

ELECTRONICALLY FILED - 2018 Mar 12 12:30 PM - KERSHAW - COMMON PLEAS - CASE#2017CP2800831

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF KERSHAW

IN THE MATTER OF:  
LEMUEL WHITAKER BOYKIN, II, deceased

Case No. 2017-CP-28-00831

**Rigdon H. Boykin**, as sole disinterested Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B;

Petitioner,

v.

MOTION TO INTERVENE

**Mary Deas Wortley**, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; **Alice B. Belger**, individually, as Co-Trustee of the Lemuel Whitaker Boykin, II Residuary Trusts A and B, and as Co-Personal Representative of the Estate of Alice S. Boykin; **Lemuel Whitaker Boykin, III**; and **May Cantey Boykin**;

Respondents.

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SC Court of Appeals

Pursuant to Rule 24(a)(2), SCRPC, Theodore T. Wagner, M.D., B. Boykin Wagner, Mary Deas Heimbach, and Allie Boykin Belger (collectively, the "Intervenors"), by and through their undersigned attorneys, hereby move to intervene in this action as a matter of right because, as beneficiaries of the Lemuel Whitaker Boykin, II Residuary Trusts A and B (the "Residuary Trust"), they have an interest in the property that is the subject of this action.

**BACKGROUND**

This matter arises out of a dispute between Petitioner and Respondents as trustees ("Trustees") of the Lemuel Whitaker Boykin, II estate and resulting trusts. Lemuel Whitaker

Boykin, II ("Mr. Boykin") executed a Last Will and Testament (the "Will") on June 2, 1989, which created two trusts: (1) a marital trust to provide income and support for his wife, Alice Schoolbred Boykin ("Mrs. Boykin"), during her lifetime (the "Marital Trust"); and (2) the Residuary Trust (the "Residuary Trust"). A true and correct copy of the Will is attached as Exhibit A to the Petition. Mr. Boykin died on December 19, 1989, and was survived by Mrs. Boykin and his four children: Wortley and Belger, Lemuel Whitaker Boykin, III, and May Cantey Boykin. After Mrs. Boykin died in 2016, the remaining assets of the Marital Trust were or shall be transferred into the Residuary Trust, and Belger succeeded Mrs. Boykin as one of the Trustees.

The Residuary Trust is designed to provide reasonable support and maintenance to Mr. Boykin's four children during their lifetimes through distributions of trust income or principal "as the need arises primarily for the medical care, comfortable maintenance, welfare and education," and "shall terminate upon the death of the last to survive," and then be divided "into separate shares so as to provide one share for each deceased child . . . who shall leave issue then living." (Will 7-8, § VIII.3.) The Intervenor, as children of Wortley and Belger, are Mr. Boykin's four grandchildren and, thus, are beneficiaries of the Residuary Trust pursuant to the terms of the Will. In addition, Intervenor's shares of net the trust assets are to be issued from "the then remaining trust principal, if any, and any accrued and undistributed income on hand . . ." (Will 9, § VIII.3.)

In response to being outvoted on certain issues, Petitioner filed his Petition for Attorney's Fees, Trustee Fees and Declaratory Judgment (the "Petition") on August 23, 2017. The Petition included a request for attorneys' fees and a request that this Court anoint Petitioner as the "sole disinterested, non-beneficiary" Co-Trustee "entitled to exercise pre-eminent authority" to appoint legal counsel for the Residuary Trust and take other actions. (Petition ¶ 59.c.) Petitioner filed his Motion for Fees and Appointment of Trust Counsel shortly thereafter. On January 24, 2018, this

Court held a hearing on and granted Petitioner's Motion. At the hearing, the Court ordered that all parties' reasonable attorneys' fees would be paid out of the Residuary Trust, and indicated that it would allow the parties to propose counsel to represent the Residuary Trust. Upon receiving this information, the Intervenor decided to file this Motion.

### ARGUMENT

The South Carolina Rules of Civil Procedure allow a party, upon "timely application," to intervene in an action as a matter of right "when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that disposition of the action may as a practical matter impair or impede his ability to protect that interest . . . ." Rule 24(a)(2), SCRPC. "Generally, the rules of intervention should be liberally construed where judicial economy will be promoted by declaring the rights of all affected parties." *Gov't Employee's Ins. Co., Ex parte*, 373 S.C. 132, 138, 644 S.E.2d 699, 702 (2007) (internal citation omitted). South Carolina courts have elaborated that

a party seeking intervention under Rule 24(a)(2) must: (1) establish timely application; (2) assert an interest relating to the property or transaction which is the subject of the action; (3) demonstrate that . . . without intervention, disposition of the action may impair or impede its ability to protect that interest; and (4) demonstrate that its interest is inadequately represented by other parties.

