[This document was prepared by [Supervising Attorney], Duke Health Justice Clinic, Box 90360, Durham, NC 27708, (919) 613-7169.]

**LAST WILL OF**

**[TESTATOR’S NAME]**

I, [name of testator], domiciled in [name of county] County, North Carolina, declare this to be my last will, hereby revoking all wills and codicils heretofore made by me.

At the time of the execution of this Will, my immediate family group consists of my children, [names of children].

I.

I direct that all my just debts, my funeral and burial or cremation expenses, and the cost of administration of my estate be paid out of the assets of my estate as soon as practicable after my death. However, I direct that my Executor may cause any debt to be carried, renewed, and refinanced from time to time and upon such terms as my Executor may deem advisable taking into consideration the best interest of the beneficiaries hereunder. Provided further that any debts that could be barred by the applicable statutes of limitation shall not be paid as a debt of my estate.

II.

I direct that all taxes (including any interest and penalties thereon) imposed by any taxing authority because of my death shall be paid by my Executor out of my residuary estate, specifically including taxes on life insurance and other non-probate assets.

III.

I give my tangible personal property, including my automobiles, in shares of equal value, to my children who survive me. If any of my children predecease me, then that child’s share shall be distributed equally among my surviving children. If none of my children survive me, I give the same to [alternate beneficiary].

My Executor shall have the sole discretion to divide the property among my children, taking into consideration their wishes.

I may leave a writing, which, although not a part of my Will, expresses my desires concerning the disposition of my tangible personal property. I request, but do not require, that my wishes as set forth in any such writing be observed.

If any beneficiary of my tangible personal property has not reached the age of 18 at the time of my death, my Executor shall deliver that minor child’s share, regardless of value, to that child’s parent, legal guardian or other adult who has custody of him or her, and that person’s receipt shall operate as a full release of my Executor.

If it becomes necessary to incur expenses of shipment to complete the delivery of my tangible personal property to a beneficiary, my estate and not the beneficiary who is to receive that bequest shall arrange for and pay the costs of shipment incurred in making such delivery.

IV.

I give all of the rest, residue, and remainder of my property of every sort, kind and description, both real and personal, absolutely and in fee simple, to my Trustee(s), hereinafter named, IN TRUST, pursuant to the terms of Article V of this Will, for the benefit of my children.

If none of my children survive me, I give the same to [alternate beneficiary].

V.

TRUST FOR MY CHILDREN

Property that is distributed to my Trustee under the terms of this Will shall be administered pursuant to the following terms and conditions:

A. Purpose of Trust. The purpose of this Trust is to provide for the health, education, support and maintenance of my children who survive me.

B. Appointment of Trustee. I name [Trustee name] of [Trustee’s county] County, North Carolina, as Trustee. If the appointment of a substitute or successor Trustee becomes necessary, I name [alternate Trustee] of [alternate’s county] County, North Carolina. If the appointment of additional successor Trustees is necessary, the last serving Trustee shall have the right to make such appointment, without court order, in a writing signed by the last serving Trustee. Any Trustee shall have the right to resign, without court order, at any time in a writing signed by the Trustee with such resignation to be effective upon the acceptance of the Trusteeship by a successor Trustee.

C. Insurance Proceeds. Any insurance company or other parties who shall become indebted to any minor child of mine on account of my death, are hereby expressly directed to pay the funds to my Trustee(s) named herein, for the benefit of such child to the same extent as if that party had been appointed by the Court as Guardian of my child.

D. Powers of Trustee. My Trustee shall have full and complete discretion to use the principal and income of the Trust in the manner the Trustee best sees fit for the benefit of my children. My Trustee shall have full discretion to make distributions to my children, consistent with my directions as set forth herein. Without in any way limiting the foregoing purposes, powers and authority, the Trustee shall have all of the powers set forth and described in Article 3, Chapter 32 of the General Statutes of North Carolina relating to the powers of fiduciaries as they exist at the time I sign this Will, which are hereby incorporated into this Will.

