

# Last Will and Testament

OF

HENRY GRADY YARBOROUGH, SR.

STATE OF ALABAMA,  
JEFFERSON COUNTY.

I, Henry Grady Yarborough, Sr., a resident of Jefferson County, State of Alabama, being of sound mind and disposing memory, do make, publish and declare this instrument as and for my Last Will & Testament, hereby revoking any and all other wills and codicils thereto heretofore made by me.

## ITEM ONE

I direct that all of my debts, including the expenses of my last illness and funeral, shall be paid out of my estate by my Executor hereinafter named, as soon as practicable after my death.

## ITEM TWO

I give and bequeath all of my wearing apparel, jewelry, books, pictures, automobiles, and all other objects of my personal use, together with any insurance thereon, all club memberships and stadium certificates, to my son, Henry Grady Yarborough, Jr., absolutely, if he survives me, and if not, to his children, equally. If any property bequeathed under this Item is distributable to a descendant of mine who has not attained the age of twenty-one (21) years, my Executor may, in his or its sole discretion, deliver the same directly to such descendant or to the parent, guardian, or other person having custody of such descendant. I hereby vest in my Executor full power and authority to determine what objects of property are included in the foregoing descriptions.

World Properties  
2820 Calumet Rd.  
Bham Ala. 35216

ITEM THREE

If my son, Henry Grady Yarborough, Jr., survives me, I give and bequeath the sum of Two Hundred and Fifty Thousand Dollars (\$250,000.00) in accordance with the provisions of Item Five hereof. This bequest may be set aside in cash or in kind, or partly in each, and the decision of my Executor as to the property or interests in property to be allocated to said bequest shall be final and conclusive and shall not be subject to question by any beneficiary, legatee, or devisee; provided however, that such property or properties shall be valued at it or their respective value or values as of the valuation date for federal estate tax purposes which is elected or which applies with respect to my estate. No adjustment shall be made for a disproportionate allocation of unrealized gains for Federal Income Tax purposes. All the rest, residue and remainder of my property of whatever kind and character and wherever situated (excluding any property over which I have only a general or limited power of appointment exercisable by will, deed or otherwise) I hereby give, devise, and bequeath to my son, Henry Grady Yarborough, Jr., provided that he survives me.

Henry Jr.

If my son, Henry Grady Yarborough, Jr., does not survive me, then all bequests and devises in this Item Three, including the residuary bequest and devise obtained in said Item Three, shall lapse and all property therein shall pass according to the residuary clause in Item Five of this Will.

ITEM FOUR

All the rest, residue and remainder of my property of whatever kind and character and wherever situated (excluding any property over which I have only a general or limited power of appointment exercisable by will, deed or otherwise) shall be held or disposed of in accordance with the provisions of Item Five of this Will.

ITEM FIVE

I hereby give, devise and bequeath all assets described in

the operative provisions of Items Three and Four above of this my Will and passing through this Item Five of my said Will to my Trustee, who shall hold the same in trust for the uses and purposes as hereinafter provided.

(a) During the lifetime of my son, Henry Grady Yarborough, Jr., the Trustee shall from time to time pay to or use and apply for the health, maintenance, support and education of such one or more or all or none of my said son and my descendants as shall be fitting at the time of such payment, so much of the income of the trust and the principal thereof, in such amounts and proportions and proportions, equal or unequal, as the Trustee shall deem necessary or desirable, taking into account other resources available to each such person and known to the Trustee. It is my intention that the Trustee may pay all or part or none of the income or principal or both, may make unequal payments, may from time to time exclude one or more of such persons from payments hereunder, may make payment to any such person even though payment could be made to the parent or ancestor of such person, may make payment to any such person who is living at the time of such payment even though payment could be made to the parent or ancestor of such person, and may make payment to any such person who is living at the time of such payment even though such person be not living at the time of the creation of this trust. The net income or any part thereof not so paid shall be accumulated, added to, and shall become a part of the principal of the trust. I wish, but do not require that the Trustee consider the suggestions of my said son, Henry Grady Yarborough, Jr., as to the needs of each person (including himself) to whom payments may be made, although the Trustee shall not in any event be obligated to follow such suggestions. No person shall have the right to require any distribution be made to him or her or to any person or organization for the benefit of such person, the decision of the Trustee being final and binding on all parties.

(b) Upon the death of my said son, Henry Grady Yarborough, Jr., or upon my death, if my said son shall not survive me, the Trustee shall apportion this trust into so many equal parts so that there

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AS BY DEED

will be one share for each grandchild of mine then living and one share for the then living descendants of each deceased grandchild of mine.

