law of that new situs shall thereafter govern the validity, construction and administration of such trust; to grant additional trust powers; to restrict trust powers; to impose lawful spendthrift restrictions and other lawful conditions; to create life or term interests for one or more objects of that power, with remainder to other objects of that power, or without remainder; to grant further powers of appointment; except that my spouse is only authorized to grant further special powers of appointment to objects of the original power and which further powers shall be exercisable only in favor of one or more objects of the original power; and to prescribe all of the terms of any such trust. This testamentary special power of appointment shall be exercisable only by specific reference thereto in my spouse's Will. Notwithstanding the foregoing, any power hereunder which is exercisable only in favor of a limited class (e.g. my then living issue) may nevertheless be exercised in favor of a trust which provides for distributions outside such class as long as such distributions can only occur after

the death of all members of such class (provided the holder of such power, the holder's creditors, the holder's estate and the creditors of the holder's estate are excluded from receiving any part of such contingent distribution). Upon the death of my spouse, the **KATES FAMILY TRUST** shall end and its net remaining balance (after the exercise by my spouse of the aforementioned testamentary special power of appointment) shall be distributed as provided in Paragraph 3.3.

3.3 If my spouse shall predecease me or shall not be married to me at my death, then at my death all of my residuary estate, or, if my spouse shall survive me, then at my spouse's death the net remaining balance (after the exercise by my spouse of the aforementioned special power of appointment) of the **KATES FAMILY TRUST**, as the case may be, shall be divided as follows into as many shares as there shall be children of mine then living and children of mine then deceased but leaving issue then living according to the following provisions.

(a) All of my interests, if any, in **KATES FINE CATERING SERVICE**, a Tennessee general partnership, or its successor, shall be allocated to the share created for **DANIELLE** under Paragraph 3.3(b) if she survives me. If **DANIELLE** does not survive me, this bequest shall lapse and said sum shall be instead disposed of as provided in Paragraph 3.3(b) below.

(b) The then net remaining amount of my residuary estate shall be divided into as many equal shares as there shall be children of mine then living and children of mine then deceased but leaving issue then living. One of these shares, other than **DANIELLE'S** share, shall be held pursuant to Paragraph 3.4 for each of those children of mine then living and one of those shares shall be distributed in fee simple and per stirpes to the then living issue of each of those children of mine then deceased, subject to Paragraph 3.5. The share created for **DANIELLE** shall be shall be distributed to the Trustee under the Betty M. Kates Irrevocable Gift Trust Agreement (the "Trust Agreement"), which I, as Settlor and my spouse, **BETTY M. KATES**, as the initial trustee, entered into on the 14th day of May, 2001, prior to the execution of this Will (to be added to and commingled with the corpus of the trusts arising thereunder, and to be held, administered and distributed in accordance with the terms of the Trust Agreement and in all respects as an integral part thereof). If none of my issue shall be living at that time, the remaining balance shall be distributed (1) 50% in fee simple to my heirs and (2) 50% in fee simple to my spouse's heirs unless at the first death of my spouse and me, I was not married to my spouse, in which event all of the then net balance shall be distributed in fee simple to my heirs.

3.4 Each share so set apart for a living child of mine shall be held by the trustee upon the following trusts, terms and conditions:

(a) The trustee may accumulate the net income of such separate trust and add it to corpus or pay or apply so much of its income and corpus to or for the benefit of such child (sometimes referred to as the "primary beneficiary") and such child's issue in such amounts and proportions as may be deemed advisable from time to time to provide for their support in their accustomed manners of living and for their maintenance, health and education. In exercising its discretion as to the amount (if any) of income and corpus which may be paid to or for the benefit of

these beneficiaries, the trustee may, but need not, consider any other income or property which is available to any of these beneficiaries from any other source. Furthermore, it is my desire to encourage each of my issue to pursue an occupation, and not become solely dependent upon trust distributions for his or her support. In addition, it is my desire that after attaining age 25 and prior to retirement each of my issue who is a beneficiary of this trust be engaged in an activity to benefit society, although not engaged in an endeavor that is considered a traditional occupation, such as, but not limited to, continuing with education, charitable service and devoting him or herself to the raising of his or her children, are considered to be worthy endeavors and a contribution to society that fall under the scope of this desire. Accordingly, in making distributions to or for the benefit of a beneficiary herein, the trustee shall take into consideration the beneficiary's occupation and other endeavors to best meet my stated desire. These standards for distribution are intended to grant a liberal degree of fiduciary discretion to the trustee to make income and corpus available to or for the benefit of these beneficiaries for reasonable purposes, it not being intended hereby to grant any beneficiary a non-fiduciary inter vivos power to withdraw or appoint trust assets.

