

IN THE MATTER OF THE ESTATE OF

IN THE PROBATE COURT OF
JEFFERSON COUNTY, ALABAMAADA FRENCH MCWANE

Deceased

CASE NO. 167372**LETTERS TESTAMENTARY****TO ALL WHOM IT MAY CONCERN:**

The Will of the above-named deceased having been duly admitted to record in said county. **Letters Testamentary** are hereby granted to JOHN J. MCMAHON, JR. the Personal Representative named in said will, who has complied with the requisitions of the law and is authorized to administer the estate. Subject to the priorities stated in § 43-8-76, Code of Alabama (1975, as amended), the said Personal Representative, acting prudently for the benefit of interested persons, has all the powers authorized in transactions under § 43-2-843, Code of Alabama (1975, as amended).

WITNESS my hand this date, JUNE 14, 1999(SEAL) GEORGE R. REYNOLDS

Judge of Probate

I, Peggy A. Proctor, Chief Clerk of the Court of Probate of Jefferson County, Alabama, hereby certify that the foregoing is a true, correct and full copy of the **Letters Testamentary** issued in the above-styled cause as appears of record in said court. I further certify that said Letters are still in full force and effect.

WITNESS my hand and seal of said Court this date, FEBRUARY 7, 2000Peggy A. Proctor
Chief Clerk

02/29/2000-86332
10:27 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
033 CJ1 88.50

Inst # 2000-06332

IN THE MATTER OF THE ESTATE
OF ADA FRENCH MCWANE,
DECEASED.

) IN THE PROBATE COURT OF
)
) JEFFERSON COUNTY, ALABAMA
)
) CASE NO. 167372

PETITION FOR LETTERS TESTAMENTARY

TO THE JUDGE OF SAID COURT, THE HONORABLE GEORGE R. REYNOLDS:

Comes your petitioner, John J. McMahon, Jr., and respectfully shows unto Your Honor the following facts:

1. In the last will and testament of Ada French McWane, which has been duly probated and admitted to probate in this Court, your petitioner is duly named as Executor thereof in the event that the decedent's husband, James Ransom McWane, predeceases the decedent. The decedent's husband, James Ransom McWane, predeceased the decedent, the decedent's said husband having died on December 13, 1997. Accordingly, your petitioner is due to act as Executor of the decedent's estate.

2. Your petitioner is a resident of Jefferson County, Alabama, is over the age of twenty-one (21) years, is of sound mind, and is in no respect disqualified under the law from serving as such Executor.

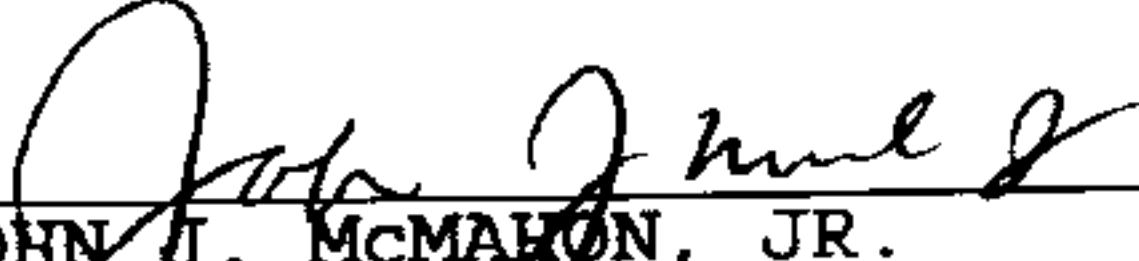
3. Under said will, your petitioner is duly exempted from giving any bond as such Executor. The decedent died seized and possessed of certain real and personal estate, estimated to aggregate in value in excess of \$10,000.00.

WHEREFORE, to the end that the properties constituting said estate may be collected and preserved for those who appear to have a legal interest therein and that the

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will may be executed according to the requests and directions of the decedent, your petitioner prays that Your Honor will grant letters testamentary to your petitioner in this matter without his entering into bond, as is provided by the terms of said will.

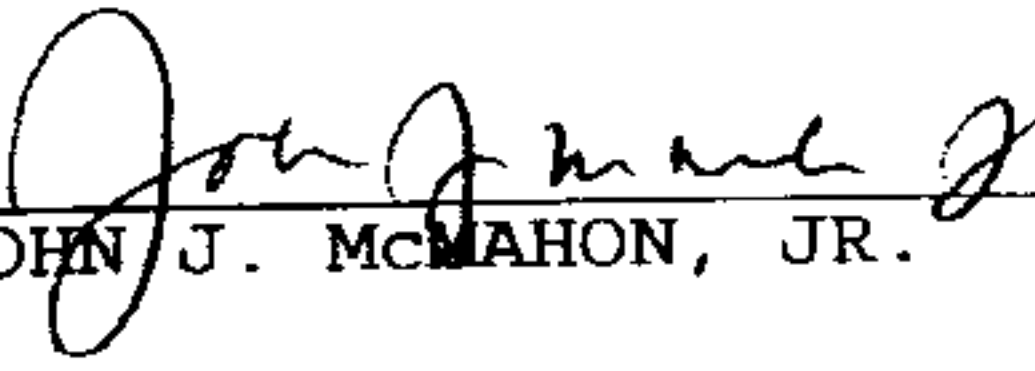

JOHN J. MCMAHON, JR.
2900 Highway 280, Suite 300
Birmingham, AL 35223

PETITIONER'S ATTORNEYS:
MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203-2618
(205) 254-1000

STATE OF ALABAMA)

JEFFERSON COUNTY)

Before me, Ashley W. Rivers, a Notary Public for said County in said State, personally appeared John J. McMahon, Jr., who, being first duly sworn, makes oath that he has read the foregoing Petition and knows the contents thereof and is informed and believes, and upon such information and belief avers, that the facts alleged therein are true and correct.