The Trustee shall transfer and pay over, subject to subsection (e) of this Item, any share set aside for the living descendants of a deceased grandchild of mine, to such descendants, per stirpes.

(c) The Trustee shall transfer and pay over one-third of the share allocated to any grandchild of mine to such grandchild free of trust when he or she attains the age of twenty-five (25) years, or upon apportionment, whichever later occurs. The Trustee shall transfer and pay over the remainder of said share to such grandchild when he or she shall attains the age of thirty (30) years, or upon apportionment, whichever later occurs.

During the continuance of the trust for any grandchild of mine, the Trustee shall pay to or for the benefit of such grandchild so much of the income and principal of such grandchild's share as the Trustee deems necessary or desirable to provide for the health, maintenance, support and education of such grandchild. Any part of the net income not so used may be accumulated and added to the principal of said share, being thereafter invested and treated in all respects as a part thereof, or may be distributed in such manner as the Trustee deems to be in the best interests of such grandchild.

(d) Upon the death of any grandchild beneficiary of mine prior to attaining the age for final distribution of his or her share, the Trustee shall transfer and pay over said share to the descendants of such grandchild in such manner and proportions as such grandchild may by Last Will & Testament appoint and direct, making specific reference to this limited power of appointment hereby granted. The Trustee shall transfer and pay over, subject to subsection (e) of this Item, any unappointed portion of such grandchild's share to his or her then living descendants, per stirpes, or if none, then to my living descendants, per stirpes the share of any such descendant to be merged with, administered and disposed of as a part of such other share, if any, as may then

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be held hereunder for the benefit of such descendant.

If any such grandchild is not survived by descendants of him or her, or of me, the Trustee shall transfer and pay over the share of said trust then held for such grandchild, to such persons as would be entitled to inherit the property constituting said share and in the proportions in which they would be entitled to inherit the same, from me under the laws of Alabama then in force, had I died at said time a resident of Alabama intestate and owned said property.

(e) If any share of this trust becomes distributable, other than by exercise of a power of appointment granted hereunder, to a descendant of mine who is under the age of twenty-one (21) years and for whom no other share is then being held in trust, then though his or her share shall be vested in him or her, the trustee shall continue to hold the same in trust with all of the powers and authority given it with respect to other trust property held hereunder, until he or she shall attain the age of twenty-one (21) years, using and applying for his or her health, maintenance support and education such part of the income and principal of such share as the trustee deems necessary or desirable for said purposes, accumulating and adding to principal any income not so used or distributing the same in such manner as the Trustee deems to be in the best interests of such descendant. When such descendant shall attain the age of twenty-one (21) years, the Trustee shall transfer and pay over said share to him or her free of trust. If any such descendant shall die prior to attaining the age of twenty-one years, the Trustee shall transfer and pay over said share to his or her Executor or administrator.

H. B. [Signature]

(f) If I am survived neither by my son nor by any descendant of me, I give, devise and bequeath my entire estate to such persons as would be entitled to inherit said estate and in such proportions as they would be entitled to inherit the same,

from me under the laws of Alabama had I died a resident of Alabama intestate.

ITEM SIX

The Trustee shall hold and manage the said trust or trusts and all share thereof, with all of the powers and authority it would have if it were the absolute owner thereof, including, but not limited to the following powers:

1. To collect the income therefrom.
2. To compromise, adjust and settle in its discretion any claim in favor of or against the trust.
3. To hold any property or securities originally received by it as a part of the trust or to which it becomes entitled by virtue of incorporation, liquidation, reorganization, merger, consolidation or change of charter or name, including any stock or interest in any family corporation, partnership or enterprise, or any stock or obligation of AmSouth Bancorporation or any of its affiliates, so long as it shall consider the retention for the best interests of the trust.
4. To sell, auction, convey, exchange, lease or rent for a period beyond the possible termination of the trust (or for a less period) for the improvement or otherwise, or to grant options, or otherwise dispose of, all or any portion of the trust, in such manner and upon such terms and conditions as the trustee may approve.
5. To invest and reinvest the trust and the proceeds of sale or disposal of any portion thereof, in such loans, bonds, stocks, mortgages, common trust funds, securities, or other property, real or personal, or to purchase options for such purposes, or to exercise options, rights, or warrants, to purchase securities or other property, as the Trustee may deem suitable.
6. To hold, retain or acquire property or securities which in its opinion is for the best interests of the trust, without regard to any statutory or constitutional limitation applicable to the investment of trust funds.
7. To vote any corporate stock held hereunder in person, or by special, limited or general proxy, with or without power of substitution, or to refrain from voting the same, and to waive notice of any meeting and to give any consent for or with respect thereto.
8. To continue or dispose of any business enterprise without liability therefor, whether such enterprise be in the form of a sole proprietorship, partnership, corporation or otherwise, and to develop, add capital to, expand or alter the business of such enterprise, to liquidate, incorporate, reorganize, manage or consolidate the same, or change its charter or name, to enter into, continue or extend any voting trust for the duration of or beyond the term of the trust, to appoint directors and employ officers, managers, employees or agents (including any trustee or directors, officers or employees thereof) and to compensate and offer stock options and other employee or fringe benefits to them, and in exercising the powers

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*Henry*



in relation to such business enterprise, to receive extra or extraordinary compensation therefor.