(b) The trustee shall not be required to equalize payments of income or encroachments upon corpus, made as provided herein, among the beneficiaries to whom such payments or encroachments may be made, and may pay income or corpus to or for the benefit of one or more of such beneficiaries without being required to make like payments or compensating distributions at any time to or for the benefit of the other beneficiaries. None of such payments or encroachments shall be treated as advancements and none shall be used to meet, fulfill or discharge anyone's personal legal obligations to a beneficiary. The trustee shall look primarily to the needs of the child of mine who is the primary beneficiary of such trust and shall confer with such child, if not then incapacitated, prior to making a distribution from the trust to or for the benefit of an issue of such child.

(c) The trustee may make loans from such trust to such child (upon such terms as the trustee deems advisable), to permit the child to use the loan proceeds for use in a Qualified Business or for a reasonable down payment on a personal residence. The trustee shall be held harmless for any depreciation in value to the trust arising from such actions. Provided, however, the trustee shall not make any such loan from a trust for use in a Qualified Business if it, when added to the face value of the then outstanding loans for such purposes held by the trust for such child would result in more than the lesser of: (i) fifty percent (50%) of the trust's assets, as aggregated, to be so loaned or (ii) five hundred thousand dollars ($500,000). Further provided, however, the trustee shall not make any such loan from a trust for use as a reasonable down payment on a personal residence if it, when added to the face value of the then outstanding loans for such purposes held by the trust for such child would result in more than the lesser of: (i) fifty percent (50%) of the trust's assets, as aggregated, to be so loaned or (ii) two hundred fifty thousand dollars ($250,000). Provided, however, in making such a loan to a child of mine, if the child has multiple trusts from which such a loan can be made, the trustee should coordinate with the trustee of other trusts of which my child is a beneficiary in an attempt to insure that (i) the total face amount of the loans made from this and the other trusts do not exceed the lesser of (a) fifty percent (50%) of the such trusts' assets, in the aggregate or (b) with regard to one or more loans for a Qualified Business, five hundred

thousand dollars ($500,000), and with regard to one or more loans for a reasonable down payment on a personal residence, two hundred fifty thousand dollars ($250,000), and (ii) any such loan is made in a manner and from the trust that reduces the aggregate incidence of generation-skipping transfer tax on distributions to my issue. Notwithstanding anything contained in this Paragraph to the contrary, before making any loan pursuant to the terms of said paragraph with respect to a Qualified Business, the trustee must first determine that any such loan is primarily to advance the business of such child and not that of such child's spouse. The term "Qualified Business" shall refer to a business that is a child's primary source of employment or a business that a child is qualified through education, training and work experience to manage, regardless of whether or not the child is in fact personally managing the business.

(d) Each such child shall have a testamentary special power of appointment to donate and appoint at such child's death the remaining balance of such child's separate trust at such time to or for the benefit of such one or more of such child's issue, then living, or if none, to such one or more of my issue then living, or if none, to one or more persons, corporations or other entities, in such manner and in such proportions, whether outright, in trust or otherwise, as such child may desire. Under no circumstances may that remaining balance be appointed to such child, such child's creditors, such child's estate or the creditors of such child's estate. This testamentary special power of appointment may be renounced or released, in whole or in part, by such child, by an acknowledged written instrument executed by such child and delivered to the trustee during such child's lifetime, or in any other manner permitted by law. This testamentary special power of appointment is an exclusive power, which may be exercised in favor of one or more objects of that power to the exclusion of any others. If this testamentary special power of appointment is exercised in further trust, such child is authorized: to select a new situs for any such trust and to provide that the law of that new situs shall thereafter govern the validity, construction and administration of such trust; to grant additional trust powers; to restrict trust powers; to impose lawful spendthrift restrictions and other lawful conditions; to create life or term interests for one or more objects of that power, with remainder to other objects of that power, or without remainder; to grant further powers of appointment; and to prescribe all of the terms of any such trust. This testamentary special power of appointment shall be exercisable only by specific reference thereto in such child's Will. Notwithstanding any power hereunder which is exercisable only in favor of a limited class (e.g. my then living issue) may nevertheless be exercised in favor of a trust which provides for distributions outside such class as long as such distributions can only occur after the death of all members of such class (provided the holder of such power, the holder's creditors, the holder's estate, and the creditors of the holder's estate are excluded from receiving any part of such contingent distribution).