JOHN J. MCMAHON, JR.

Sworn to and subscribed before me this the 17th day of May, 1999.

Ashley W. Rivers
NOTARY PUBLIC

FILED IN OFFICE THIS 14 DAY OF June, 19 99, PRAYER
GRANTED AND PETITION ORDERED RECORDED

George R. Reynolds
JUDGE OF PROBATE

IN THE MATTER OF:

THE ESTATE OF:

ADA FRENCH McWANE
DECEASEDIN THE PROBATE COURT OF
JEFFERSON COUNTY, ALABAMA

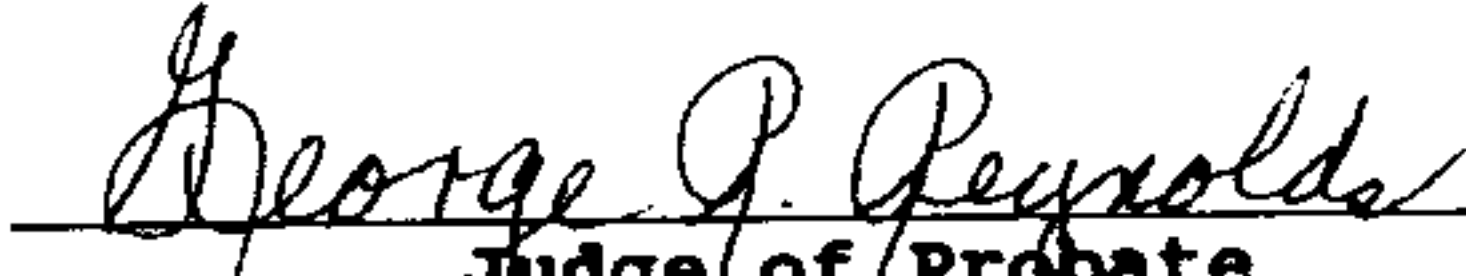
CASE NUMBER 167372

ORDER GRANTING LETTERS TESTAMENTARY WITHOUT BOND

Now on this day comes John J. McMahon, Jr. and files in this Court his petition in writing, under oath, praying that Letters Testamentary upon the Will of Ada French McWane, deceased, be issued to him.

It is therefore **ORDERED** and **DECREED** by the Court that Letters Testamentary upon said will be granted to John J. McMahon, Jr., and that said letters issue without bond or security being required, in accordance with the terms of said will. It is further **ORDERED** that the petition in this behalf be recorded.

DONE this date, June 14, 1999.



Judge of Probate

IN THE MATTER OF THE ESTATE
OF ADA FRENCH MCWANE,
DECEASED.

) IN THE PROBATE COURT OF
)
) JEFFERSON COUNTY, ALABAMA
)
) CASE NO. 167372

PETITION FOR PROBATE OF WILL

TO THE JUDGE OF SAID COURT, THE HONORABLE GEORGE R. REYNOLDS:

Comes your petitioner, John J. McMahon, Jr., and respectfully shows unto Your Honor the following facts:

1. Ada French McWane died in Birmingham, Alabama, on or about April 27, 1999. At the time of her death, the decedent was an inhabitant of Jefferson County, Alabama.

2. Surrendered herewith is an instrument dated January 31, 1991, which your petitioner verily believes and avers to be the decedent's last will and testament, which was duly signed by the decedent when over twenty-one (21) years of age and of sound mind, and which was duly attested by the following witnesses:

Candy Stewart-Magee	Odenville, Alabama
Ronald O. Travis	Birmingham, Alabama
Jan J. Ehrhardt	Birmingham, Alabama

3. Your petitioner is named as Executor in the last will and testament of the decedent in the event that the decedent's husband, James Ransom McWane, predeceases the decedent. The decedent's husband predeceased the decedent, so that your petitioner is due to act as Executor of the decedent's estate.

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4. The following is a true, correct and complete list of the names, ages, conditions, relationships and addresses of the decedent's next of kin, namely:

<u>NAME, AGE, CONDITION, RELATIONSHIP</u>	<u>ADDRESS</u>
✓ Charles Phillip McWane, over 21, of sound mind, son.	2848 Southwood Road Birmingham, AL 35223
✓ Anna McLester McWane, over 21, of sound mind, daughter.	2955 Burland Lane The Plains, VA 20198
✓ James Ransom McWane, Jr., over 21, of sound mind, son.	4240 Caldwell Mill Road Birmingham, AL 35243

WHEREFORE, your petitioner prays that Your Honor will take jurisdiction of this Petition; will cause all such notices or citations to issue to the said next of kin and attesting witnesses as may be proper in the premises; and will cause such proceedings to be had and done and such proof to be taken and render such orders and decrees as will duly and legally effect the probate and record in this Court of said will as the last will and testament of the decedent.


