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By Deputy

LAST WILL AND TESTAMENT

OF

MARDO E. TOEDTER

Table of Contents

Page

I. DISPOSITION OF ESTATE 1
A. Payment of Final Expenses 1
B. Payment of Taxes 1
C. Tangible Personal Property 2
D. Residuary Estate 2
E. Direct Distributions by Personal Representative 3
II. FIDUCIARIES 3
A. Appointment of Personal Representative 3
B. Independent Administration 3
C. General Powers of Personal Representative 3
D. Tax Elections 4
(1) Optional Valuation 4
(2) Basis Allocation 4
(3) Administration Expenses 4
(4) Generation-Skipping Tax Exemption 5
E. Ancillary Administration 5
F. Bond Not Required 5
G. Fiduciary's Authority Presumed 5
H. Fiduciary's Liability for Own Actions 5
I. Fiduciary's Liability for Actions of Predecessor 5
J. Fiduciary Indemnified 5
K. Compensation 6
L. Custody of Assets 6
III. DEFINITIONS AND GENERAL PROVISIONS 6
A. Survivorship 6
B. Children 6
C. Descendants 6
D. Internal Revenue Code 6
E. Fiduciary 6
F. Other Terms 7
G. Disclaimer 7
H. Governing Law 7
I. Administration of Real Property in Probate Estate 7
J. No-Contest Provision 7

FILED
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RICHARD R. ROOKER, Clerk
Davidson County

LAST WILL AND TESTAMENT

OF

MARDO E. TOEDTER

I, **MARDO E. TOEDTER**, of Davidson County, Tennessee, declare the following to be my Last Will and Testament, and I hereby revoke any and all of my prior wills.

I. DISPOSITION OF ESTATE.

A. Payment of Final Expenses. I direct my Personal Representative to pay out of my estate, as soon as is practicable, all of my legally enforceable debts, the expenses of my last illness and funeral, and the cost of a suitable marker for my grave.

B. Payment of Taxes.

(1) Under the provisions of the **MARDO E. TOEDTER REVOCABLE TRUST**, between myself, as Grantor and Trustee, dated today and executed prior to the execution of this Last Will and Testament ("Trust Agreement"), the Trustee is authorized to pay certain taxes lawfully imposed by reason of my death. To the extent such Trustee does not pay such taxes, I direct my Personal Representative to pay such taxes in the same manner and subject to the same limitations as provided in such Trust Agreement. No portion of such taxes shall be charged against or reduce any gift, bequest or devise (a) of specific property, (b) of a pecuniary amount or (c) which is deductible for tax purposes. Furthermore, no tax imposed under Chapter 13 of the Internal Revenue Code on property transferred by me as a "direct skip," as defined in Section 2612(c) of such Code, shall be deducted from or reduce the gift, bequest or devise which constitutes a "direct skip."

(2) My Personal Representative shall not pay from my estate any additional estate or inheritance taxes imposed by reason of the inclusion in my estate (for tax purposes) of the value of any property over which I have a power of appointment that I have not effectively exercised. Such additional taxes shall be paid from such property, by the person or entity holding such property.

(3) My Personal Representative shall not be required to pay any state inheritance tax which has not been assessed prior to the date of approval of the final settlement of my estate, it being my intention that the probate administration of my estate not be extended because of any such tax which cannot be determined as of the date of my death.

(4) Any taxes paid pursuant to this paragraph shall be charged against the assets in my estate remaining after payment of all gifts, bequests and devises which are

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deductible for tax purposes and the payment of all gifts, bequests and devises of a specific sum of money or of specific property.

(5) All actions taken by my Personal Representative in the exercise of the discretion and powers granted in this paragraph shall be conclusive and binding upon all parties in interest. All other provisions of this Last Will and Testament providing for the distribution of my estate shall be subject to the right of my Personal Representative to withhold any such distribution, in whole or in part, pending a final determination of the taxes to be paid under the provisions of this paragraph.

C. **Tangible Personal Property**.

(1) If, at the time of my death, I shall have prepared a written statement or list disposing of specific items of tangible personal property, whether written before or after the execution of this Last Will and Testament, I direct that such list govern the division or distribution of such items of tangible personal property.