(e) Upon the death of such child, such child's separate trust shall end and its net, then remaining balance (after the exercise by such child of the aforementioned testamentary special power of appointment and any testamentary general power conferred below) shall be distributed in fee simple, per stirpes and free of trust to my then living issue of such child, subject to Paragraph 3.5, or, in default of such issue, the said remaining balance shall be distributed (1) 50% in fee simple to my heirs and (2) 50% in fee simple to my spouse's heirs, unless at the death of the first to die of my spouse and me I was not married to my spouse in which event all of it shall be distributed in fee

simple to my heirs; provided, however, that the share of any of my issue for whose primary benefit another trust is then being held hereunder shall be added to and commingled with such trust.

(f) Upon the death of such child, a portion of such child's separate trust property, as defined below (the "Defined Portion"), shall be paid to such persons, corporations or entities, including the estate of such child or the creditors of his or her estate, as such child shall appoint by written instrument signed by such child and delivered to the trustee of such trust prior to the death of such child. For purposes of this paragraph, the Defined Portion shall mean the smallest portion of such property that could be included in such child's taxable estate without increasing the total amount of the Transfer Taxes payable at his or her death over the amount that would have been payable in the absence of this provision. For purposes of this paragraph, the term "Transfer Taxes" shall mean all transfer, estate, inheritance, succession and other death taxes which shall become payable by reason of such child's death including all federal and state generation-skipping transfer taxes payable at such child's death.

3.5 Whenever any payment hereunder is required to be made from my estate or upon the termination of any trust established hereunder to any issue of any child of mine who is under the age of age 35 years at such time, the interest so required to be paid shall be indefeasibly vested in such beneficiary but the trustee shall retain the amount payable until the beneficiary attains age 35 or dies, whichever first occurs, and the trustee may pay the income and corpus to or for the benefit of such beneficiary in such amount or amounts and from time to time as it may determine is needed for such beneficiary's support, maintenance, health and education, and if such beneficiary lives to attain age 35, then when such beneficiary so attains age 35 the trustee shall pay the then remaining corpus and the undistributed income to such beneficiary, and if such beneficiary dies before attaining age 35, then on such beneficiary's death the trustee shall pay the then remaining corpus and undistributed income to such beneficiary's estate.

3.6 "My heirs" shall mean those persons, other than creditors and my spouse, who would take my personal property under the laws of the State of Tennessee if I had died intestate at the time stipulated for distribution and domiciled in the State of Tennessee. "My spouse's heirs" shall mean those persons, other than creditors and me, who would take my spouse's personal property under the laws of the State of Tennessee if my spouse had died intestate at the time stipulated for distribution and domiciled in the State of Tennessee. Persons adopted during their minority (and their issue, including in the case of adopted issue only issue adopted during such issue's minority) by any person named or referred to herein shall be considered and treated in all respects the same as children born of marriage and their issue. Illegitimate children of any of my male issue shall not be treated as issue of mine unless they are adopted by an issue of mine. If my spouse and I shall be divorced or if my spouse shall renounce my Will, my spouse shall be deemed to have predeceased me. The term "*per stirpes*" with reference to the issue of any individual shall mean that the stocks begin with the children of such individual and that no distribution at any generational level shall be "*per capita.*" A living issue of mine who dies no later than six months after a subject transfer described in Treas. Reg. Section 2612-1(a)(2) shall be treated as having predeceased the transferor described therein.

3.7 The trustee shall terminate and forthwith distribute any trust created hereby, or by exercise of a power of appointment hereunder, one day prior to expiration of the permissible period under the relevant application of the Rule Against Perpetuities, if any, determined using as measuring lives in being only persons who are beneficiaries of any trust created by or pursuant to this instrument.

3.8 The trustee shall have the power, in its sole and absolute discretion, to add and commingle the corpus of any trust created hereunder with any other trust, established by me, my spouse or created under my spouse's Will, that is held for the benefit of the same beneficiary or beneficiaries, that has substantially identical dispositive provisions even if the trustee of the respective trusts are different, without the necessity of any prior or subsequent approval from any court or beneficiary.