JOHN J. McMAHON, JR.
2900 Highway 280, Suite 300
Birmingham, AL 35223

PETITIONER'S ATTORNEYS:

MAYNARD, COOPER & GALE, P.C.
1901 Sixth Avenue North
2400 AmSouth/Harbert Plaza
Birmingham, Alabama 35203-2618
(205) 254-1000

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STATE OF ALABAMA)

JEFFERSON COUNTY)

Before me, Ashley W Rivers, a Notary Public for said County in said State, personally appeared John J. McMahon, Jr., who, being first duly sworn, makes oath that he has read the foregoing Petition and knows the contents thereof and is informed and believes, and upon such information and belief avers, that the facts alleged therein are true and correct.

John J. McMahon, Jr.
JOHN J. MCMAHON, JR.

Sworn to and subscribed before
me this the 17th day of
may, 1999.

Ashley W Rivers
NOTARY PUBLIC

FILED IN OFFICE THIS 14 DAY OF
June 19 99, PRAYER
GRANTED AND PETITION ORDERED RECORDED
George C. Reynolds
JUDGE OF PROBATE
GP

IN THE MATTER OF:

THE ESTATE OF:

ADA FRENCH MCWANE,
DECEASEDIN THE PROBATE COURT OF
JEFFERSON COUNTY, ALABAMA

CASE NUMBER 167372

ORDER ON FILING AND PROBATING LAST WILL AND TESTAMENT

This day came John J. McMahon, Jr. and filed a petition in writing, under oath, therewith producing and filing in this Court an instrument of writing purporting to be the Last Will and Testament of Ada French McWane, deceased, said will bearing date, January 31, 1991, and attested by Candy Stewart-Magee, Ronald O, Travis and Jan J. Ehrhardt; and praying that the same be probated as provided by law; that the next of kin of said deceased are as follows, to-wit: Charles Phillip McWane, son, Birmingham, Alabama; Anna McLester McWane, daughter, The Plains, Virginia and James Ransom McWane, Jr., son, Birmingham, Alabama, each of whom is over nineteen years of age and of sound mind.

, And thereupon comes each of the above named next of kin expressly waiving all notice of the petition to probate said will and consenting that the same be probated at once, and the court having ascertained by sufficient evidence that the signatures affixed to said waivers of notice and acceptances of service are the genuine signatures of said next of kin; now on motion of said petitioner, the Court proceeds to hear said petition; and, after due proof and hearing had according to the laws of this state, the court is satisfied and is of the opinion that said instrument is the genuine Last Will and Testament of said deceased, and that such instrument should be probated as the Last Will and Testament of said deceased. It is, therefore,

ORDERED, ADJUDGED AND DECREED by the Court that said instrument be duly admitted to probate as the Last Will and Testament of Ada French McWane, deceased, and ORDERED to be recorded together with the proof thereof and all other papers on file relating to this proceeding. It is further ORDERED that petitioner pay the costs of this proceeding.

DONE this date, June 14, 1999.

George P. Reynolds
Judge of Probate

CERTIFICATE TO THE PROBATE OF WILL

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The State of Alabama
JEFFERSON COUNTY

I, George R. Reynolds, Judge of the Court of Probate, in and for said State and County, do hereby certify that the foregoing instrument _____ of writing ha s this day, in said Court, and before me as the Judge thereof, been duly proven by the proper testimony to be the genuine last Will and Testament _____ of ADA FRENCH MCWANE Deceased and that said Will _____ together with the proof thereof have been recorded in my office in Judicial Record, Volume JR1695, Page 272-292.

In witness of all which I have hereto set my hand, and the seal of the said Court, this date JUNE 14, 1999

George R. Reynolds, Judge of Probate.

PROOF OF WILL (ONE WITNESS)

PROBATE - 22

IN THE MATTER OF THE ESTATE OF

IN THE PROBATE COURT

OF JEFFERSON COUNTY, ALABAMA

ADA FRENCH MCWANE

Deceased.

CASE NO. 167372

Before me, the undersigned, Judge of said Court, personally appeared in open Court _____

JAN J. EHRHARDT

who having been by me first duly sworn, deposeth and says that s he is a subscribing witness to the instrument of writing now shown to her and which purports to be the last Will and Testament of

Ada French McWane, deceased,

late and inhabitant of this County, that said deceased, signed and executed said instrument on the day that same bears date, and declared the same to be her last Will and Testament, and that affiant set her signature thereto, on the day the same bears date, as a subscribing witness to the same in the presence and at the request of said deceased and in the presence of the other subscribing witness, and that such other witnesses subscribed their /s name as a witness in the presence and at the request of said deceased. That said deceased was of sound mind and disposing memory, and in the opinion of deponent fully capable of making said Will, at the time the same was so made as aforesaid. Affiant further states that said deceased was on the day of the said date of said Will, of the full age of Nineteen years and upwards.

Subscribed and sworn to before me this date

J. EhrhardtJune 14, 1999

George R. Reynolds
Judge of Probate.

Recorded in Will Record _____, Page _____

LAST WILL AND TESTAMENT
OF
ADA FRENCH MCWANE

JR 1695 PG 272

I, ADA FRENCH MCWANE, a resident of Jefferson County, State of Alabama, being of sound and disposing mind and memory, do make, publish and declare this instrument as and for my last will and testament, hereby revoking any and all former wills and codicils thereto heretofore made by me.