*In re: Horry County State Bank*, 361 S.C. 503, 308, 604 S.E.2d 723, 725 (Ct. App. 2004). For the reasons set forth below, the Intervenor has met these requirements.

First, the Motion is timely. As noted above, Petitioner filed his Petition on August 23, 2017 and served his Motion for Fees and Appointment of Trust Counsel on September 6, 2017. However, the Court did not grant Petitioner's Motion for Fees and ask the parties to suggest additional trust counsel until January 24, 2018. No other ruling on the merits of any other claim or any ruling as to the amount of attorneys' fees to be paid has yet been decided by the Court.

As Mr. Boykin's grandchildren, the Intervenor are beneficiaries of the Residuary Trust, and therefore have interests in the property that is the subject of this litigation. As noted above, any share the Intervenor are to receive upon the Residuary Trust's termination is to be paid out of the remaining assets and income of the Residuary Trust, if any.

Finally, none of the other parties represented in this action adequately represent the Intervenor's interests. South Carolina courts consider the following factors when determining the adequacy of another party's representation: "(1) whether the existing parties will undoubtedly make all of the intervenor's arguments; (2) whether the existing parties are capable and willing to make such arguments; and (3) whether the intervenor offers different knowledge, experience, or perspective on the proceedings that would otherwise be absent." *Id.* at 508-09, 604 S.E.2d at 726. Here, there is no assurance that any of the existing parties undoubtedly will or are capable and willing to make all of these Intervenor's arguments regarding the administration of this Trust. There are potential conflicts among the beneficiaries of the Trust, especially between the four beneficiaries already named as parties and the Intervenor. And none of the Intervenor are currently involved in this action. Thus, there is no other party who is similarly situated to the Intervenor and could offer the same "knowledge, experience, or perspective on the proceedings." Accordingly, the Intervenor have demonstrated that no other party represented in this action adequately represents their interests, and this Court should allow them to intervene.

### CONCLUSION

For the reasons set forth above, this Court should allow the Intervenor to intervene in the above-captioned action.

*[signature page to follow]*

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**HAYNSWORTH SINKLER BOYD, P.A.**

By: s/James Y. Becker

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*Attorneys for Theodore T. Wagner, MD, B.  
Boykin Wagner, and Mary Deas Heimbach*

**BUNDY McDONALD, LLC**

By: s/Walter H. Bundy

Walter H. Bundy  
1516 Old Trolley Road, 2nd Floor  
Summerville, SC 29485

*Attorney for Respondent Allie Boykin Belger*

March 12, 2018

STATE OF SOUTH CAROLINA )  
COUNTY OF KERSHAW )

J. M. B. Gen. Felg  
LAST WILL AND TESTAMENT

I, Lemuel Whitaker Boykin, II, a resident of and domiciled in the State of South Carolina, County of Kershaw, being of sound and disposing mind and memory, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Wills and Codicils at any time heretofore made by me.

ITEM I: I direct that all estate, inheritance, succession, death or similar taxes (except generation-skipping transfer taxes) assessed with respect to my estate herein disposed of, or any part thereof, or on any bequest or devise contained in this my Last Will (which term wherever used herein shall include any Codicil hereto), or on any insurance upon my life or on any property held jointly by me with another or on any transfer made by me during my lifetime or on any other property or interest in property included in my estate for such tax purposes be paid out of my residuary estate and shall not be charged to or against any recipient, beneficiary, transferee or owner of any such property or interests in property included in my estate for such tax purposes.

ITEM II: I give and bequeath my family portrait to my son, L.W. Boykin, V, if he shall survive me. If my said son shall not survive me, then said item shall pass under Item III herein.

L.W. 73.

L.W. Boykin  
Mark up

EXHIBIT A

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**ITEM III:** I give and bequeath all of the rest of my personal effects of every kind, including but not limited to, pictures, books, jewelry, wearing apparel, boats, automobiles and other vehicles, and all policies of fire, burglary, property damage and other insurance on or in connection with the use of this property, to my beloved wife, Alice S. Boykin, if she shall survive me. If my said wife shall not survive me, I give and bequeath all of said property to my children, Mary Deas Wagner, Alice Shoobred Boykin, L.W. Boykin, V and May Cantey Boykin, in approximately equal shares, provided, however, the issue of a deceased child surviving me shall take, per stirpes, the share his or her parent would have taken had he or she survived me; and provided further that, if any child of mine predeceases me without leaving a child surviving him or her, then such share as would have been acquired by my deceased child shall be divided equally among my surviving children. If my named beneficiaries do not agree to the division of the said property among themselves, my Personal Representatives shall make such division among them, the decision of my Personal Representatives to be in all respects binding upon my issue. If any beneficiary hereunder is a minor, my Personal Representatives may distribute such minor's share to such minor or for such minor's use to any person with whom such minor is residing or who has the care or control of such minor without further responsibility and the receipt of the person to whom it is distributed shall be a complete discharge of my Personal Representatives.