ITEM IV

4.1 If my spouse and I shall die under such circumstances that it is doubtful which of us survived the other, it shall be presumed that my spouse predeceased me and my estate shall be accordingly administered.

ITEM V

5.1 I make, nominate and appoint my spouse as my personal representative in all domiciliary and ancillary probate proceedings. If my spouse shall have predeceased me, or having survived me, dies, fails to qualify as my personal representative or having so qualified, dies, resigns, or ceases to act as my personal representative, then I make, nominate and appoint our son, **SAMUEL**, as my personal representative in all domiciliary and ancillary probate proceedings. I request that my personal representative be allowed to qualify thereas without giving surety upon his or her official bonds. Furthermore, I specifically waive and excuse my personal representative from the filing of my estate's inventory, pursuant to Tennessee Code Annotated section 30-2-301 and the filing any accounting of my estate pursuant to Tennessee Code Annotated section 30-2-601(a)(1) with any court.

5.2 I make, nominate and appoint my spouse as the initial trustee of the **KATES FAMILY TRUST** established hereunder. If my spouse fails or ceases to serve a trustee of the **KATES FAMILY TRUST**, then, **SAMUEL** shall serve as the successor trustee of such trust. I request that each non-corporate trustee be allowed to qualify thereas without giving surety upon its official bonds. The trustee shall not be required to render an accounting to any court; however, an annual accounting of each trust herein created shall be rendered to my spouse. My spouse if then living, not incapacitated and not divorced from me, or if not, a simple majority in beneficial interest of all trust beneficiaries then receiving, or entitled to receive, the income of a trust, may at any time, and from time to time, by prior written notice delivered to the trustee of the **KATES FAMILY TRUST**, remove that trustee and appoint another trustee (or series of successor trustees) or allow

an existing co-trustee to continue serving as the sole trustee. If a trustee of the **KATES FAMILY TRUST** ceases to act as a trustee of such trust, that trustee's co-trustee, if any, shall be the trustee of that trust. If at anytime during the term of any of those trusts there shall not be a trustee acting thereunder, my spouse, if living, not incapacitated and not divorced from me, or if not, **DANIELLE**, if living and not incapacitated, or if not, a simple majority in beneficial interest of all trust beneficiaries then receiving, or entitled to receive, the income of that trust, may appoint a trustee (or series of successor trustees). If any such beneficiary is then a minor, that beneficiary shall act through that beneficiary's statutory guardian, or, if a statutory guardian has not been appointed, that beneficiary shall act through the person or persons then having that beneficiary's care, custody, nurture and control. In all events, a qualified bank or trust company shall serve as the sole trustee of any trust or a co-trustee of any trust that has more than one trustee.

5.3 The personal representative and also the trustee of the trusts established hereunder, if any, in the exercise of a reasonable discretion with respect to all property, real and personal, at any time forming a part of my estate, may exercise any and all of the powers set forth in Tennessee Code Annotated section 35-50-110, to the extent applicable, all of which provisions and powers are incorporated herein by reference (as set out in these statutes on the date I sign this Will), even if these statutes are amended or repealed hereafter and even if my estate or the trusts are administered in a state other than Tennessee, including but not limited to the power to sell, exchange, assign, transfer and convey any security or property, real or personal, held in my estate or in any trust, at public or private sale, at such time and price and upon such terms and conditions (including credit) as they may desire, without the prior or subsequent approval of any court or judicial authority. My personal representative and the trustee of the trusts established hereunder may retain and/or invest in any property of any kind without prior or subsequent court approval, just as I might do in the management of my own affairs, and without concern for the degree of speculation, the lack of income, the lack of diversification or any other risk or legal or statutory restriction (including the prudent man rule) of any kind now or hereafter existing, in their sole, absolute and unfettered discretion. My personal representative and the trustee of the trusts established hereunder may make any distribution of my estate and any trust property in cash or in kind or both, even though shares be composed differently. The actions of my fiduciaries require unanimity among them, either by vote at a meeting (in person or by telephone) or by written concurrence. If one of them gives written notice to the other(s) of any action which such fiduciary proposes be taken, the failure of such proposing fiduciary to receive any written objection to such proposal from such other fiduciaries within 20 days after the effective date of such proposed notice shall constitute the formal approval of such other fiduciaries. Furthermore, any fiduciary, with the consent of the other fiduciaries, may delegate at any time or from time to time any or all of his, her, or its rights, powers, duties, and authority, whether or not discretionary, to such other fiduciaries by an instrument executed by such delegating fiduciary and delivered personally or sent by certified mail to the other fiduciaries, provided, however, that any such delegating instrument shall be revocable at any time by a similarly delivered or sent executed instrument and, provided further, that any right, power, duty or authority which is expressly conferred upon less than all of the fiduciaries shall <u>not</u> be thus delegated (except to one or more other fiduciaries upon whom such right, power, duty, or authority is conferred). This

Will, and the testamentary dispositions contained herein, shall be administered, construed and governed pursuant to the laws of the State of Tennessee.