E. Management of Trust Assets: Trustee shall invest the Trust assets, collect the income therefrom, and pay over or apply so much of the net income to or for the benefit of any one or more of my children from time to time as such payments are made, in such amounts or shares as my Trustee in their sole discretion shall determine. My Trustee shall accumulate the balance of the remaining income and annually add it to principal. Without in any way limiting the discretion given to my Trustee, it is my expectation that my Trustee will exercise discretion in a liberal manner so as to meet the health, education, support and maintenance needs of my children. To the extent possible under the circumstances, my Trustee shall strive to equalize distributions among my children, but my Trustee may in their sole discretion address emergencies or special needs that might arise even if that might result in an unequal distribution.

F. Reporting and Accounting: My Trustees shall not be required to file in any court or with any public officials or to the beneficiaries of the Trust, any reports or accounts relating to the administration of the Trusts, except to the extent I have no powers to excuse the filing of such reports or accounts. I direct that no bond or other security be required of my Trustee or any successor Trustee for the performance of duties as the Trustee.

E. Termination of the Trust. If at the time of my death no child of mine is under the age of [any age 18 or up], my Trustee shall promptly distribute all Trust assets to my children, in shares of equal value, with the share of any child who is not living at the termination of the Trust to be given to that child's issue, if any, per stirpes. If there are no issue, then the deceased child’s share shall be distributed by the Trustee, in equal shares, to my surviving children. Upon distribution of all Trust assets, the Trust shall terminate.

Otherwise, the Trust shall terminate when my youngest child reaches the age of [same age as above], at which time the remaining Trust assets shall be distributed by the Trustee to my surviving children, with the share of any child who is not living at the termination of the Trust to be given to that child's issue, if any, per stirpes. If there are no issue, then the deceased child’s share shall be distributed by the Trustee, in equal shares, to my surviving children.

F. Payment by Executor to Trustee. The written receipt of the Trustee shall operate as a full release and discharge of my Executor of the property transferred by the Executor to the Trustee.

VI.

I nominate [name of guardian] of [county and state] as guardian of the persons of my children who are unmarried minors at the time of my death. If the appointment of a substitute or successor guardian becomes necessary, I nominate [alternate guardian] of [county and state] as guardian. I direct that no bond or other security be required of the guardian in any jurisdiction for the performance of the duties as guardian.

VII.

If any beneficiary and I should die under circumstances as would render it doubtful whether the beneficiary or I died first, or if any beneficiary should die within thirty (30) days of me, then it shall be conclusively presumed for purposes of this my Will that said beneficiary predeceased me.

VIII.

In this Will, the terms "Executor" and "testator" are used to refer to both male and female individuals, in lieu of using the terms "executrix" and "testatrix."

IX.

I appoint [Executor’s name], of [name of county] County, [state], to be Executor of this my last will. If [Executor’s name] shall predecease me or for any reason shall fail to qualify as Executor hereunder, or having qualified, shall die or resign, then I appoint [alternate’s name] of [county] County, [state] as substitute or successor Executor. My Executor, and any successor, shall serve without bond.

X.

I give and grant to my Executor and to any successor Executor all of the powers enumerated in North Carolina General Statutes Section 32-27 and Section 28A-13-3, which powers are hereby incorporated by reference and shall be considered a part of this Will. These powers are granted pursuant to North Carolina General Statutes Section 32-26 and shall be in addition to and not in limitation of the common law and statutory powers of fiduciaries.

XI.

Unless otherwise directed in this Will, whenever the Executor or the Trustee of any Trust under this Will is directed to distribute any money or property to a person who is under twenty-one years of age on the date of such distribution, the Executor or Trustee shall be authorized to make such distribution to an adult person duly appointed by such Executor or Trustee as custodian for such person under the North Carolina Uniform Transfers to Minors Act.

I, [testator’s name], the testator, sign my name to this instrument this \_\_\_\_\_\_ day of

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, [current year], and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will 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 eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[testator’s name]

We, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signs or places [her/his] mark before me and executes this instrument as [her/his] last will and that [she/he] signs it willingly (or willingly directs another to sign for [her/him]), and that each of us, in the presence and hearing of the testator, hereby signs this Will as witness to the testator's signing, and to the best of our knowledge, the testator is eighteen years of age or older, of sound mind, and under no constraint or undue influence.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WITNESS

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

WITNESS

STATE OF NORTH CAROLINA

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Subscribed, sworn to and acknowledged before me by [testator’s name] the testator, and subscribed and sworn to before me by witnesses, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_this \_\_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public

(SEAL) My commission expires:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_