ITEM ONE

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

ITEM TWO

I give and bequeath all household furniture, furnishings and effects (including, without limitation, appliances, furniture, furnishings, rugs, pictures, paintings, books, silver, plate, linen, china, glassware, antiques and objects of art), personal effects (including, without limitation, wearing apparel, jewelry, watches and all other articles of personal use or ornament), automobiles and their accessories, boats and their accessories, club memberships and stadium certificates owned by me at the time of my death and not otherwise effectively bequeathed, together with all policies of insurance relating thereto, to my husband, James Ransom McWane, if he survives me. If my husband does not survive me, I give and bequeath the same to such of my children, Charles Phillip McWane and Anna McLester McWane, as survive me, to be divided among them by my executor, in my executor's sole and absolute discretion, in as nearly equal pro-

FILED IN OFFICE THIS THE 14 DAY
OF June 19 99 FOR
PROBATE AND RECORD.

George H. Reynolds
JUDGE OF PROBATE

portions as may be practicable, having due regard for the personal preferences of my children. If I am not survived by my husband or by my son, Charles Phillip McWane, or by my daughter, Anna McLester McWane, the gift provided by this Item shall lapse, and the property herein described shall become a part of my residuary estate.

I hereby vest in my executor full power and authority to determine what items of property pass under the provisions of this Item.

ITEM THREE

My residuary estate (meaning thereby the rest and residue of the property of whatsoever kind and character and wheresoever situated belonging to me at the time of my death and over which I have the power of disposition, but not meaning any property over which I then have only a power of appointment, general or limited, exercisable by deed, will or otherwise) shall be disposed of as follows:

1. If any one or more of the group consisting of my son, Charles Phillip McWane, my daughter, Anna McLester McWane, or any issue of either my said son or my said daughter survive me, my executor shall divide my residuary estate into a sufficient number of equal shares so that there shall be set aside one equal share for each child of mine surviving me and one equal share for the issue collectively surviving me of either my said son or my said daughter who predeceases me leaving issue surviving me, such shares to be held or disposed of as follows:

A. With respect to any share so set aside for either my son, Charles Phillip McWane, or my daughter, Anna McLester McWane, such share shall be disposed of as follows:

(1) If such child has attained the age of forty (40) years at my death, I give, devise and bequeath such share to him or her;

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(ii) If such child has attained the age of thirty (30) years but not forty (40) years at my death, I give, devise and bequeath one-half (1/2) of such share to him or her;

(iii) Any part or all of such share not payable to such child under subparagraphs (i) and (ii) of this paragraph I give, devise and bequeath to the trustee hereinafter named, in trust, nevertheless, to be held, managed and disposed of as a separate trust for such child's primary benefit in accordance with the provisions set out in ITEM FOUR hereof.

B. With respect to any share so set aside for the issue collectively surviving me of either my said son or my said daughter who predeceases me leaving issue surviving me, my executor shall further divide such share among such living issue, in equal shares per stirpes, and with respect to each living issue entitled to such share or a portion of such share, I give, devise and bequeath such share or such portion of such share to which he or she is entitled to him or her if he or she has attained the age of thirty-five (35) years, otherwise to the trustee hereinafter named, in trust, nevertheless, to be held, managed and disposed of as a separate trust for his or her benefit in accordance with the provisions set out in ITEM FIVE hereof.

2. If I am survived neither by my son, Charles Phillip McWane, nor by my daughter, Anna McLester McWane, nor by any issue of my said son or my said daughter and if my husband, James Ransom McWane, survives me, I give, devise and bequeath my residuary estate to my husband.

3. If I survived neither by my son, Charles Phillip McWane, nor by my daughter, Anna McLester McWane,

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nor by any issue of my said son or my said daughter nor by my husband, James Ransom McWane, and if my son, James Ransom McWane, Jr., survives me, I give, devise and bequeath my residuary estate to my said son.

4. If I am survived neither by my son, Charles Phillip McWane, nor by my daughter, Anna McLester McWane, nor by any issue of my said son or my said daughter nor by my husband, James Ransom McWane, nor by my son, James Ransom McWane, Jr., and if any issue of my son, James Ransom McWane, Jr., survives me, I give, devise and bequeath my residuary estate to the then living issue of my son, James Ransom McWane, Jr., such issue to take, in equal shares per stirpes, subject to the provisions of ITEM SEVEN hereof.

5. If I am survived neither by my husband, James Ransom McWane, nor by any issue of mine and if my husband's sister, Bee McWane Reid, survives me, I give, devise and bequeath my residuary estate to my husband's said sister.

6. If I am survived neither by my husband, James Ransom McWane, nor by any issue of mine nor by my husband's sister, Bee McWane Reid, I give, devise and bequeath my residuary estate to the McWane Foundation.

ITEM FOUR

The following provisions shall govern each separate trust herein created for the primary benefit of my son, Charles Phillip McWane, or my daughter, Anna McLester McWane, such child being herein called the "beneficiary," and the trustee is directed as follows:

1. The trustee shall pay to or for the benefit of the beneficiary so much, if any, of the net income or principal of the trust as the trustee, in the trustee's sole and absolute discretion, shall deem necessary or desirable for the beneficiary's support, maintenance and

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education, it being my intention that all or part or none of the net income or principal may be paid to the beneficiary. The trustee shall consider all resources and income of or available to the beneficiary from all sources reasonably known to the trustee. The beneficiary shall not have the right to require that any payment of income or principal be made under the provisions of this paragraph, the decision of the trustee being final and binding. The trustee shall be fully discharged with respect to all amounts of principal so paid to the beneficiary without obligation on the part of the beneficiary to account therefor to the trustee or any person, firm or corporation. The net income or any part thereof not so paid shall be accumulated and added to and become a part of the principal of the trust.

2. If the beneficiary was under the age of thirty (30) years at the creation of the trust, the trustee shall transfer, convey and pay over, free of trust, to the beneficiary one-half (1/2) of the then corpus when the beneficiary attains the age of thirty (30) years.

