Karen Y Johnson Davidson County
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STATE OF TENNESSEE

I, RICHARD R. ROOKER, Clerk of the Circuit Court for Davidson County, do hereby certify that the foregoing is a true and complete copy of the **LAST WILL AND TESTAMENT** heretofore assigned to Seventh Circuit Court (Probate Division) for Davidson County, Tennessee, Case No. **18P1236**.

ESTATE OF JAMES DEAN BIRMINGHAM

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the 16th day of August in the year Two Thousand and Eighteen.

RICHARD R. ROOKER CIRCUIT COURT CLERK

RICHARD R. ROOKER, Clerk

By: _____
Deputy Clerk

18P1236

LAST WILL AND TESTAMENT

OF

JAMES DEAN BIRMINGHAM

FILED

AUG 16 2018

RICHARD R. BOOKER, Clerk
By _____ Deputy

I, JAMES DEAN BIRMINGHAM, presently residing at 198 Drake Lane, Roxbury Township (Ledgewood), County of Morris, and State of New Jersey, being of sound mind, memory and understanding do hereby make, publish and declare this to be my Last Will and Testament in the manner following:

FIRST: I direct that all my just debts, funeral/cremation, last illness and testamentary expenses, be paid as soon after my demise as conveniently may be done. This does not include any mortgage I may have on real property; which mortgages shall attach to any devise of said real property. I designate my named Executor as a funeral agent with the authorities granted under N.J.S.A. 45:27-22 *et seq.*

SECOND: The rest, residue and remainder of my estate, both real or personal, I devise, bequeath and appoint, absolutely and in fee, as follows:

A. Seventy-Five (75%) percent to my beloved spouse, KAREN E. BIRMINGHAM, per capita.

B. Twenty-Five (25%) percent to my beloved children, DANIELLE MASON and PATRICK BIRMINGHAM, per stirpes and not per capita. If either any of said beneficiaries shall predecease me, their share shall pass to their children, natural or adopted, if any, per stirpes.

However, if at the time of my death, my beloved spouse, KAREN E. BIRMINGHAM is disabled then I give and bequeath to FRED BIRMINGHAM as Trustee an amount of not less than the spousal elective share of the augmented estate, as defined in N.J.S.A. 3B:8.10 which would be due to my spouse, KAREN E. BIRMINGHAM, if she meets all eligibility requirements, after considering that my spouse joined with me and/or consented to any transfers we made to third parties during our mutual lifetimes. Trustee may, in his sole discretion, either pay out the elective share directly to my spouse or may hold that share in trust during the lifetime of my beloved spouse, KAREN E. BIRMINGHAM. Trustee may pay such portion of the income or corpus of the trust to my spouse, as Trustee in his sole, absolute and non-reviewable discretion, deems is suitable to meet my spouse's special or supplemental care, comfort, special medical, health and maintenance needs, but not shelter and support needs, otherwise paid from governmental or

public entitlement programs or private insurance or other benefits, including but not limited to, long term care insurance or Medicaid. It is my intent to supplement and not supplant any private or public benefits to which my spouse may qualify or be entitled.

Upon the demise of my spouse, the balance left in the trust shall be distributed to my remainder beneficiaries in the manner set forth in Clause THIRD of this Last Will and Testament.

By way of example and not by way of limitation, the supplemental needs of the trust beneficiary may include employment and direct payment of medical care or personnel, including private duty nurses or geriatric care managers or home health care assistants; insurance and prescriptions; use of private rooms in a facility, including an assisted living facility; employment of caregivers, companions; adult day care, Alzheimer's programs; to relieve persons assisting with the care of trust beneficiary of any financial burden arising out of such care; respite for caregivers; trips, outings, vacations or other recreation, provide or supplement home care, housekeeping, home improvements, equipment, vehicles for transport and generally to provide for enhancements which are not provided by insurance or governmental or private relief programs, which in the sole judgment of the Trustee, will enrich trust beneficiary's quality of life. The companion, caregiver or family members assisting or accompanying trust beneficiary may be reimbursed by Trustee for all reasonable expenses incurred by them.