(2) All other articles of tangible personal property which I may own at the time of my death, including, but not limited to, automobiles, books, pictures, silverware, china, crystal, household furniture and furnishings, all other articles of household use, clothing, jewelry and all other articles of personal use or adornment, not including, however, any stamps, currency, coins, gems, gold or silver bullion, or other tangible personal property held primarily for investment, or used or held for sale in a business, I give and bequeath to my child, **DWIGHT W. TOEDTER**, if he is then living at my death. If **DWIGHT W. TOEDTER** is not then living, such tangible personal property shall be divided among my descendants, per stirpes, in such shares of substantially equal value as they shall agree. If no such agreement can be reached by descendants within ninety (90) days after my death, then my tangible personal property shall be distributed in such substantially equal shares as my Personal Representative, in the sole and absolute discretion of my Personal Representative, shall determine. If all of my descendants predecease me, such tangible personal property shall be distributed as part of my residuary estate.

(3) If any beneficiary is a minor at the time of my death, the interest of such beneficiary in any such tangible personal property shall be delivered by my Personal Representative to the Trustee under the Trust Agreement, to be held for the use and benefit of such beneficiary under the terms and conditions provided in the Trust Agreement.

D. **Residuary Estate**. The remainder of my estate ("residuary estate") I give to the Trustee of the trust created under the Trust Agreement, as it may be amended from time to time prior to my death, to have and to hold and to administer and distribute as a part of the trust estate, for the uses and purposes, upon the terms and conditions and with the powers and duties set forth in such Trust Agreement. Should such trust not be in existence at my death, I give my residuary estate to the Trustee appointed under such Trust Agreement, as Trustee, to be held and disposed of for the same uses and purposes, and subject to the same powers and duties as are set forth in such Trust Agreement as it exists as of the date of execution of this Last Will and Testament; and for this purpose, the provisions of the Trust Agreement are hereby incorporated by reference.

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E. **Direct Distributions by Personal Representative**. Any portion of my residuary estate which is to be distributed by my Personal Representative to the Trustee under the Trust Agreement, which portion would be immediately distributable free from trust by such Trustee, shall be distributed by my Personal Representative directly to the person or persons who would be entitled to receive the same from such Trustee.

II. FIDUCIARIES.

A. Appointment of Personal Representative.

(1) I hereby appoint my son, **DWIGHT W. TOEDTER**, as the Personal Representative of my estate. In the event **DWIGHT W. TOEDTER** should fail or cease to act as a Personal Representative of my estate, I hereby appoint my daughter-in-law, **DIANNE M. TOEDTER**, as successor Personal Representative of my estate. In the event **DIANNE M. TOEDTER** should fail or cease to act as a Personal Representative of my estate, I hereby appoint my granddaughter, **CHRISTINA SUE MARSHALL-CLARDY**, as successor Personal Representative of my estate.

(2) The term "Personal Representative", as used in this Last Will and Testament, shall be deemed to include the terms "executor" or "administrator" if those terms are used in the statutes of any state that has jurisdiction over all or any portion of my estate. The term shall include Co-Personal Representatives when two or more Personal Representatives have been nominated and are acting as such. Every title, estate, right and discretion vested in or conferred upon the Personal Representative of my estate shall likewise become and be vested in, and may be exercised by, a successor Personal Representative. I request that my Personal Representative be allowed to qualify thereas without providing a bond. Additionally, 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 of any accounting of my estate, pursuant to Tennessee Code Annotated Section 30-2-601(a)(1), with any court. I furthermore extend such waiver and excuse to any state in which my Last Will and Testament is probated if the state allows for such waiver and excuse.

B. **Independent Administration**. To the full extent permitted by law, I hereby authorize my Personal Representative to administer my estate without adjudication, order or supervision of the Probate Court or other court having jurisdiction over my estate. In the event of such independent administration, my Personal Representative shall have, in addition to the powers specifically granted my Personal Representative in this Last Will and Testament, the rights and powers permitted independent personal representatives by the laws of my state of domicile effective with respect to such administration.

C. **General Powers of Personal Representative**. In addition to all the powers granted to my Personal Representative under applicable state law (including, but not limited to, all of the powers described in Sections 35-50-109 and 35-50-110 of the Tennessee Code Annotated, as amended or restated from time to time, to the extent applicable and except as

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otherwise amended or modified herein), I grant to my Personal Representative the following rights and powers with respect to my estate, all to be exercisable by my Personal Representative without order of the Probate Court or other court having jurisdiction over my estate:

(1) To sell, dispose of, manage and operate all and any property, real or personal, constituting my estate which is not specifically devised or bequeathed in this Last Will and Testament;

(2) To incur such expenses in the administration of my estate as my Personal Representative may deem necessary and proper;

(3) To adjust any claims which may be due to or by me or due to or by my estate, upon such terms as my Personal Representative may deem proper; and

(4) To invest any funds coming into my Personal Representative's hands in such securities or other property as my Personal Representative may select, whether or not of the class or kind usually permissible for estates.