9. To subdivide or otherwise develop, and to change the use or purpose of, any real estate constituting a part of the trust into residential, recreational, commercial, cemetery, or other usage, to construct, alter, remodel, repair or raze any building or other improvement located thereon, to release, partition, vacate, abandon, dedicate or adjust the boundaries as to any such property.

10. To operate farms and woodlands with hired labor, tenants or sharecroppers, to acquire real estate, crop allotments, livestock, poultry, machinery, equipment, materials, and any other items of production in connection therewith, to clear, drain, ditch, make roads, fence and plant part or all of such real estate, and to employ or enter into any practices or programs to conserve, improve or regulate the efficiency, fertility and production thereof, to improve, sell, auction or exchange crops, timber or other product thereof, to lease or enter into other management, cutting, production or sales contracts for a term beyond the possible termination of the trust or for a less period, to employ the methods of carrying on agriculture, animal husbandry and silviculture which are in use in the vicinity of any of such real estate or which the Trustee deems otherwise appropriate, to make loans or advances at interest for production, harvesting, marketing or any other purpose hereunder, in such manner and upon such terms and conditions as the trustee may approve, and in general to take any action which the Trustee deems necessary or desirable in such operation of farms and woodlands.

11. To drill, explore, test, mine or otherwise exploit oil, gas, or other mineral or natural resources, to engage in absorption, repressuring, and other production, processing or secondary recovery operations, to install, operate and maintain storage plants and pipelines or other transportation facilities, to engage in any of the above activities directly under such business form as the Trustee may select or to contract with others for the performance of them, and to enter into and execute oil, gas and mineral leases, division and transfer orders, grants, farm-out, pooling or unitization agreements, and such other instruments or agreements in connection therewith as the Trustee deems necessary or desirable.

12. To borrow money for such time and upon such terms as the Trustee sees fit, without security on or mortgage of any real estate or upon pledge of any personal property held hereunder, and to execute mortgages or collateral agreements therefor as necessary.

13. To advance money to any trust for any purpose of the trust, and the Trustee shall reimburse itself for the money so advanced with reasonable interest thereon from the trust or from any funds belonging thereto.

14. To hold money in its custody while awaiting distribution or investment under the terms hereof, even though such money be commingled with its funds (in which case the Trustee shall keep a separate account of the same on its books), and the Trustee shall not be required to pay interest thereon.

15. To appoint, employ, remove and compensate such attorneys, agents and representatives, individual or

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corporate, as the Trustee deems necessary or desirable for the administration of the trust, and to treat as an expense of the trust any compensation so paid.

16. To hold property or securities in bearer form, in the name of the Trustee, or in the name of its nominee, without disclosing any fiduciary relation.

17. To keep any property constituting a part of said trust properly insured against hazards, to pay all taxes or assessments, mortgages or other liens now or hereafter resting upon said property, and to create reserves for depreciation, depletion or such other purposes as the Trustee deems necessary or desirable.

18. To determine whether any money or property coming into its hands shall be treated as a part of the principal of the trust or a part of the income therefrom, and to apportion between principal and income any loss or expenditure in connection with the trust as the Trustee may deem just and equitable; provided, however, that such power shall be exercised in accordance with the provisions of the Alabama Principal and Income Act.

19. To pay from income any expenses reasonably necessary for the administration of the trust, and in the event the income is insufficient for such payments, the same shall be paid from the principal thereof.

20. To exercise any power hereunder, either acting alone or jointly with others.

21. To pay the funeral and burial expenses of any beneficiary from the principal of the trust from which income has been payable to such beneficiary.

22. To divide or distribute the trust property as provided for hereunder in cash or in kind, or partly in each, and for such purposes, to determine the value of the trust property, and to determine the share and identity of persons entitled to take hereunder.

ITEM SEVEN

I direct that all estate or other tax levied against my estate by reason of my death shall be paid by my Executor out of my residuary estate as defined by applicable provision of this Will and any codicils hereto.