5.4 In addition to the powers granted to my personal representative in Paragraph 5.3 above, my personal representative is authorized, but not required, to advance or pay as an expense of administration the reasonable costs of routine upkeep of any real property passing under my Will for the period authorized under Tennessee Code Annotated section 30-2-323, as amended.

5.5 Any individual who is both a trustee and a beneficiary of a trust created hereunder shall not be prohibited from exercising any power specified in Tennessee Code Annotated section 35-50-124, as amended, that otherwise such individual would be prohibited from exercising absent an instruction in this Will to the contrary.

5.6 The initial trustee of the trusts established under Paragraphs 3.4 and 3.5 shall be the beneficiary for whom the trust is named. If at anytime during the term of any of those trusts there shall not be a trustee acting thereunder, a majority in beneficial interest of all trust beneficiaries then receiving, or entitled to receive, the income of that trust may appoint a successor trustee (or series of successor trustees). The primary income beneficiary of each such trust may at any time, and from time to time, without cause, by an acknowledged written instrument delivered to the trustee, remove the trustee, and appoint a successor trustee (or series of successor trustees). This instrument shall state a future date at which time it shall be effective. If any such beneficiary is then a minor, that beneficiary shall act through that beneficiary's statutory guardian, or, if a statutory guardian has not been appointed, that beneficiary shall act through the person or persons then having that beneficiary's care, custody, nurture and control.

5.7 Any trustee of any trust established hereunder may resign at any time by giving 60 days prior written notice of its intention to do so to the beneficiaries then receiving, or entitled to receive, the income from the trust to which such resignation is referable. If any such beneficiary is then a minor, notice to such beneficiary shall be directed to such beneficiary's statutory guardian, or if a statutory guardian has not been appointed, it shall be directed to the person or persons then having the care, custody, nurture and control of such beneficiary. In all events, a qualified bank or trust company shall serve as the sole trustee of any trust or a co-trustee of any trust that has more than one trustee.

5.8 If a trustee of any trust established hereunder ceases to act, it shall settle its accounts with, and transfer and deliver to its successor trustee all of the trust assets which it holds. Its successor trustee shall be vested with the powers herein conferred upon the original trustee and shall be subject to the limitations herein placed on the original trustee.

5.9 A successor trustee shall not be liable for breaches of trust committed by its predecessor trustee, but shall be liable for its own breaches of trust, which arise if it (a) neglects to take proper steps to redress a breach of trust committed by its predecessor trustee, (b) continues to

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retain property improperly purchased or retained by its predecessor trustee or (c) delays in securing from its predecessor trustee possession of trust property.

5.10 My personal representative and trustee may from time to time receive reasonable compensation for their services. Such expenses may be charged, in the personal representative's and trustee's discretion, to either income or corpus.