*Handwritten signature/initials*

AVAGE, ROYALL,  
BEHEEN & BYARS  
1 CHURCH STREET  
ANDEN, S.C. 29020

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ITEM IV: I give and bequeath the following general legacies:

(1) The sum of Three Thousand Five Hundred and 00/100 (\$3,500.00) Dollars to James Moore, if he shall survive me, or if he shall not survive me, to his wife, Bina Moore, if she shall survive me.

(2) The sum of Two Thousand and 00/100 (\$2,000.00) Dollars to Helen Stradford, if she shall survive me, or if she shall not survive me, to her husband, Singleton Stradford, if he shall survive me.

ITEM V: I give and devise all my right, title and interest in and to the easternmost three (3) acres of a certain (5) acre parcel of real property located in Sumter County, South Carolina, and acquired by me from Helen Boykin Moses, together with all of the improvements thereon and appurtenances thereto, to James Moore, if he shall survive me, or if he shall not survive me, to his wife, Bina Moore, if she shall survive me. I also give and devise unto James Moore a tract of land in Sumter County containing four (4) acres, more or less, adjoining the four (4) acre parcel which I have previously deeded to him to begin at the northeast corner of the parcel previously given him and to be adjacent to the tract which I have already given him. I direct this be surveyed under the direction of my Personal Representatives and a deed of distribution delivered to him for the said parcel. If he fails to survive me, then unto his wife, Bina Moore, if she survives me.

*Sealed  
prior to  
deed  
OK  
@ 3:30 pm*

*W. J. Boyd*

*Handwritten mark*

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*Parcel  
min  
to  
Jill*

ITEM VI: I give and devise all my right, title and interest in and to the westernmost three (3) acres of a certain six (6) acre parcel of real property located in Sumter County, South Carolina, and acquired by me from Helen Boykin Moses, together with all of the improvements thereon and appurtenances thereto, to Helen Stradford, if she shall survive me, or if she shall not survive me, to her husband, Singleton Stradford, if he shall survive me.

*OK  
Jill*

ITEM VII: If my wife, Alice S. Boykin, shall survive me, I give, devise and bequeath to my Trustee hereinafter named, cash, securities or other property of my estate (undiminished by any estate, inheritance, succession, death or similar taxes) having a value equal to the maximum marital deduction as finally determined in my federal estate tax proceedings, less the aggregate amount of marital deductions, if any, allowed for such tax purposes by reason of property or interests in property passing or which have passed to my said wife otherwise than pursuant to the provisions of this Item; provided, however, the amount of this devise or bequest shall be reduced by the amount, if any, needed to increase my taxable estate (for federal estate tax purposes) to the largest amount that, after allowing for the unified credit against the federal estate tax, and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the death tax payable to any state), will not result in a federal estate tax being imposed on my estate. The

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term "maximum marital deduction" shall not be construed as a direction by me to exercise any election respecting the deduction of estate administration expenses, the determination of the estate tax valuation date, or any other tax election which may be available under any tax laws, only in such manner as will result in a larger allowable estate tax marital deduction than if the contrary election had been made. My Personal Representatives shall have the sole discretion to select the assets which shall constitute this devise or bequest. In no event, however, shall there be included in this devise or bequest any asset or the proceeds of any asset which will not qualify for the federal estate tax marital deduction, and this devise or bequest shall be reduced to the extent that it cannot be created with such qualifying assets. My Personal Representatives shall value any asset selected by my Personal Representatives for distribution asset at the date of distribution of such asset.

*R.S.*

I direct my Personal Representatives to elect as provided in Internal Revenue Code Section 2056(b)(7)(B)(v) to cause the property distributed to the Trustees of this trust to be treated on the federal estate tax return of my estate as qualified terminable interest property.