To clarify my intent to supplement and not supplant public benefits on behalf of my spouse, I note that should my spouse be or become a recipient of public benefits, any claim for reimbursement shall not be considered by the Trustees of this supplemental trust, even if a portion of the trust principal consists of assets in which my spouse held any interest prior to death since the applicable law 42 U.S.C. 1396p(b)(4) clearly and unambiguously limits any claim to any interest or title held by my spouse at the time of her death. Further, this would exclude any assets conveyed between spouses under 42 U.S.C. 1396p(c)(2) before death from both repayment of benefits and from calculation of the spousal elective share. It is my intent and belief that only a Medicaid recipient's estate and not their spouse's estate is responsible for repayment of correctly paid benefits under 42 U.S.C. 1396p(b)(1) as set forth in the three prong analysis in In re Estate of Barg, 752 N.W.2d 52, certiorari denied by Vos v. Barg, 129 S.Ct. 2859 (2009).

The Trustee shall not be required in those circumstances to pay out all of the corpus of the trust for the needs of the trust beneficiaries since this is a testamentary trust which is intended to supplement,

but not wholly support their needs. The purpose of this trust is to supplement and not to supplant any public or private benefits to which my spouse may be entitled.

Notwithstanding anything herein to the contrary, no individual Trustee who is also a beneficiary hereunder shall have any right, power, duty or discretion hereunder concerning the Trust Estate, if such right, power, duty or discretion conferred upon said Trustee under this Agreement is determined to be a general power of appointment under Section 2041 of the Internal Revenue Code of 1986, as amended, which would cause any assets of the Trust Estate to be included in the estate of said Trustee upon their death. Any such right, power, duty or discretion with such effect shall be null and void with respect to said Trustee-Beneficiary. In such event, any other Trustee(s) or Successor Trustee shall have the full authority to alternately act.

If all of the Trustees are remainder beneficiaries who could benefit under this clause, then to confirm that they do not hold a general power of appointment or are self-dealing for their benefit, Testator alternately appoints attorneys McHugh & Macri, Esqs. (M&M) as special Trustees for the limited purpose of distributing a part of the trust corpus/principal to the remainder beneficiaries. M&M's decision on that distribution shall consider tax, estate planning and asset preservation planning goals and their understanding of Settlor's original intent in establishing this trust. M&M's decision on both the distribution and the amount shall be final and non-reviewable.

McHugh & Macri's appointment shall become effective upon their receipt of a written request by all acting Trustees to consider an amendment to this trust. This appointment shall not require Court approval and McHugh & Macri shall not be required to post a bond for the exercise of this limited power.

My surviving spouse, KAREN E. BIRMINGHAM has no power of appointment in the principal of this trust. The trust principal shall in no way be assignable or alienable by her through any process whatsoever. The assets of the trust shall not be subject to garnishment, attachment, levy or any other legal process of any Court, of any creditor of the beneficiary or their estate or any estate creditors of my spouse, nor shall the trust assets be considered an asset in any bankruptcy proceeding of my spouse. My spouse shall have no power to demand, secure, give, assign, mortgage, borrow against, or will the trust assets.

In the event that FRED BIRMINGHAM predeceases me, renounces, resigns, fails to qualify or is not capable of serving as Trustee, I nominate and appoint my daughter, DANIELLE MASON as an alternate Trustee and she shall serve, without bond and with the same powers as previously outlined for my original Trustee.

THIRD: If my beloved spouse shall not survive me, then I devise, bequeath and appoint the residue of my estate and the trust above, real and personal, absolutely and in fee, as follows:

A. Seventy-Five (75%) percent to my beloved spouse's siblings, KEVIN D. SCOTT, LISA M. SHAW and PAUL A. SCOTT, in equal shares, per stirpes and not per capita. If any of said beneficiaries shall predecease me, their share shall pass to their children, natural or adopted, if any, per stirpes.

B. Twenty-Five (25%) percent to my beloved children, DANIELLE MASON and PATRICK BIRMINGHAM, per stirpes and not per capita. If either any of said beneficiaries shall predecease me, their share shall pass to their children, natural or adopted, if any, per stirpes.