3. The trust shall terminate on the first to occur of

A. The date the beneficiary attains the age of forty (40) years, or

B. The date the beneficiary dies.

If the trust terminates on the date the beneficiary attains the age of forty (40) years, the trustee shall transfer, convey and pay over, free of trust, the then remaining principal and undistributed income of the trust to the beneficiary.

If the trust terminates on the date of the death of the beneficiary, the trustee shall transfer, convey and pay over, free of trust except as provided in ITEM SIX or

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ITEM SEVEN hereof, the then remaining principal and undistributed income of the trust to the issue of the beneficiary living at the termination of the trust, in equal shares per stirpes, or if no issue of the beneficiary is living at the termination of the trust and if issue of mine (other than my son, James Ransom McWane, Jr., or his issue) is then living, to such issue of mine, in equal shares per stirpes, or if no such issue of mine is then living and if my husband, James Ransom McWane, is then living, to my said husband, or if my said husband is not then living and if my son, James Ransom McWane, Jr., is then living, to my said son, or if my said son is not then living and if any issue of my said son is then living, to such issue, in equal shares per stirpes, or if no issue of my said son is then living and if my sister, Bee McWane Reid, is then living, to my said sister, or if my said sister is not then living, to the McWane Foundation.

ITEM FIVE

The following provisions shall govern each separate trust herein created for the primary benefit of a living issue of either my son, Charles Phillip McWane, or my daughter, Anna McLester McWane, such living issue being hereinafter referred to as the "beneficiary," and the trustee is directed as follows:

1. The trustee shall pay to or apply for the benefit of the beneficiary so much, if any, of the net income or principal of the trust as the trustee, in the trustee's sole and absolute discretion, shall deem necessary or desirable for the beneficiary's support, maintenance and education, it being my intention that all or part or none of the net income or principal may be paid to the beneficiary. The trustee shall consider all resources and income of or available to the beneficiary from all

sources reasonably known to the trustee. The beneficiary shall not have the right to require that any payment of income or principal be made to him or her, the decision of the trustee being final and binding on all persons. The trustee shall be fully discharged with respect to all amounts of income or principal paid to or for the benefit of the beneficiary without obligation on the part of the beneficiary to account therefor to the trustee or any person, firm or corporation. The net income or any part thereof not so paid shall be accumulated and added to and become a part of the principal of the trust.

2. The trust shall terminate on the first to occur of

A. The date the beneficiary attains the age of thirty-five (35) years,

B. The date which is twenty-one (21) years after the date of the death of the last to die of the issue of my husband's mother, Louise Nevins McWane, living at the creation of the trust, or

C. The date the beneficiary dies.

If the trust terminates on the date determined under subparagraph A or B above, the trustee shall transfer, convey and pay over, free of trust, the then principal of the trust, together with any undistributed income thereof, to the beneficiary.

If the trust terminates on the date of the death of the beneficiary, the trustee shall transfer, convey and pay over, free of trust except as provided in ITEM SIX or ITEM SEVEN hereof, the then principal of the trust, together with any undistributed income thereof, to the issue of the beneficiary living at the termination of the trust, in equal shares per stirpes, or if no issue of the beneficiary is living at the termination of the trust and if issue of mine (other than my son, James Ransom McWane,

Jr., or his issue) is then living, to such issue of mine as would be entitled to inherit the property constituting the same and in the proportions in which they would be entitled to inherit the same from the beneficiary under the laws of descent and distribution of Alabama relating to real property in force at the termination of the trust, had the beneficiary died immediately following the termination of the trust, domiciled in Alabama, intestate, unmarried, survived only by issue of mine and owned the same, whether or not the property being distributed is real, personal or mixed, or if no such issue of mine is then living and if my husband, James Ransom McWane, is then living, to my said husband, or if my said husband is not then living and if my son, James Ransom McWane, Jr., is then living, to my said son, or if my said son is not then living and if any issue of my said son is then living, to such issue, in equal shares per stirpes, or if no issue of my said son is then living and if my husband's sister, Bee McWane Reid, is then living, to my husband's said sister, or if my husband's said sister is not then living, to the McWane Foundation.

ITEM SIX

If any person becomes entitled to any share of the principal or undistributed income of any trust herein created on its termination and if such person has any other property then held in trust for his or her benefit under the provisions of this will, his or her share in the trust so terminating shall not be transferred, conveyed and paid over, free of trust, to him or her but shall be added to, merged with and administered and disposed of like such other property so held in trust for him or her.

ITEM SEVEN

If any person becomes entitled to any share of my estate on my death or of the principal or undistributed income of any trust herein created on its termination, if such person has no other property then held in trust for his or her benefit under this will and if such person shall not have attained the age of twenty-one (21) years on the date he or she becomes so entitled to such share, then though the share of such person in my estate or in the trust so terminating shall then vest in him or her, his or her share shall not be transferred, conveyed and paid over, free of trust, to him or her, and the trustee shall hold the same in trust for him or her until he or she shall attain the age of twenty-one (21) years, using and applying for his or her support, maintenance and education such part of the net income from his or her share or of the principal thereof as the trustee deems necessary or desirable for said purposes; provided, however, if such person shall die prior to attaining the age of twenty-one (21) years, the trustee shall transfer, convey and pay over, free of trust, the then principal and undistributed income from his or her share to his or her estate.