This trust shall be held, administered and distributed as follows:

- (1) Commencing with the date of my death, my Trustees shall pay to or apply for the benefit of my said wife during her

*Marital Trust*

lifetime all the net income from this trust in convenient installments, but no less frequently than quarter-annually. Any accrued and undistributed income at the death of my wife shall be paid to her Personal Representatives.

(2) In addition, my Trustees may pay to or apply for the benefit of my said wife such sums from the principal of this trust as in their sole discretion shall be necessary or advisable from time to time for the medical care, support, maintenance and reasonable comfort of my said wife, taking into consideration to the extent my Trustees deem advisable, any other income or resources of my said wife known to my Trustees.

(3) My said wife may, at any time by written notice, require my Trustees either to make any nonproductive property of this trust productive or to convert such nonproductive property to productive property within a reasonable time.

(4) Unless my wife's will specifically provides that the estate, succession, death or similar taxes assessed with respect to the assets of this trust be paid otherwise, my Trustees shall pay to the Personal Representatives and administrators of the estate of my wife for the purposes of paying such taxes, the amount by which such taxes assessed by reason of my wife's death shall be increased as a result of the inclusion of the assets of this trust in her estate for such tax purposes.

(5) Upon the death of my said wife, the entire remaining principal of this trust shall be added to and become a part of the Residuary Trust set forth in Item VIII herein and

shall be held and administered or distributed in whole or in part as if it had been an original part of Residuary Trust set forth in Item VIII herein.

**ITEM VIII:** I give, devise and bequeath all the rest, residue and remainder of my property of every kind and description (including lapsed legacies and devises), wherever situate and whether acquired before or after the execution of this will, to my Trustees hereinafter named. This trust shall be known as the "Residuary Trust" and shall be held, administered and distributed as follows:

(1) Commencing with the date of my death, my Trustees shall pay to or apply for the benefit of my children, Mary Deas Wagner, Alice Shoobred Boykin, L.W. Boykin, V., and Kay Canteley Boykin during their lifetimes the net income from this trust in convenient installments at least annually and in such shares and proportions as the Trustees in their sole discretion shall determine providing to each a reasonably equal division of income as the need arises primarily for the medical care, comfortable maintenance, welfare and education of my said beneficiaries, taking into consideration to the extent my Trustees deem advisable, any other income or resources of my said beneficiaries known to my Trustees. In addition, my Trustees shall pay to or apply for the benefit of any one or more of the issue of a deceased child such of the net income of this trust as my Trustees shall determine for the medical care and support of such issue, taking into consideration to the

*Residuary Trust*

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extent my Trustees deem advisable, any other income or resources of such issue known to my Trustees.

(2) My Trustees may pay to or apply for the benefit of any one or more of my said children such sums from the principal of this trust in such shares and proportions as in their sole discretion shall be necessary or advisable from time to time for the medical care, education, support and maintenance and reasonable comfort of my said children, taking into consideration to the extent my Trustees deem advisable, any other income or resources of my said children known to my Trustees. In addition, my Trustees may, if my Trustees deem advisable, pay to or apply for the benefit of any one or more of the issue of a deceased child such of the principal of this trust as my Trustees shall determine for the medical care and support of such issue, taking into consideration to the extent my Trustees deem advisable, any other income or resources of such issue known to my Trustees. I direct that the distributions shall be kept reasonably equal to each beneficiary over a period of years, however, my Trustees shall have final and complete authority to determine the fairness thereof.

(3) This trust shall terminate upon the death of the last to survive of my said children.

(a) My Trustees at that time shall divide this trust as then constituted into separate shares so as to provide one (1) share for each deceased child of mine who shall leave issue then living.

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(b) My Trustees shall transfer and pay over the then remaining trust principal, if any, and any accrued and undistributed income on hand, to the child or children of my issue who shall be then surviving, per stirpes.

(c) In the event that no children of mine shall survive me, I give, devise and bequeath my residuary estate to the issue of my child or children, per stirpes.

ITEM IX: The determination of my Personal Representatives or my Trustees, as the case may be, with respect to the identification of any property passing under this, my Last Will and Testament, including any tract or parcel of real property, shall be binding and conclusive upon all persons interested in my estate or any trust hereby created.

