

IN THE MATTER OF THE ESTATE OF

IN THE PROBATE COURT OF
JEFFERSON COUNTY, ALABAMAJAMES RANSON MCWANE

Deceased

CASE NO. 162194**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 CHARLES PHILLIP MCWANE
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, JANUARY 22, 1998(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, 2000

Peggy A. Proctor
Chief Clerk

02/29/2000-06333
10:27 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
086 CJ1 221.00

Inst # 2000-06333

IN THE MATTER OF THE ESTATE
OF JAMES RANSOM MCWANE,
DECEASED.

) IN THE PROBATE COURT OF
)
) JEFFERSON COUNTY, ALABAMA
)
) CASE NO. 162194

PETITION FOR LETTERS TESTAMENTARY

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

Comes your petitioner, Charles Phillip McWane, and respectfully shown unto Your Honor the following facts:

1. In the last will and testament of James Ransom McWane, which has been duly probated and admitted to record in this Court, your petitioner is duly named as executor thereof.

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.

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 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

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2.

without his entering into bond, as is provided by the terms of said will.

Charles Phillip McWane
CHARLES PHILLIP MCWANE

PETITIONER'S ATTORNEYS:

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

FILED IN OFFICE THIS 22 DAY OF
January, 19 98, PRAYER
GRANTED AND PETITION ORDERED RECORDED

George L. Reynolds
JUDGE OF PROBATE

STATE OF ALABAMA)

JEFFERSON COUNTY)

Before me, Joanne S. Moore, a
Notary Public for said County in said State, personally
appeared Charles Phillip McWane, 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.

Charles Phillip McWane
CHARLES PHILLIP MCWANE

Sworn to and subscribed before
me this the 26 day of
December, 1997.

Joanne S. Moore
NOTARY PUBLIC

IN THE MATTER OF:

THE ESTATE OF:

JAMES RANSOM MCWANE,
DECEASEDIN THE PROBATE COURT OF
JEFFERSON COUNTY, ALABAMA

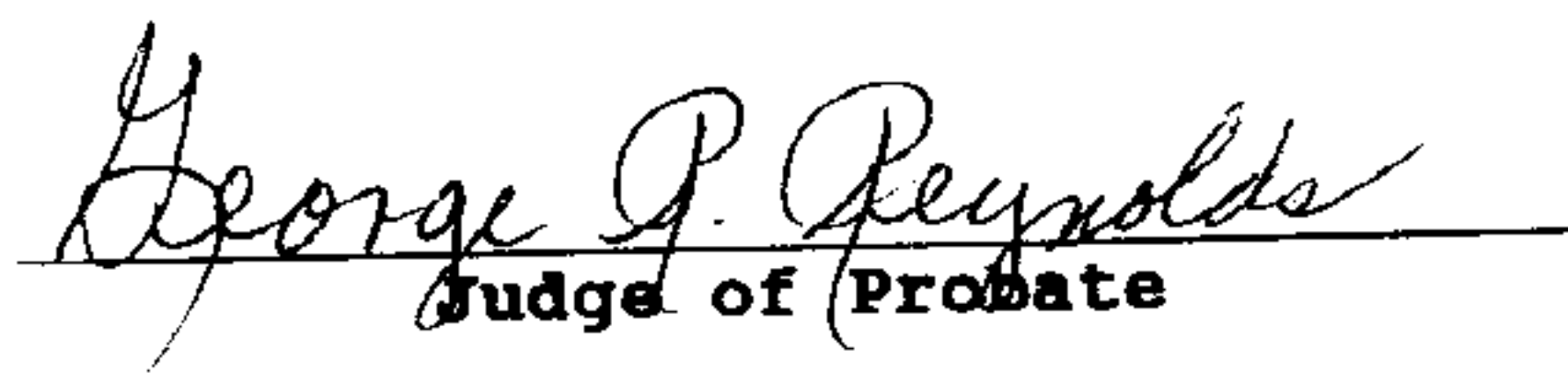
CASE NUMBER 162194

ORDER GRANTING LETTERS TESTAMENTARY WITHOUT BOND

Now on this day comes Charles Phillip McWane and files in this Court his petition in writing, under oath, praying that Letters Testamentary upon the Will of James Ransom McWane, deceased, be issued to him.