ITEM EIGHT

The following provisions shall apply to each trust created under this will:

1. The trustee is authorized, but not required, to mingle the trust property of the separate trusts held under this will, allotting to each separate trust an undivided interest in the mingled funds.

2. All references in this will to "trustee" shall be deemed to include not only the original trustee but also any successor trustee; and all powers and

discretions vested in the original trustee shall be vested in, and exercisable by, any such successor trustee.

3. If the happening of any future event may cause the ultimate vesting of any trust estate herein created 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 and in such event the trust as to said trust estate or as to such 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 as to said trust estate or as to such share therein shall terminate. In such case said trust or such share therein shall at the expiration of such period thereupon be vested in and distributed to the person for whose primary benefit the trust was created, or, if the trust was created for the primary benefit of more than one person, to such persons in the proportions in which they are so enjoying the same, irrespective of their attained ages.

4. The income of the trusts herein created at my death shall accrue from the date of my death, and until the trusts are established, I authorize my executor, in my executor's absolute discretion, from time to time and at any time, to pay out of my general estate to the respective income beneficiaries of such trusts, as advance payments of income, such sum or sums as, in my executor's judgment, are not in excess of the income which such income beneficiaries probably would have been entitled to receive from the said trusts had the same been established. Any such sum paid from the principal of my general estate shall be regarded merely as a temporary advance to be restored to the principal from income otherwise payable to the beneficiary to whom such advance shall have been made.

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5. As to the net income which by any of the provisions of this will may be payable to any person, such person shall have no right or power, either directly or indirectly, to anticipate, charge, mortgage, encumber, assign, pledge, hypothecate, sell or otherwise dispose of same, or any part thereof, until same shall have been actually paid in hand to him or her by the trustee. Nor shall such income nor the principal or corpus of any trust estate nor any part of or interest in either of them be liable for or to any extent subject to any debts, claims or obligations of any kind or nature whatsoever or to any legal process in aid thereof, contracted or incurred by or for such person before or after my death.

6. The whole or any part of the income or principal of any trust payable to any beneficiary who, in the opinion of the trustee, is incapacitated through illness, age or other cause may, in the discretion of the trustee, be paid to such beneficiary or applied by the trustee for the benefit of such beneficiary or paid to the guardian of the person of such beneficiary.

ITEM NINE

1. The trustee of any trust created under this will shall be my husband, James Ransom McWane. If my husband be dead or fails or refuses to act as trustee or, having acted, should thereafter die, resign or become incapacitated, then and in any such event John J. McMahon, Jr. shall act as trustee. If both my husband and John J. McMahon, Jr. be dead or otherwise unable or unwilling to act as trustee, then and in any such event AmSouth Bank N.A. (or such successor corporation having trust powers as may succeed to the business of said bank by purchase, merger, consolidation or otherwise) shall act as trustee. Any successor trustee shall have all of the rights,

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powers, authorities, duties and discretions of the original trustee.

2. The individual trustee at any time serving hereunder shall not be entitled to compensation but shall be entitled to reimbursement for all expenses reasonably incurred in the performance of the duties of trustee. The corporate trustee shall be entitled to reasonable compensation for any service rendered by it as trustee. No trustee shall be required to give any bond or security.

3. In addition to, and not by way of limitation of, the powers conferred by law upon fiduciaries, I hereby expressly grant to the trustee with respect to each of the trust estates herein created, including any accumulated income thereof, the powers hereinafter enumerated, all such powers so granted to be exercised by the trustee, as the trustee may deem advisable, in the trustee's sole and absolute discretion:

A. To retain and hold any property, including stocks, bonds or other securities, originally received by the trustee as a part of the trust estate, irrespective of whether such property is a so-called "legal" investment of trust funds and irrespective of the relative proportion of the trust estate represented by any such property or part thereof, and, without limiting the generality of the foregoing, to retain and acquire the stock or other securities of National Commerce Corporation or McWane, Inc. or any successor in interest thereto;

B. To sell, exchange, transfer or convey, either before or after option granted, all or any part of the trust estate upon any terms and conditions, and to invest and reinvest the trust estate and the proceeds of sale or disposal of any portion thereof in any loans, stocks, bonds or other securities, common trust

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funds, mortgages, participations in mortgages, or other property, real or personal, whether so-called "legal" investments of trust funds or not;

C. To improve, repair, lease or rent for improvement or otherwise for a term beyond the possible termination of the trust or for any less term, either with or without option of purchase, and to develop, let, exchange, release, partition, subdivide, vacate, dedicate, adjust the boundaries of or change the use of any real estate constituting a part of the trust estate;

D. To borrow money from any lender, including the trustee, for any purpose, with or without security or mortgage of any real estate or pledge of any personal property held by the trustee hereunder;

E. To determine whether or to what extent receipts should be determined to be income or principal, whether or to what extent expenditures should be charged against principal or income, and what other adjustments should be made between principal or income by following the provisions of the Alabama Principal and Income Act as the same shall exist from time to time, and in all instances in which such Act does not resolve questions relating to principal and income, to determine the same with due regard to the interest of the beneficiary then entitled to the income thereof;

F. To keep any property constituting a part of the trust estate properly insured against any hazards, to pay all taxes or assessments, mortgages or other liens now or hereafter resting upon said property, and generally to pay all the expenses of the trust incurred in the exercise of the powers herein vested in the trustee;

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G. To make divisions and distributions hereunder provided for either in cash or in kind, or partly in cash and partly in kind, and for that purpose to determine values thereof, and to determine the identity of persons entitled to take hereunder;