(5) I further direct that my Personal Representative shall have, without limitation or exception, and whether or not specifically enumerated in this Article, the same powers of management, investment and control of the assets of my estate as are granted to the Trustee under the Trust Agreement with respect to the assets of any trust estate.

D. **Tax Elections**. I authorize my Personal Representative, in the sole discretion of my Personal Representative, to elect any one or more of the following, which decision shall be binding and conclusive upon all parties in interest:

(1) **Optional Valuation**. Taking into account both estate and income tax consequences, to elect or to fail to elect an optional valuation date in determining the value of my gross estate for federal estate tax purposes.

(2) **Basis Allocation**. To allocate any basis increase otherwise allowed under Section 1022(b) of the Internal Revenue Code, including any subsequent Section of the Internal Revenue Code, to any property owned by me at my death in such portions, amounts and manner as my Personal Representative shall determine, even if such allocation should benefit my Personal Representative. Any allocation made by my Personal Representative shall be binding and conclusive upon all parties in interest. In addition, my Personal Representative shall be indemnified and reimbursed from my estate for any loss, damage, liability or expense incurred or sustained by such Personal Representative, in a fiduciary capacity, by reason of any allocation made by my Personal Representative.

(3) **Administration Expenses**. To take all or any portion of administration expenses either as a deduction for estate tax purposes or as a deduction for income tax purposes, in such manner as my Personal Representative, in the sole discretion of my Personal Representative, may determine, regardless of the fact that the federal estate tax liability of my estate is thereby increased or that the interests of any beneficiaries may be affected.

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(4) **Generation-Skipping Tax Exemption**. To allocate any portion of my exemption under Section 2631(a) of the Internal Revenue Code, or any successor provision in effect at the time of my death, to any property with respect to which I am the transferor, including any property transferred by me during life with respect to which an allocation had not been made prior to my death, and to make such elections as my Personal Representative may deem advisable with respect to such exemption.

E. **Ancillary Administration**. If ancillary administration of my estate, outside my state of domicile, shall be deemed necessary or advisable by my Personal Representative, my Personal Representative shall have the right to act as ancillary administrator, or to appoint an attorney-at-law licensed to practice in the state in which such ancillary administration is to take place or a bank or trust company, having net assets under management of not less than One Hundred Million Dollars ($100,000,000) at the time of such appointment, authorized to do business in such state, as the ancillary administrator of my estate, with such bond, if any, as my Personal Representative, in the sole discretion of my Personal Representative, shall determine.

F. **Bond Not Required**. No fiduciary acting under this Last Will and Testament shall be required to give bond for the faithful performance of his, her or its duties; except as may otherwise be requested by my Personal Representative in connection with any ancillary administration.

G. **Fiduciary's Authority Presumed**. No person dealing with any fiduciary acting under this Last Will and Testament shall be obligated to see to the application of any money, securities or other property paid or delivered to such fiduciary, nor to inquire into the authority of such fiduciary to enter into and consummate any transaction or take any other action.

H. **Fiduciary's Liability for Own Actions**. No fiduciary acting under this Last Will and Testament shall be liable for any mistake in judgment in the making or retaining of investments, or any other discretionary decision made, so long as any such decision is made in good faith.

I. **Fiduciary's Liability for Actions of Predecessor**. No fiduciary acting under this Last Will and Testament shall have any liability for the acts or omissions to act of any predecessor fiduciary, nor any obligation to audit the accounts of any predecessor fiduciary. No fiduciary shall be entitled to any acceptance fee or other additional compensation for auditing or investigating the accounts of such predecessor fiduciary.

J. **Fiduciary Indemnified**. Any individual acting as a fiduciary under this Last Will and Testament shall be indemnified and reimbursed from my estate for any loss, damage, liability or expense incurred or sustained by such fiduciary, in an individual or fiduciary capacity, by reason of any act or failure to act of such fiduciary for or on behalf of and in furtherance of my estate. However, the protection provided by this paragraph shall not apply to any loss, damage, liability or expense incurred or sustained by reason of gross negligence or willful malfeasance of the fiduciary.