It is therefore **ORDERED** and **DECREED** by the Court that Letters Testamentary upon said will be granted to Charles Phillip McWane, 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, January 22, 1998.


Judge of Probate

IN THE MATTER OF THE ESTATE
OF JAMES RANSOM McWANE,
DECEASED.

) IN THE PROBATE COURT OF
)
) JEFFERSON COUNTY, ALABAMA
)
) CASE NO. 162194

PETITION FOR PROBATE OF WILL

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

Comes your petitioner, Charles Phillip McWane, and respectfully shows unto Your Honor the following facts:

1. James Ransom McWane died in Birmingham, Alabama, on or about December 13, 1997, and at the time of his death was an inhabitant of Jefferson County, Alabama.

2. Surrendered herewith is an instrument dated September 17, 1985, 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:

Candace Stewart-Magee
Ronald O. Travis
Kirby Sevier

Odenville, Alabama
Birmingham, Alabama
Birmingham, Alabama

Surrendered herewith also is an instrument dated January 31, 1991, which your petitioner verily believes and avers to be a first codicil to the last will and testament hereinabove described, 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:

Candace Stewart-Magee
Ronald O. Travis

Odenville, Alabama
Birmingham, Alabama

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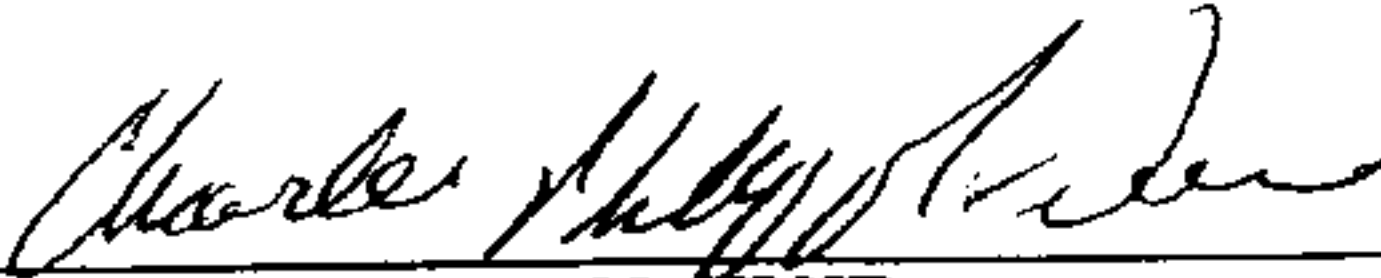
2.

3. Your petitioner is named as executor in the last will and testament of the decedent.

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

<u>NAME, AGE, CONDITION, RELATIONSHIP</u>	<u>ADDRESS</u>
W Ada French McWane, over 21, of sound mind, wife.	3320 Briarcliff Road Birmingham, AL 35223
f Charles Phillip McWane, over 21, of sound mind, son.	2848 Southwood Road Birmingham, AL 35223
W Anna McLester McWane, over 21, of sound mind, daughter.	2955 Burrland Lane The Plains, VA 20198
W 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 widow, heirs, 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 and first codicil as the last will and testament and first codicil of the decedent.



CHARLES PHILLIP MCWANE

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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, Janne S. Moore, a

Notary Public for said County in said State, personally
appeared Charles Phillip McWane, 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.

Charles Phillip McWane
CHARLES PHILLIP MCWANE

Sworn to and subscribed before
me this the 26 day of
December, 1997.