H. To hold any or all securities or other property constituting the trust estate in bearer form, in the name of the trustee, or in the name of some other person, partnership or corporation without disclosing any fiduciary relation, and to mingle any or all of the property constituting the trust estate in investments with other property held in other trust estates;

I. To vote in person or by proxy, general or limited, upon all stocks, bonds or other securities constituting a part of the trust estate; to unite with other owners of similar property in carrying out any plan for the consolidation, merger, dissolution, recapitalization, liquidation or reorganization of any corporation or other business entity whose securities constitute a part of the trust estate; to exchange the securities of any corporation or other business entity constituting a part of the trust estate for other securities; to assent to the consolidation, merger, dissolution, recapitalization, liquidation or reorganization of any such corporation or other business entity; to sell or lease the property or any portion thereof of any such corporation or other business entity to any other corporation or other business entity; to pay all assessments, expenses and sums of money for the protection of the interest of the trust estate as the holder of such stocks, bonds or other securities; and generally to exercise with respect to all stocks, bonds or other securities held

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by the trustee the same rights and powers as are or may be exercised by a person owning similar property in his own right;

J. To institute and defend any and all suits or legal proceedings relating to the trust estate in any court, and to compromise or submit to arbitration all matters of dispute in which the trust estate may be involved;

K. To execute and deliver any and all contracts, conveyances, transfers or other instruments, and to do any acts, including the employment of attorneys or agents, necessary or desirable in the execution of the powers herein vested in the trustee;

L. 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 products thereof; to lease or enter into 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 that are in use in the vicinity of any of such real estate or that the trustee deems otherwise appropriate; to make loans or advances at interest for production, harvesting, marketing or any other purpose hereunder, in any manner and upon any terms and conditions; and in general to take any action in such operation of farms and woodlands;

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M. To drill, explore, test, mine or otherwise exploit oil, gas and 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 any other instruments or agreements in connection therewith; and

N. To retain any business interest as shareholder, security holder, creditor, partner, proprietor or otherwise, even though it may constitute all or a large portion of the trust estate; to participate in the conduct of any business and take or delegate to others discretionary power to take any action with respect to its management and affairs that an individual could take as owner of the business, including the voting of stock and the determination of all questions of policy; to execute partnership agreements and amendments thereto; to participate in any incorporation, reorganization, merger, consolidation, recapitalization, liquidation or dissolution of any business or any change in its nature; to invest additional capital in, subscribe to or buy additional stock or securities of, or make secured, unsecured or subordinated loans to any business with trust funds; to rely upon the reports of certified public accountants as to the operations and financial condition of any business, without independent investigation; to

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elect or employ, as directors, officers, employees or agents of any business, and compensate, any persons, including a trustee or a director, officer or agent of a trustee; to deal with and act for any business in any capacity, including any banking or trust capacity and the loaning of money out of the trustee's own funds, and to be compensated therefor; and to sell or liquidate any interest in any business.

4. All powers given to the trustee in this Item and elsewhere in this will are exercisable by the trustee only in a fiduciary capacity.

ITEM TEN

1. The trustee serving hereunder may resign as to any trust created hereunder at any time without assigning any cause or reason therefor and without action or approval of any court by an instrument of resignation which shall have attached to it either proof that a copy has been sent to, or acknowledgment of receipt of a copy from, such of my husband and children as are then living, over the age of twenty-one (21) years and competent to act.

2. The trustee at any time serving as to any trust created hereunder may be removed at any time without any cause or reason being assigned therefor and without action or approval of any court by an instrument of removal executed by a majority of my husband and children as are then living, over the age of twenty-one (21) years and competent to act.

3. If the trustee resigns or is removed, then any successor trustee named in ITEM NINE to succeed the resigned or removed trustee shall so succeed the resigned or removed trustee. If no successor trustee is named in ITEM NINE to succeed the resigned or removed trustee, a majority of my husband and children as are then living,

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over the age of twenty-one (21) years and competent to act may appoint a successor trustee, which shall be a bank or trust company having trust powers and a capital and undivided surplus of at least Five Million Dollars (\$5,000,000).

4. Any instrument of resignation, removal or appointment shall be executed and acknowledged as required by law in the case of deeds. In the case of a trustee resigning or being removed, the instrument shall be filed in the Probate Court of the County in which is located the residence or principal office of the trustee resigning or being removed. In the case of the appointment of a successor trustee, such instrument shall be filed in the Probate Court of the County in which is located the residence or principal office of the trustee resigning or being removed and also in the Probate Court of the County in which is located the principal office of the successor trustee.

ITEM ELEVEN

I nominate and appoint my husband, James Ransom McWane, as executor of this my last will and testament. If my husband be dead or fails or refuses to act as executor or, having acted, should thereafter die, resign or become incapacitated, then and in any such event John J. McMahon, Jr. shall act as executor. If both my husband and John J. McMahon, Jr. be dead or otherwise unable or unwilling to act as executor, then and in any such event AmSouth Bank N.A. (or such successor corporation having trust powers as may succeed to the business of said Bank by purchase, merger, consolidation or otherwise) shall act as executor.

The executor acting at any time hereunder shall not be required to give bond or to file an inventory or

appraisal of my estate in any court, although the executor shall make and keep an inventory and shall exhibit the same to any party in interest at any reasonable time.

I hereby vest in my executor acting at any time hereunder the same full powers of management, control and disposition of my estate herein given my trustee under ITEM NINE hereof, and I direct that in the exercise of such powers my executor shall be free from the supervision and control of the probate court or any other court.