*per stirpes*

ITEM X: It is my desire, but I do not direct, that certain tracts or parcels of real property located in the State of South Carolina and presently owned by me or by corporations the stock of which is owned in whole or in part by me, namely Millway Plantation (consisting of approximately 884 acres), the "Laney Tract" (consisting of 101 acres), Broadview Plantation (consisting of approximately 324} acres), the "Swamp Tract" (acquired from my mother and consisting of approximately 416 acres), the "Cantey Tract" (consisting of approximately 140 acres), and the "Gillis Tract" (consisting of approximately 112 acres), shall to the fullest extent possible be preserved for

*copy for*

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the benefit of or transferred to my children or their issue.  
However, if any or all of these parcels must be sold, they should be sold in the following order:

- (1) Swamp Tract
- (2) Broadview Plantation, Cantey Tract, Gillis Tract
- (3) Millway Plantation and Laney Tract

Any sale or mortgage of these parcels (exclusive of timber rights) must be by unanimous consent of the Trustees after consultation with and approval of a majority of the four (4) named beneficiaries of this trust unless any be not sui juris in which event approval is waived. I direct that my trustees may cut and remove timber which shall be treated as a crop. It is my further desire, but I do not direct, that my son, L.W. Boykin, V, be employed by the farm with suitable salary and other operating arrangements for my said son, to the extent that my Trustees, in whom I have complete confidence, shall determine the same to be advisable and in the best interest of my said son. It is my further desire, but I do not direct, that at any time and from time to time during the continuance of the trust created under Item VIII of this, my Last Will and Testament, or upon the termination of said trust, my Trustees shall arrange to distribute Broadview Plantation, the "Swamp Tract", the "Cantey Tract" and the "Gillis Tract", or such of said parcels, if any, as shall from time to time be held by my Trustees, to the oldest male child of my son, L.W. Boykin, V, who shall be living at the

*L.W.*

*See Part of [unclear]*

time of any such distribution. In exercising the discretionary powers granted to my Trustees under Items VII and VIII and all other powers granted to my Personal Representatives and Trustees under this, my Last Will and Testament, it is my hope that my Personal Representatives and Trustees will be mindful of my intentions. My Trustees shall be free from all liability or responsibility in making any determination from time to time to exercise or to not exercise any of the powers granted to them hereunder, but shall attempt to be as nearly equitable as possible among beneficiaries of my estate or any trust hereby created, regardless of the tax or other effects thereof, and any such determination shall be binding and conclusive upon all persons interested in my estate or any trust hereby created.

*J.P.A.*

ITEM XI: I hereby nominate, constitute and appoint as Personal Representatives of this my Last Will and Testament, my beloved wife, Alice S. Boykin, and my daughter, Mary Deas Wagner, and direct that they shall each serve without bond. If either one of them is unable or unwilling to serve or continue to serve, then I hereby nominate, constitute and appoint as substitute or successor Personal Representative, Rigdon H. Boykin, and direct that he shall also serve without bond. If any two (2) are unable to serve or cease to serve, then the third above named shall serve as sole Personal Representative, without bond.

*Deas*

ITEM XII:  
 (a) I hereby nominate, constitute and appoint as Trustees of the trusts created under Item VII of this my Last

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Will and Testament, my daughter, Mary Deas Wagner, and my wife, Alice Shoolbred Boykin, and direct that they shall serve without bond. Should Mary Deas Wagner be unable to serve or cease to serve for any reason, then I nominate and appoint Rigdon H. Boykin to serve in her place and stead, also without bond.

(b) I hereby nominate, constitute and appoint as Trustees of the trust created in Item VIII of this, my Last Will and Testament, my cousin, Rigdon H. Boykin, my daughter, Mary Deas Wagner, and my wife, Alice Shoolbred Boykin, and direct that they shall serve without bond. I further grant unto my wife, Alice Shoolbred Boykin, the right to designate by a written instrument filed in the office of the Judge of Probate, her successor trustee to serve either upon her resignation, incapacity to serve or death. I further grant unto my Trustees the authority to nominate one (1) additional family member to serve with them as co-trustee should any one of the other two (2) Trustees fail to qualify or cease to serve for any reason. This designation shall be by instrument filed in office of the Judge of Probate for Kershaw County. I also grant unto my Trustees the authority to select a trust department of a bank or a trust company to assist them in the administration of the trust if they deem the same to be necessary and I further direct that they may name a trust department of a bank or a trust company managing assets of at least One Hundred Million and 00/100 (\$100,000,000.00) Dollars to serve as co-trustee with them should they determine the same to be necessary, either at

that time or in the future. The appointment of any corporate trustee shall be accomplished by the filing of an instrument signed by the Trustees with the Probate Court of Kershaw County. The appointment of such Trustee shall neither increase nor decrease the liabilities and responsibilities of my Trustees acting hereunder, and I expressly confirm and ratify the appointment of any such additional trustees. For their services as Trustees, my individual Trustees and/or corporate Trustees shall be entitled to reasonable compensation for the services provided for the trust under Item VII or under Item VIII as the case may be. Such compensation shall not exceed the amount provided by law.