Janne S. Moore
NOTARY PUBLIC

MY COMMISSION EXPIRES OCTOBER 9, 2000

FILED IN OFFICE THIS 22 DAY OF
January, 19 98, PRAYER
GRANTED AND PETITION ORDERED RECORDED
George L. Reynolds
JUDGE OF PROBATE

IN THE MATTER OF:

THE ESTATE OF:

JAMES RANSOM MCWANE,
DECEASEDIN THE PROBATE COURT OF
JEFFERSON COUNTY, ALABAMA

CASE NUMBER 162194

**ORDER ON FILING AND PROBATING LAST WILL AND TESTAMENT
AND CODICIL THERETO**

This day came Charles Phillip McWane and filed a petition in writing, under oath, therewith producing and filing in this Court instruments of writing purporting to be the Last will and Testament and Codicil thereto of James Ransom McWane, deceased, said will bearing date the 17th day of September, 1985, and attested by Candace Stewart-Magee, Ronald O. Travis and Kirby Sevier; and said Codicil bearing date the 31st day of January, 1991, and attested by Candace Stewart-Magee and Ronald O. Travis and praying that the same be probated as provided by law; that petitioner is the son of said deceased, and is named in said will as executor thereof; that the widow and next of kin of said deceased are as follows, to-wit: Ada French McWane, Birmingham, Alabama; Charles Phillip McWane, son; Birmingham, Alabama; Anna McLester McWane, daughter, The Plains, Virginia and James Ransom McWane, son, Birmingham, Alabama, each of whom is over nineteen years of age and of sound mind.

And thereupon come the widow and each of the above named next of kin expressly waiving all notice of the petition to probate said will and Codicil 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

PAGE 2

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service are the genuine signatures of said widow and 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 instruments are the genuine Last Will and Testament and Codicil thereto of said deceased, and that such instruments should be probated as the Last Will and Testament of said deceased. It is, therefore,

ORDERED, ADJUDGED AND DECREED by the Court that said instruments be duly admitted to probate as the Last Will and Testament and Codicil thereto of James Ransom McWane, deceased, and ORDERED to be record 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, January 22, 1998.


Judge of Probate

PROOF OF WILL (ONE WITNESS) & CODICIL

PROBATE - 12

IN THE MATTER OF THE ESTATE OF

IN THE PROBATE COURT

OF JEFFERSON COUNTY, ALABAMA

JAMES RANSOM MCWANE

Deceased

CASE NO. 162194

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

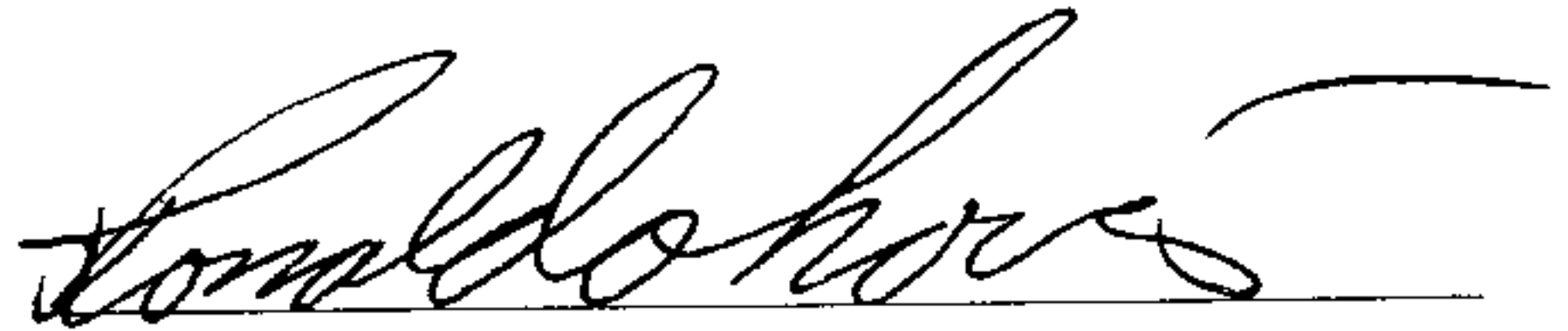
RONALD O. TRAVIS

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

JAMES RANSOM 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 his last Will and Testament, and that affiant set his 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 witness subscribed their names 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 January 22, 1998


Judge of Probate

Recorded in Will Record _____, Page _____

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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 **JAMES RANSOM MCWANE** _____ Deceased and that said Will _____

together with the proof thereof have been recorded in my office in Judicial Record, Volume **JR 1583**, Page **893-966**

In witness of all which I have hereto set my hand, and the seal of the said Court, this date **January 22, 1998**.