The individual executor at any time serving hereunder shall not be entitled to compensation but shall be entitled to reimbursement for all expenses reasonably incurred in the performance of the duties of executor. The corporate executor shall be entitled to reasonable compensation for any services rendered by it as executor.

ITEM TWELVE

The executor of my estate and the trustee of any trust created hereunder are authorized, but not required, (a) to deal with the personal representative of the estate of my husband, my father, my mother, my husband's father or mother, or of any issue of mine, and (b) to deal with the trustee of any trust created by me, my husband, my father, my mother, my husband's father or mother, or any issue of mine. The foregoing authorization shall not be affected by the fact that any fiduciary serving hereunder is the personal representative or one of the personal representatives of such estate or is the trustee or one of the trustees of such trust, any rule of law to the contrary being hereby expressly waived.

By way of illustration, the executor or trustee hereunder is authorized to purchase at a fair price securities and other property, real or personal, and to retain such purchased property, as an investment. In

addition, the executor or trustee hereunder is authorized to make loans out of the property being administered, provided such loans are made on adequate security and for an adequate rate of interest.

ITEM THIRTEEN

Should it be necessary for a representative of my estate to qualify in any jurisdiction wherein the executor named herein cannot or may not desire to qualify as such, or if at any time and for any reason there shall be no executor in office in such other jurisdiction, then I appoint as executor therein such person or corporation as may be designated by my executor. Such substituted executor shall, without giving any security, have in such other jurisdiction all the rights, powers, authorities, duties and discretions conferred or imposed upon the executor by the provisions of this will.

ITEM FOURTEEN

All references in this will to "child" or "children" shall mean lawful blood descendants in the first degree of the parent designated, and references to "issue" shall mean lawful blood descendants in the first, second or any more remote degree of the ancestor designated, provided always, however, that an adopted child and such adopted child's lawful blood descendants shall be considered as lawful blood descendants of the adopting parent or parents and of anyone who is by blood or adoption an ancestor of the adopting parent or of either of the adopting parents, and shall not be considered descendants of the adopted child's natural parents, except that when a child is adopted by a spouse of one of his or her natural parents such child shall be considered a descendant of such natural parent as well as a descendant of the adopting parent.

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ITEM FIFTEEN

I have intentionally preferred my son, Charles Phillip McWane, my daughter, Anna McLester McWane, and their issue over my son, James Ransom McWane, Jr., and his issue under the provisions of this will. I have done so only after long and careful consideration based on my conviction that this will be in the best interest of all concerned.

ITEM SIXTEEN

If my husband, James Ransom McWane, shall die simultaneously with me or under such circumstances as to render it impossible to determine who predeceased the other, I hereby direct that I shall be deemed to have survived him, and the provisions of this will shall be construed upon that assumption.

IN WITNESS WHEREOF, I have executed this instrument as and for my last will and testament on this the 31st day of January, 1991.

Ada French McWane (SEAL)
ADA FRENCH MCWANE

The above and foregoing was signed and published by ADA FRENCH MCWANE as and for her last will and testament on the day the same bears date in our presence, and we, on said date, and at her request, and in her presence, and in the presence of each other, have hereunto affixed our names as attesting witnesses.

Candy Stewart-Thayer ADDRESS: Rt. 2 Box 243, Odenville, AL 35720

Kenneth R. Rous ADDRESS: 5265 Woodford Dr., Birmingham, AL 35242

Jan J. Hubbard ADDRESS: 3086 River Oaks Rd. Bham AL 35243

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The State of Alabama
JEFFERSON COUNTY

I, Peggy A. Proctor, Chief Clerk of the Probate Court of said County and State, do hereby certify the foregoing papers to be, and contain a full, true and correct copy of the LETTERS TESTAMENTARY, PETITION FOR LETTERS TESTAMENTARY, ORDER GRANTING LETTERS TESTAMENTARY WITHOUT BOND, PETITION FOR PROBATE OF WILL, ORDER ON FILING AND PROBATING LAST WILL AND TESTAMENT, PROOF OF WILL (ONE WITNESS), CERTIFICATE TO THE PROBATE OF WILL, LAST WILL AND TESTMENT OF ADA FRENCH MCWANE as appears on file and of record in this Court.

Witness my hand and seal of said Court, this the 7 day of FEBRUARY 2000
Peggy A. Proctor
Chief Clerk

The State of Alabama
JEFFERSON COUNTY

I, George R. Reynolds, Judge of the Probate Court of said County and State, do hereby certify that, Peggy A. Proctor, whose name is signed to the preceding certificate of exemplification, is the Chief Clerk of the Probate Court of Jefferson County, Alabama, duly appointed and sworn, and that said Court is a Court of Record, and that full faith and credit are due to her official acts.

I further certify that the seal affixed to the said exemplification is the seal of the said Probate Court of Jefferson County, Alabama, and that the attestation thereof is in due form of law.

This the 7 day of FEBRUARY 2000
George R. Reynolds
Judge of Probate

The State of Alabama
JEFFERSON COUNTY

I, Peggy A. Proctor, Chief Clerk of the Probate Court of said County and State, do hereby certify that George R. Reynolds, whose name is signed to the foregoing certificate, is the Judge of the Probate Court of Jefferson County, Alabama, duly elected and sworn, and that the signature of said Judge is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this the 7 day of FEBRUARY 2000
Peggy A. Proctor
Chief Clerk