*L.M.A.*

ITEM XIII: Whenever the words "Personal Representative" and/or the word "Trustee", or any modifying or substituted pronouns therefor are used in this my Will, such words and respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof, and shall apply equally to the Personal Representative and/or Trustee named herein and to any successor or substitute Personal Representative and/or Trustee acting hereunder, and such successor or substitute Personal Representative and/or Trustee shall possess all the rights, powers and duties, authority and responsibility conferred upon my Personal Representative and/or Trustee originally named herein.

ITEM XIV: My Personal Representatives and Trustees, respectively, are authorized in their absolute discretion

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with respect to any real property, by unanimous vote, or personal property, by majority vote, at anytime held under any provision of this Will and without authorization by any court and in addition to any other rights, powers, authority and privileges granted by any other provision of this Will or by statute or general rule of law:

A. To sell, transfer and convey the whole or part of the property, whether real or personal, constituting this estate or trust, at such time or times, in such manner, upon such terms and conditions, and for such price, as to the Personal Representative or trustee shall seem best, together with the power to make, execute and deliver such instruments as shall be necessary to effectuate such sale or sales without an order of the Court, but I direct that two (2) independent appraisals be made on each such sale of real estate.

B. To retain any of the original property constituting the estate or trust, regardless of the character of such property or whether it is such as then would be authorized by law for investment by Personal Representatives or trustees or whether it leaves a disproportionately large part of the estate or trust invested in one type of property, for such time as to the Personal Representative or trustee shall seem best, and to dispose of such property by sale, exchange or otherwise as and when they shall deem advisable.

C. To invest and reinvest the property of the estate or trust in such manner as men of prudence exer-

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cise in the management of their own affairs. At any time, and from time to time, to keep all or any portion of the estate or trust in cash and uninvested for such period or periods of time, as he may deem advisable, without liability for any loss in income by reason thereof. In addition, the "under productive property rule" of the Revised Uniform Principal and Income Act shall not be applicable.

D. To vote in person or by special, limited or general proxy with power of substitution, all stocks and other securities held by them and to exercise in their sole discretion any option or privilege to exchange such stocks or other securities held by them in any corporation for other stocks or securities at such time and upon such terms and conditions as they shall deem proper, and to exercise all conversions, subscription and other rights of whatsoever nature pertaining thereto or to sell such rights; to consent to and participate in any plan of reorganization, consolidation, merger, combination, or other similar plan, and to consent to any contract, lease, mortgage, purchase, sale or other action by any corporation pursuant to such plan, and to exchange the securities held by them for the securities issued in connection therewith, and to deposit any such securities with protective, reorganization or similar committee, to delegate discretionary power thereto, and to pay part of their expense and compensation as assessments levied with respect to such securities, as the Personal Representative or trustee may deem expedient for the

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protection of their interest as holder of any stocks, bonds or other securities of any corporation, and generally to exercise in regard to all stocks, bonds or other investments held by the Personal Representative or trustee all such rights, powers and privileges as are, or may be lawfully exercised by any person owning similar property in his own right.

*R. S. B.*

E. To extend the time of payment of any obligation held by them and to compromise, settle, and submit to arbitration upon such terms as to them may seem proper, or to release any claim in favor of or against the estate or trust property, and the right in their sole discretion when deemed advisable to abandon any property. To lease real estate, including the right to lease for terms that may extend beyond the date of the termination of the estate and trust, for fixed or contingent rent or both; to improve and remodel real estate and to borrow money for the purpose, to secure the borrowing by mortgage of the real estate or pledge of the lease or leases, or both.

F. To carry such insurance against such hazards including public liability, and in such amounts in either stock companies or mutual companies as to the Personal Representatives and/or trustees shall seem advisable.

G. To determine, irrespective of statute or rule of law, how all receipts and disbursements of this estate or trust or any share thereof, including the executor's or trustee's compensation, shall be credited, charged or

K. To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as to them shall seem advisable, includ-

reasonable care.  
Personal representative provided he was selected and retained with omission, misconduct, or default of any such agent or profes- estate or trust, and to do so without liability for any neglect, for the proper management, handling and administration of the which manager may also be one of the trustees, deemed needful and other assistants, advisors and a manager of the assets, attorneys-in-fact, attorneys-at-law, tax specialists, realtors, live or trustee shall seem proper, agents, accountants, brokers, principal or the income or both as to the Personal Representa-

J. To employ and compensate, out of the Discounts may be disregarded.  
premiums paid in connection with the purchase of any securities.