5.11 My fiduciaries may exercise all tax related elections, options, discretions, and choices which they have in such manner as they, in their sole but reasonable judgment (where appropriate, receiving advice of tax counsel), believe will achieve the overall minimum in total combined present and reasonably anticipated (but appropriately discounted) future administrative expense and tax burden of all kinds. My fiduciaries shall not be accountable to any person interested in any trust or in my estate for the manner in which, in good faith, they carry out this direction to minimize overall taxes and expenses (including any decision they may make not to incur the expense of detailed analysis of alternative choices) and, even though their decisions in this regard may result in increased tax or decreased distributions to a trust, to my estate, or to one or more beneficiaries, it will be their sole judgment as to whether there will be any compensation readjustments or reimbursements by reason of the manner in which they thus carry out this direction. My fiduciaries shall not be responsible for the use made by any person of any payment of income or corpus which may be made to or for the benefit of that person hereunder, and my fiduciaries shall not be obligated to see to the proper use or application thereof by such person. Any income or corpus which they, in the exercise of any of their powers, may determine to apply for the benefit of a minor may be directly applied by them, or, in their absolute discretion, may be paid over, without bond, to the parent of such minor or to the guardian of his or her person or property or to the person with whom such minor resides or to such minor's custodian under any Transfers or Gifts to Minors Act. Upon making any payment or disbursement of income or corpus as provided herein, my fiduciaries shall be fully discharged of liability with respect thereto and from further accountability therefor. My fiduciaries shall take into consideration the applicable resource and income limitations of any public assistance programs for which any beneficiary hereunder shall be eligible when determining whether to make any discretionary distributions. My fiduciaries shall investigate all sources of support available to the beneficiaries and shall take whatever steps necessary to enroll them for such benefits or assistance. It is my intention that no part of the income or corpus of a beneficiary's trust shall be used to supplement or replace public assistance benefits of any county, state, federal or governmental agency that serves persons with disabilities that are the same or similar to their impairments. For purposes of determining the eligibility of the beneficiaries for these benefits, no part of the corpus or income of that beneficiary's trust shall be considered available to that beneficiary.

5.12 No beneficiary of any trust established hereunder shall have any right or power to anticipate, pledge, assign, sell, transfer, or alienate (by operation of law, legal process or otherwise) or encumber his or her interest (in income or corpus) in any trust, in any way; nor shall any such interest in any manner be liable for or subject to the debts, liabilities or obligations of such beneficiary or claims of any sort against such beneficiary. Nothing contained in this paragraph shall

be construed as restricting in any way the exercise of any power of appointment granted hereunder or the disclaimer of any power or interest hereunder.

5.13 (a) The trustee is authorized, without the necessity of prior court approval or the consent of the persons interested, to establish two or more separate trusts in order to segregate them for any purpose or reason, including the following:

(1) property held in trust which is or would be excepted, excluded or exempt from or under Chapter 13 (tax on generation-skipping transfers) of the Code from such property which is not so excepted, excluded or exempt, so that one or more of such separate trusts will have an inclusion ratio of zero;

(2) property held in trust for one of two or more beneficiaries from property held in trust for such other beneficiaries, so that one or more of such separate trusts shall be a qualified subchapter S trust under section 1361(d) of the Code;

(3) property transferred in trust by a creator (including but not limited to a transfer treated as made by a spouse by reason of section 2513 of the Code) from property transferred in trust by one or more different creators;

(4) property transferred in trust by a creator (including but not limited to a transfer treated as made by a spouse by reason of section 2513 of the Code) pursuant to a disposing instrument from property transferred by the same creator pursuant to another disposing instrument; and

(5) property held in trust that could cause potential liability under any federal, state or local environmental law.

(b) The trusts established under this Paragraph 5.13shall be deemed to have been established as of the effective date of the disposing instrument. Except as implicit in the establishment of separate trusts authorized by this Paragraph 5.13 the terms of the disposing instrument shall govern each separate trust established hereunder. Separate trusts shall be established hereunder by an instrument or instruments in writing, signed and acknowledged by the trustee. The term "disposing instrument" shall mean the will, trust agreement, instrument exercising a power of appointment or other instrument creating such a trust or transferring property to such trust; provided that in the case of an instrument exercising a limited or testamentary power of appointment, the term "disposing instrument" may also refer to the instrument creating such power (if applicable under the circumstances).

5.14 I may designate a trust established hereunder as the beneficiary of my death benefits under an employees' trust or custodial account (or under a contract purchased by an employees' trust or custodial account) forming part of a pension, stock bonus, or profit-sharing plan or under an Individual Retirement Account, or under a tax sheltered annuity. The trustee may disclaim any or

all of these benefits and any other assets distributable to that trust. No beneficiary, acting individually as a beneficiary, shall have any voice in exercising this disclaimer. No trustee shall be held liable for any action taken or not taken with respect to this disclaimer, and it may be exercised in the absolute, sole and unfettered discretion of the trustee and I waive the trustee's duty of impartiality in connection with its exercise of its right of disclaimer. The decision of the trustee in the exercise of this discretion shall be conclusive and binding on all of the beneficiaries of that trust.

5.15 For purposes of this Agreement, the term "Qualified Corporate Trustee" shall mean any bank or trust company having a capital and surplus of no less than $5,000,000 and authorized to administer trusts. Any Qualified Corporate Trustee shall be entitled to compensation for its services rendered hereunder in accordance with its regular schedule of fees then in effect.