FOURTH: If my beloved spouse should die simultaneously with me in a common disaster or occurrence, under circumstances wherein it cannot be reasonably determined which of us died first, it shall be conclusively presumed that my beloved spouse survived me; and my estate shall be administered and distributed, in all respects, in accordance with such presumption. In the event of a common disaster where either spouse shall not survive for nine months after the date of death of the first spouse, then the marital deduction permitted by law shall be adjusted in this estate to the amount which will minimize Federal and State estate tax on the combined estate of the husband and wife.

FIFTH: Should any part of my estate become payable to a beneficiary who has not attained the age of 23 years, I hereby appoint the surviving parent of such beneficiary as Trustee of the property of such beneficiary who has not attained the age of 23 years. I then give, devise and bequeath their share of my estate to said Trustee to have and to hold same, IN TRUST, and to expend both principal and income, in the sole discretion of the Trustee, for the health, welfare, education, support and maintenance of such beneficiary, in appropriate shares, until such beneficiary attains the age of 23 years; whereupon their remaining share of the minor trust shall be paid to said beneficiary upon execution of a release to the Trustee hereinabove named. In the event said beneficiary dies before attaining the age of 23 their remaining share

shall be divided equally between their siblings and if none, then the remaining share shall be distributed pursuant to the terms of the residuary clause of this Will. I direct that any Trustee named herein shall not be required to post a bond or other security for the faithful performance of their duties.

SIXTH: I hereby nominate, appoint, and empower KAREN E. BIRMINGHAM, as Executrix of this my Last Will and Testament. She shall serve without bond of any sort in any jurisdiction for the faithful performance of her duties. I specifically vest the said Executrix with the full power and authority to sell, transfer and convey at public or private sale, any property real, personal or mixed which I may own at the time of my death, at such time and place, and upon such terms and conditions as they may determine, and to do so without court approval and to do each other act and thing necessary and appropriate to the complete administration of this Will. In the event that KAREN E. BIRMINGHAM predeceases me, renounces, resigns, fails to qualify or is not capable of serving as Executrix under this my Last Will and Testament, I nominate and appoint FRED BIRMINGHAM, as alternate Executor of this my Last Will and Testament, and he shall serve, without bond, and with the same powers as previously outlined for my original Executrix.

SEVENTH: Any death taxes, including State inheritance or estate taxes or Federal estate taxes due on residuary distributions passing under this Will, (but not specific bequests or devises), shall be paid from my residuary estate, even if at different rates. Any death taxes due on bequests or devises passing under this Will or on any other distributions passing outside of this Will (inclusive of IRAs, 401(k)s, life insurances, trusts) and which are included in my taxable estate shall be payable by the recipient thereof pursuant to N.J.A.C. 18:26-10.4 *et seq.* and N.J.S.A. 3B:24-2.

Should any beneficiary elect or disclaim any property passing under this Will, then any death taxes incurred by said election or disclaimer shall be payable from the amount so elected or disclaimed.

EIGHTH: I hereby revoke any and all Wills and Codicils made by me at any time prior to the date of the execution of this Will and Testament.

I, JAMES DEAN BIRMINGHAM the Testator sign my name to this instrument this 14th day of April, 2014, and being duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

James Dean Birmingham L.S.
JAMES DEAN BIRMINGHAM

We as witnesses, sign our names to this instrument, and, being duly sworn, do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his Last Will and that he signs it willingly (or willingly directs another to sign for him) and that each of us, in the presence and hearing of the Testator, hereby signs this Will as witness to his signing, and that to the best of our knowledge the Testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

WITNESS:

Judith A. Bonnet L.S.
JUDITH A. BONNET

Deborah McKay L.S.
DEBORAH McKAY

The State of New Jersey }
}ss:
County of Morris }

Subscribed, sworn to and acknowledged before me by JAMES DEAN BIRMINGHAM the Testator and subscribed and sworn to before me by JUDITH A. BONNET and DEBORAH McKAY witnesses, this 14th day of April, 2014.

L.S.
VINCENT MACRI
Attorney at Law
State of New Jersey