I. To amortize or not amortize the discretion shall determine.  
reserves as the Personal Representative or trustee in their sole shall determine and to establish or not establish depreciation Personal Representative or trustee in their sole discretion income depreciation on any asset of the estate or trust as the H. To charge or not charge against

subject to any question by any beneficiary thereof.  
the Personal Representative or trustee shall be final and not apportioned as between income and principal, and the decision of

*[Handwritten initials]*

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ing the power to borrow from the Personal Representative or trustee and to mortgage or pledge such portion of the estate or trust as may be required to secure such loans; and as maker or endorser to renew existing loans.

L. To value and appraise the assets hereof in any division or distribution of the estate or trust and to distribute the same in kind at such appraised value, which shall be conclusive against all persons interested hereunder.

M. To retain, buy, sell or otherwise deal with stock and securities of the Personal Representative and trustee as the Personal Representative or trustee shall deem best.

N. In addition to the powers, authority and discretion herein conferred or conferred by law, the Personal Representative or trustee shall have the authority to do all things and the right to exercise all powers reasonably necessary or incidental to the proper management of the estate or trust and the Personal Representative or trustee shall not be liable for any loss to the estate or trust occasioned by his acts in good faith, nor for honest errors in judgment.

O. Notwithstanding any other provisions hereof, the trustees, by unanimous consent, may in their discretion elect to dedicate any portion of the real property to a conservation easement or family managed non-profit foundation primarily for the purpose of protecting wildlife habitat.

*Handwritten initials/signature*

ITEM XV: In the event for any reason there is liquidation and/or sale and/or exchange of real properties included in my estate or held by corporations in which I own stock, tracts and/or parcels other than those listed in Item X should be liquidated, sold and/or exchanged first. Further, I shall endeavor to leave a suggested list of the order of liquidation, attached to this Will, which list shall not be controlling, but shall be used as a guide for my Personal Representatives and/or Trustees. The powers and discretion of my Personal Representatives and Trustees under this Will shall not be superceded by this Item XV.

*R. W. B.*

ITEM XVI: My Personal Representatives shall have absolute discretion, but shall not be required, to make adjustments in the rights of any beneficiaries, or among the principal and income accounts to compensate for the consequences of any tax decision or election, or of any investment or administrative decision, that my Personal Representatives believe has had the effect, directly or indirectly, of preferring one (1) beneficiary or group of beneficiaries over others. In determining the federal estate and income tax liabilities of my estate, my Personal Representatives shall have discretion to select the valuation date and to determine whether any or all of the allowable administration expenses in my estate shall be used as federal estate tax deductions or as federal income tax deductions and shall have the discretion to file a joint income tax return with my spouse.

**ITEM XVII:** It is expressly provided that the grant of rights, powers, privileges and authority to my Personal Representatives and Trustees in connection with the imposition of duties upon my Personal Representatives and Trustees by any provision of this my Will or any statute relating thereto shall not be effective if and to the extent that the same, if effective, would disqualify the marital deduction as established in the Marital Trust hereof. It is my intention that my said wife, under the provisions of the Marital Trust, have substantially that degree of beneficial enjoyment of the Trust Estate during her lifetime which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust and my Personal Representatives and Trustees shall not exercise their discretion in a manner which is not in accord with this expressed intention. My Personal Representatives and Trustees shall invest the Trust Estate so that it will produce for my said wife during her lifetime an income or use which is consistent with the value of the Trust Estate and with its preservation. It is expressly provided that my Personal Representatives and Trustees shall not in the exercise of their discretion make any determination inconsistent with the foregoing, especially in regard to and including, but not limited to, the powers granted in Paragraphs (1), (2), (5), (13), (22), (23), (24), (26) and (39) of Item XIV hereof and by any statute granting powers to a trustee.

*R. S. B.*

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**ITEM XVIII:** For purposes of this Will, "children" means the lawful blood descendants of the first degree of the parent designated, including all of my children by my previous marriage; and "issue" and "descendants" means the lawful blood descendants in any degree of the ancestor designated; provided, however, that if a person has been adopted, that person shall be considered a child of such adopting parent and such adopted child and his issue shall be considered as issue of the adopting parent or parents and if anyone who is by blood or adoption an ancestor of the adopted parent or either of the adopting parents.