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K. **Compensation**. Each individual shall be entitled to receive reasonable compensation for his or her services as a fiduciary acting under this Last Will and Testament, and shall be reimbursed for the reasonable and necessary expenses incurred in the performance of his or her duties as such. Any corporate fiduciary shall be entitled to reimbursement for expenses and to receive compensation for its services as a fiduciary under this Last Will and Testament in accordance with its published schedule of fees in effect at the time such expenses are incurred or such services are rendered, or a lower amount as otherwise negotiated.

L. **Custody of Assets**. While two or more Personal Representatives are acting, the corporate Co-Personal Representative, if any, shall have the right to custody of all estate assets and shall keep the records of the estate. If no corporate Co-Personal Representative is acting, custody of estate assets and the estate records shall be kept by any one or more of the Personal Representatives.

III. DEFINITIONS AND GENERAL PROVISIONS.

A. **Survivorship**. Any beneficiary under this Last Will and Testament who dies within ninety (90) days after my death shall be considered to have died prior to my death.

B. **Children**. The terms "child" and "children" as used in this Last Will and Testament shall include lawfully adopted children as well as natural children; provided that any adoption which becomes final after the adopted person has attained age eighteen (18) shall not be considered a lawful adoption for purposes of this Last Will and Testament. A posthumous child shall be considered as living at the death of his parent. Any child born to an unwed mother shall be deemed to be the legitimate child of such mother, but shall not be the child of the father unless (1) the father has executed a written declaration acknowledging the child as his own or (2) a court of competent jurisdiction has entered an order or judgment declaring that a father/child relationship exists. On the date this Last Will and Testament is executed, I have the following living child, **DWIGHT W. TOEDTER**.

C. **Descendants**. The term "descendants" as used in this Last Will and Testament means the children of the person designated and the descendants of such children, excluding any descendant whose adoption becomes final after age eighteen (18) and such person's descendants. Whenever a distribution is to be made to the descendants of any person, the property to be distributed shall be divided into as many equal shares as there are living children of the person and deceased children of the person who have descendants who are then living. Each living child shall take one share and the share of each deceased child shall be divided among his or her then living descendants in the same manner.

D. **Internal Revenue Code**. The term "Internal Revenue Code" as used in this Last Will and Testament means the Internal Revenue Code of 1986 or corresponding provisions of any subsequent federal tax laws.

E. **Fiduciary**. The term "fiduciary" as used in this Last Will and Testament means any Personal Representative acting under this Last Will and Testament.

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F. **Other Terms**. For the purposes of this Last Will and Testament, the use of either the singular or the plural shall be presumed to include the other. The use of titles and headings in this Last Will and Testament are for organizational purposes only and no such title or heading shall have any legal effect.

G. **Disclaimer**. In addition to any disclaimer rights conferred by law, I hereby authorize any beneficiary or trustee at any time within nine (9) months after the date of my death to disclaim in whole or in part any interest, benefit, right, privilege or power granted to such beneficiary or trustee under this Last Will and Testament. Any such disclaimer shall be made by duly acknowledged written instrument executed by such beneficiary or trustee, or his or her legal representative, and delivered to my Personal Representative and filed in the court having jurisdiction over my estate. In the event of any such disclaimer (including a disclaimer under state law), the disclaimed interest, benefit, right, privilege or power shall pass as though such beneficiary or trustee had predeceased me.

Specifically, in the case of a beneficiary who disclaims a beneficial interest in trust, as to any interest so disclaimed the trust will be administered and future distributions made as though such beneficiary had predeceased me, even though this may cause an acceleration of one or more remainder interests. However, any such disclaimer by a beneficiary shall not affect any other interest, benefit, right, privilege or power of such beneficiary under this Last Will and Testament that has not been disclaimed.

H. **Governing Law**. This Last Will and Testament and the administration of my estate shall be governed by the laws of the State of Tennessee.

I. **Administration of Real Property in Probate Estate**. I direct that all real property that I may own at the time of my death be administered as part of my probate estate subject to the control of my Personal Representative, as authorized by Tennessee Code Annotated § 31-2-103. It is my intention that my Personal Representative have possession and control of my real property during the period of administration, including the power to sell, lease, encumber and otherwise convey all or any portions of such real property or interests therein without the joinder of any beneficiary of my estate or the approval of any court. The commissions or other expenses arising out of the sale of any such property by my Personal Representative shall be deemed to be a proper expense of administering my estate.