ITEM VI

6.1 It is my belief and expectation that I shall own equity in various closely-held businesses at my death. I therefore give my personal representative the following powers, authority and, where specified, duties, with respect to any interest in any closely-held business which I may own at my death:

(a) The power to continue or to permit the continuation of any business, incorporated or unincorporated, which I may own or in which I may have any interest at the time of my death for such period as my personal representative shall determine, or to recapitalize, reorganize or liquidate the same upon such terms as in his sole discretion he shall determine, including without limiting the generality of the foregoing power (i) to invest additional sums in any such business even to the extent that my estate may be invested largely or entirely in any such business without liability for any loss resulting from lack of diversification, (ii) to act as or to select other persons (including any beneficiary hereunder) to act as directors, officers or other employees of any such business, the same to be compensated without regard to any such person being a fiduciary or beneficiary hereunder, and (iii) to make such other arrangements in respect thereof as they shall deem proper.

(b) The power to elect under section 6166 of the Code, (or under a corresponding statute of any state imposing a death tax on my estate), to defer the payment of the federal estate tax or state death tax for such period as my personal representative may in its sole discretion determine. In the event such an election is made, my personal representative may in its sole discretion (i) notwithstanding any other provision of this Will or applicable law, charge interest on the deferred tax to income or principal in such manner as he determines and (ii) elect under section 6324A of the Code (or a corresponding provision of state law) to create a special lien for the deferred estate or death tax (including tax attributable to property not passing under this Will) and may subject property belonging to my estate to such lien.

(c) The power in my personal representative to designate itself to serve as a director of any closely-held business and to receive a director's fee in addition to such fiduciary's

compensation thereas and to obtain and pay out of principal or income the cost of liability insurance for any such director.

(d) The power to retain, and pay the compensation of, investment bankers, appraisers, accountants, legal counsel and others when my personal representative shall determine that such services are desirable in connection with the affairs of any closely-held business in which an interest is held.

(e) Notwithstanding any otherwise applicable law, I direct that upon the sale or other disposition of property which has been unproductive or underproductive of income no part of the proceeds received shall be allocated to income.

(f) If my estate shall include stock of any corporation which, together with any other stock of the same or a different corporation includible in my gross estate, as finally determined in the federal estate tax proceeding relating to my estate, satisfies the requirements of section 303 or 304 of the Code, I direct that any property received by my executor from the corporation in connection with a redemption of such stock shall not be used to satisfy the provisions of the outright pecuniary marital deduction bequest to my spouse under Paragraph 2.5 of the Trust Agreement.

(g) I recognize that in the exercise of its powers my personal representative may be placed in a position of having conflicting interests as a fiduciary and as an individual, and I direct that such conflicting interests shall not be a basis for my personal representative not participating in the exercise of powers with closely-held business interests.

(h) I direct my personal representative to comply with the terms of any mandatory buy-sell agreement with respect to any closely-held business interest, and I empower my personal representative to exercise any option or right conferred under any buy-sell agreement with respect to any closely-held business interest, with full discretion in this regard.

(i) The power to guarantee the debt of such enterprise in its capacity as personal representative or to pledge estate assets as security for the debt of such enterprise.

(j) The power to invest additional sums in such enterprise even to the extent that my estate be invested largely or entirely in such enterprise without liability for any loss resulting from lack of diversification.

(k) The power to sell all or any part of the securities in such enterprise to another shareholder of such enterprise (including an estate beneficiary) or to the enterprise itself upon such terms as the personal representative in its sole discretion shall deem reasonable without any obligation to solicit offers from third parties, and based solely upon an appraisal or appraisals of a qualified appraiser or appraisers.

(l) The power to retain in the corporation such amount of its net earnings as my personal representative may deem advisable in conformity with responsible business practice, so long as my estate receives sufficient income to pay the income tax it and my beneficiaries owe on such income.

(m) Notwithstanding any provision herein to the contrary that grants my personal representative investment powers, my personal representative shall not have the power to start, to enter into or otherwise engage in any business enterprise, or to continue to operate any business interest that becomes part of my estate, if such activity constitutes "carrying on business" as referred to in section 301.7701-2 of the Treasury Regulations.