**ITEM XVIV:** Notwithstanding anything herein to the contrary, the Trusts created under this my Will shall terminate no later than twenty-one (21) years after the death of the last survivor of my children's issue living on the date of my death, when my Trustee shall distribute each remaining trust hereunder to the beneficiary or beneficiaries of the current income thereof, and if there is more than one beneficiary, in the proportion in which they are beneficiaries.

**ITEM XX:** If any share hereunder become distributable to a beneficiary who has not attained the age of twenty-one (21) years, then such share shall immediately vest in such beneficiary, but notwithstanding the provisions herein, my Trustees shall retain possession of such share in trust for such beneficiary until such beneficiary attains the age of Twenty-one (21) years, using so much of the net income and principal of

under such circumstances as would render it doubtful whether the

ITEM XXII: If any beneficiary and I should die

such beneficiary's care, support and education.  
beneficiary; (4) by my Trustee using such amounts directly for  
relative or friend for the care, support and education of such  
the legally appointed guardian of such beneficiary; (3) to some  
Trustee deems best: (1) directly to such beneficiary; (2) to

paid out by my Trustee in such of the following ways as my  
properly to administer such amounts, then such amounts shall be  
physical disability, is, in the opinion of my Trustee unable  
ated incompetent, but who, by reason of illness or mental or  
to a person under legal disability, or to a person not adjud-  
become payable to a person under the age of twenty-one (21), or  
under any trust created hereunder or any share thereof shall

ITEM XXI: In case the income or principal payment

herein generally.  
powers and discretions had with respect to the trust created  
shall have, with respect to each share so retained, all the  
her personal representatives or administrators. My Trustee  
age twenty-one (21), or if he or she shall sooner die, to his or  
be paid over and distributed to such beneficiary upon attaining  
her parents known to my Trustee. Such beneficiary's share shall  
able any other income or resources of such beneficiary or his or  
taking into consideration to the extent my Trustee deem advi-  
proper support, medical care and education of such beneficiary,  
such share as my Trustee deem necessary to provide for the

*J. J. J.*

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beneficiary or I died first, then it shall be conclusively presumed for the purposes of this my Will that said beneficiary predeceased me; provided, however, that if my beloved wife, Alice S. Boykin, shall die with me as aforesaid, I direct that my said wife shall be conclusively presumed to have survived me.

ITEM XXIII: If at any time Trust B created hereunder has a fair market value as determined by my Trustee of Fifteen Thousand and 00/100 (\$15,000.00) Dollars or less, my Trustees, in their absolute discretion if they determine that it is uneconomical to continue such trust, may terminate such trust and distribute the trust property to the person or persons then entitled to receive or have the benefit of the income therefrom or the legal representative of such person. If there is more than one (1) income beneficiary, my Trustees shall make such distribution to such income beneficiaries in the proportion in which they are beneficiaries or if not proportion is designated, in equal shares to such beneficiaries.

ITEM XXIV: On the death of any person entitled to income or support from Trust B hereunder, my Trustees shall be authorized to pay the funeral expenses and the expenses of the last illness of such person from the corpus of the Trust from which such person was entitled to income or support.

ITEM XXV: Except as otherwise provided herein, all payments of principal and income payable, or to become payable, to the beneficiary of any trust created hereunder shall not be subject to anticipation, assignment, pledge, sale or transfer in

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any manner, nor shall any said beneficiary have the power to anticipate or encumber such interest, nor shall such interest, while in the possession of my Personal Representatives or Trustees, be liable for, or subject to, the debts, contracts, obligations, liabilities or torts of any beneficiary.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this 2 day of June, 1989.

Lemuel Whitaker Boykin, II (SEAL)  
Lemuel Whitaker Boykin, II

I, Lemuel Whitaker Boykin, II, the testator, sign my name to this instrument this 2 day of June, 1989, 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.

Lemuel Whitaker Boykin, II  
Lemuel Whitaker Boykin, II  
Testator

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We, Lynn N. Robinson, and Julie G. Johnson, the witnesses, sign our names to this instrument, and at least one of us being first duly sworn, does hereby declare, generally and 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 the testator's signing, and that 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.

Lynn N. Robinson  
Witness  
Julie G. Johnson  
Witness

STATE OF SOUTH CAROLINA )  
COUNTY OF KERSHAW )

*L. N. Robinson*

Subscribed, sworn to and acknowledged before me by Lemuel Whitaker Boykin, II, the testator, and subscribed and sworn to before me by Lynn N. Robinson, witness, this 2nd day of June, 1989.

Julie G. Johnson  
Notary Public of South Carolina  
My commission expires: 4/15/96

Haynsworth  
Sinkler Boyd, P.A.

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