J. **No-Contest Provision**. If any beneficiary of my Last Will and Testament or any other inter vivos trust agreement ("Agreement") entered into by me as the Grantor ("Contestant") institutes or causes to be instituted or prosecuted any legal action, law suit or proceeding of any kind or character (i) to contest or set aside my Last Will and Testament or any Agreement, (ii) to challenge or nullify in whole or in part any provision of my Last Will and Testament or any Agreement, or (iii) to cooperate or aid in any such action, suit or proceeding on any ground whatsoever and the resolution of such action, law suit or proceeding turns out to be adverse to Contestant, that in such events, as to any such Contestant and his or her descendants, I: (a) hereby revoke any and all dispositions in my Last Will and Testament and any Agreement to or for the benefit of any such Contestant or his or her descendants; (b) such unsuccessful Contestant shall be treated as having predeceased me.

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IN WITNESS WHEREOF, I have hereunto set my hand, and hereby publish and declare this document to be my Last Will and Testament, in the presence of the witnesses named below, this 20th day of October 2014.

Mardo E. Toedter

MARDO E. TOEDTER

On this 20th day of October, 2014, **MARDO E. TOEDTER** did sign, publish and declare the foregoing instrument as and for said person's Last Will and Testament in the presence of the undersigned who, at said person's request, in said person's presence and in the presence of each other, do hereby subscribe our names as attesting witnesses, and we do hereby state that, to the best of our knowledge, at the time of the execution of this Last Will and Testament, **MARDO E. TOEDTER** was at least eighteen (18) years of age and of sound and disposing mind and memory.

Witness

Residing at: 2122 21st Avenue South

Nashville, TN 37212

Witness

Residing at: 2122 21st Avenue South

Nashville, TN 37212

STATE OF TENNESSEE)
) ss.
COUNTY OF DAVIDSON)

I, the undersigned, an officer authorized to administer oaths, certify that **MARDO E. TOEDTER**, the Testatrix, and the witnesses, whose names are signed to the foregoing instrument, having appeared together before me and having been first duly sworn, each then declared to me that the Testatrix signed and executed the instrument as said person's Last Will and Testament, and that said person had willingly signed and executed it as said person's free and voluntary act for the purposes therein expressed; and that each of the witnesses, in the presence and hearing of the Testatrix, signed the Last Will and Testament as witness and that to the best of their knowledge the Testatrix was at the time eighteen or more years of age, of sound mind, and under no constraint or undue influence.

IN WITNESS WHEREOF I have hereunto subscribed my name and affixed my official seal this 20th day of October, 2014.

(SEAL)

Colleen O'Connell
Notary Public

COLLEEN O'CONNELL STATE OF TENNESSEE NOTARY PUBLIC DAVIDSON COUNTY, TENN.

My Commission Expires: Oct. 18, 2016

AFFIDAVIT BY WITNESSES TO LAST WILL AND TESTAMENT

Each of the aforesaid witnesses, being David Heller and Maj Guinane subscribed to the foregoing Last Will and Testament of **MARDO E. TOEDTER**, executed on this 20th day of October, 2014 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 20th day of October, 2014.

Witness

Witness

Sworn to and subscribed to before me,
this 20th day of October, 2014.

NOTARY PUBLIC

COLLEEN O'CONNELL
NOTARY PUBLIC
STATE OF TENNESSEE
DAVIDSON COUNTY, TENN.

My Commission Expires:

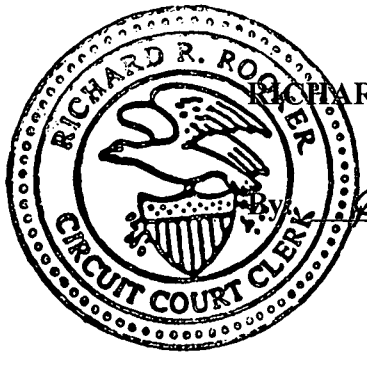
Oct. 18, 2016

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 assigned to Seventh Circuit Court (Probate Division) for Davidson County, Tennessee, Case No. 15P-2064.

ESTATE OF MARDO E. TOEDTER

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the 6th day of January in the year Two Thousand and Sixteen.



RICHARD R. ROOKER, Clerk

By: _____

Deputy Clerk