ITEM VII

7.1 If, pursuant to my Will, or any trust established herein (with the specific exception of any property that is distributed outright to my spouse that but for this paragraph qualifies for the estate tax marital deduction), any property shall be payable outright to a person who is a minor, or is under any other legal, mental, physical, or similar disability, including substance abuse and chemical dependency (hereinafter referred to as an "incapacitated beneficiary"), my fiduciaries shall have the power, exercisable in their absolute discretion and without court approval, either to defer payment of such property, or to pay such property, in whole or in part, to an incapacitated beneficiary, to a parent, guardian, or conservator of an incapacitated beneficiary, to a custodian for an incapacitated beneficiary under a Transfers or Gifts to Minors Act, or to any adult with whom an incapacitated beneficiary may reside. The recipient of such property shall not be required to furnish bond or file an accounting with respect to such property, unless my fiduciaries should direct otherwise; and the receipt of such property by the recipient shall discharge my fiduciaries from any further responsibility or liability with respect to such property. If my fiduciaries shall elect to defer payment of any such property, I authorize my fiduciaries to hold such property as a trustee for the benefit of an incapacitated beneficiary, with all the powers given to my fiduciaries in my Will and by law, and to pay or apply so much, all, or none of the income and corpus of such property for the benefit of an incapacitated beneficiary as my fiduciaries shall deem advisable for his or her support in reasonable comfort, and his or her health, maintenance and education, whether public, private or special. When an incapacitated beneficiary attains capacity, whether legal, mental, or physical, the balance of such property then remaining shall be distributed to him or her. If an incapacitated beneficiary should die before attaining capacity, the balance of such property remaining at his or her death shall be distributed to his or her estate.

ITEM VIII

8.1 If any beneficiary hereunder shall contest the probate or validity of this Will or any trust created hereunder or that I have established otherwise or any provision of any of them, or shall institute or join in (except as a party defendant) any proceeding to contest the validity of this Will

or any trust that I have established or to prevent any provision of any of them from being carried out in accordance with its terms (regardless of whether or not such proceedings are instituted in good faith and with probable cause), then all benefits provided for such beneficiary are revoked and my estate shall pass as if such beneficiary had predeceased me. Each benefit conferred herein is made on the condition precedent that the beneficiary shall accept and agree to all of the provisions of this Will, of any trust created hereunder or any trust that I have established, and the provisions of this Paragraph 8.1 are an essential part of each and every benefit.

I, **BETTY M. KATES**, the Testatrix, sign my name to this instrument this 14th 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 I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence.

Betty M. Kates
BETTY M. KATES, Testatrix

The foregoing instrument was signed, published and declared by the said **BETTY M. KATES** as and for her Last Will and Testament on the day and year written above, in our presence and in the presence of each of us who, at his request, in her presence and in the presence of each other, have subscribed our names as witnesses this 14th day of May, 2001.

Paula K. Barnes — WITNESS
Nashville, TN — ADDRESS

Leslie E. Davis — WITNESS
Portland, TN — ADDRESS

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AFFIDAVIT BY WITNESSES TO WILL

Each of the aforesaid witnesses, being Paula K. Barnes and Leslie E. Davis, subscribed to the foregoing Last Will and Testament of **BETTY M. KATES**, executed on this 14th day of May, 2001 having been requested by the Testatrix to make and sign this Affidavit, and having first been duly sworn before the Notary Public whose name appears below, hereby state that the Testatrix was over eighteen (18) years of age, was of sound mind, declared the foregoing instrument to be her Last Will and Testament, published and executed it by signing it in the presence of all of us who were all present at the same time and we, in her presence, at her request, and in the presence of each other, subscribed our names as witnesses on the said 14th day of May, 2001.

Paula K. Barnes

Leslie E Davis

Sworn to and subscribed to before me,
this 14th day of May, 2001.

David E. Heller

NOTARY PUBLIC

My Commission Expires:

1/25/2003

I certify that I prepared this Will.

David E. Heller

David E. Heller, Esq.
Greenebaum Doll & McDonald PLLC
3102 West End Avenue
700 Two American Center
Nashville, Tennessee 37203-1304
615-760-7160

NAS:521413.1

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 filed in the SEVENTH Circuit Court for Davidson County, Tennessee, on the 12 day of AUGUST, 2003, in Docket Number 03P1249, IN RE: KATES, BETTY M., as same remains of record in 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 13 day of JANUARY in the year 2015 and in the 238 year of American Independence.

RICHARD R. ROOKER, Clerk,

By: _____

Deputy Clerk

[SEAL]