ITEM EIGHT

If an election is available to take certain deductions as income tax deductions or as estate tax deductions, such election shall be made as the Executor, in its discretion, may determine, and no adjustment between principal and income shall be required as a result of such election.

ITEM NINE

Additional property of any kind and character may be added

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Attest



to any trust hereunder, with the consent of the Trustee, by me or any person or fiduciary, by will or otherwise, and such property so received by my Trustee shall be added to, merged with and become a part of the property held in such trust hereunder, and thereafter shall be administered and disposed of in accordance with the terms of such trust.

ITEM TEN

The following provisions shall govern for all purposes of this will, wherever they may be applicable:

(a) Any payment of income or discretionary payment of principal from any trust created in this Will to or for any beneficiary may, in the discretion of the Trustee, be made to any person or organization (including the beneficiary or anyone having custody of him or her), who shall apply such payment for the use and benefit of the beneficiary as provided for hereunder.

(b) Upon making any payment or transfer hereunder, the Executor and Trustee shall be discharged as to such payment or transfer without liability for the subsequent application thereof, and when the final payment or transfer is made from the principal of any trust, such trust shall terminate and the Trustee shall be fully discharged as to such trust.

(c) It is my intention that any reference herein made to grandchild or grandchildren shall include any child or children born to my son after the execution of this Will.

(d) Any adopted person, including any person adopted by my said son, and his or her descendants, shall be considered to be descendants of the adoptive parents and of the ancestors of such adoptive parents, for all purposes hereunder, whether such adoption occurs before or after the execution of this Will.

ITEM ELEVEN

I hereby designate and appoint my son, Henry Grady Yarborough, Jr., as Executor of this my Last Will & Testament. I hereby designate and appoint The First National Bank of Birmingham (and such successor corporation having trust powers as

*Handwritten signature/initials*

shall succeed to the business of said bank by purchase, merger, consolidation or change or charter or name) as Trustee hereunder. In the event my said son is deceased at the time of my death, is unable to serve or chooses not to serve as such Executor, then I designate and appoint my said Trustee as Successor Executor hereunder.

I direct that no Executor or Trustee of mine shall be required to give bond or to file an inventory or appraisal of my estate or of any trust or share thereof in any court, though it shall make out and keep an inventory and shall exhibit the same to any party in interest at any reasonable time, and I direct that it shall be free from the control and supervision of any court. I hereby vest in my Executor the same full powers of management, control and disposition of my estate as are given to the Trustee under Item Six with respect to the trust or trusts hereunder. The First National Bank of Birmingham shall be entitled to reasonable compensation for its services as Executor and Trustee.

ITEM TWELVE

In the event it becomes necessary to have administration of my estate or of any trust or share thereof in any state other than Alabama and The First National Bank of Birmingham does not qualify therefor, it may nominate and appoint any person or organization as ancillary administrator thereof, and may compensate such administrator for its services. Such administrator shall complete its administration and make such disposition of the property administered by it as The First National Bank of Birmingham may require, and in so doing it shall have the same rights, powers, duties and discretion herein conferred upon the Executor and Trustee.

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Atty Gen

If the happening of any future event may cause the ultimate vesting of any trust or of any share therein to be extended under the provisions hereof to a time beyond that within which the same is required by law to become vested, then such trust or share therein shall continue only for as long a period of time as is allowed by law, at the end of which period the said trust or share therein shall terminate. In such case said trust or share therein shall be vested in and distributed to those persons enjoying the use and benefit of said trust or share therein at the expiration of such period, in the proportion in which they are so enjoying the same, irrespective of their attained ages.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 17<sup>th</sup> day of December, 1984.

Henry Grady Yarbrough, Sr.  
HENRY GRADY YARBROUGH, SR.

We the undersigned, hereby certify that the above named Testator subscribed his name to the foregoing instrument in our presence, and published and declared the same to be his Last Will & Testament, and we, at the same time, at his request, in his presence and in the presence of each other, have hereunto signed our names as subscribing witnesses.

James R. Davis  
Witness

Suite 315 4th Ave Park Cir, Bham, AL 35223  
Address

Thermon J. Ellis  
Witness

416 Metairie Drive, Bham, AL 35226  
Address

Robert McEachels  
Witness

579 South Everett, Bham, AL 35209  
Address

STATE OF ALA. SHELBY CO.  
I CERTIFY THIS  
INSTRUMENT WAS FILED  
1984 OCT 30 PM 3:27

Thomas C. Henderson, Jr.  
JUDGE OF PROBATE

# RECORDING FEES

Recording Fee	\$ <u>27.50</u>
Index Fee	<u>1.00</u>
TOTAL	\$ <u>28.50</u>