George R. Reynolds, Judge of Probate.

LAST WILL AND TESTAMENT
OF
JAMES RANSOM McWANE

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I, JAMES RANSOM 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 of 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 wife, Ada French McWane, if she survives me. If my wife 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 between them by my executor, in my executor's sole and absolute discretion, in as nearly equal proportions as

FILED IN OFFICE THIS THE 22 DAY
OF January, 19 98 A.D.
PROBATE AND RECORD.

George K. Penwell
JUDGE OF PROBATE

J. P. Mc

may be practicable, having due regard for the personal preferences of my said children. If I am not survived by my wife 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

I give, devise and bequeath all my right, title and interest in and to any real property owned by me at the time of my death and located in Jefferson County, Alabama, to my wife, Ada French McWane, if she survives me. If my said wife does not survive me, the gift herein provided shall lapse, and the property herein described shall become a part of my residuary estate.

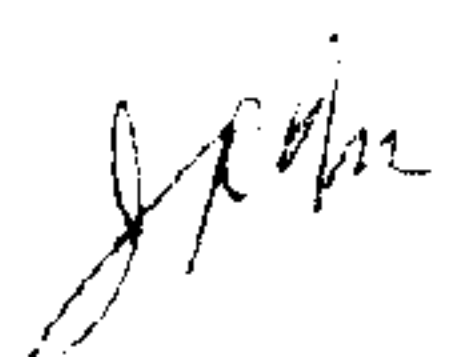
ITEM FOUR

I give, devise and bequeath all my right, title and interest in and to any real property owned by me at the time of my death and located in the area known as Shoal Creek in Shelby County, Alabama, to my wife, Ada French McWane, if she survives me. If my said wife does not survive me, the gift herein provided shall lapse, and the property herein described shall become a part of my residuary estate.

ITEM FIVE

I dispose of any Class A common stock of National Commerce Corporation owned by me at the time of my death (hereinafter "said stock") as follows:

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1. If W. Ralph Cook, the current president and chief executive officer of National Bank of Commerce of Birmingham, Alabama, survives me and is then both under the age of sixty-five (65) years and a stockholder of National Commerce Corporation, the following provisions shall be applicable:

A. If my son, Charles Phillip McWane, survives me, I give and bequeath said stock to the trustees hereinafter named in paragraph 1 of ITEM EIGHTEEN, in trust, nevertheless, to be held, managed and disposed of as a separate trust for the primary benefit of my said son in accordance with the provisions of ITEM TEN.

B. If my son, Charles Phillip McWane, does not survive me and if my daughter, Anna McLester McWane, survives me, I give and bequeath said stock to the trustees hereinafter named in paragraph 1 of ITEM EIGHTEEN, in trust, nevertheless, to be held, managed and disposed of as a separate trust for the primary benefit of my said daughter in accordance with the provisions of ITEM TEN.

C. If neither my son, Charles Phillip McWane, nor my daughter, Anna McLester McWane, survives me and if any issue of my son, Charles Phillip McWane, survives me, my executor shall divide said stock among such living issue, in equal shares per stirpes, and with respect to each living issue entitled to a share, I give and bequeath such share to the trustees hereinafter named in paragraph 1 of ITEM EIGHTEEN, in trust, nevertheless, to be held, managed and disposed of as a separate trust for the primary benefit of such issue in accordance with the provisions of ITEM TEN.

D. If neither my son, Charles Phillip McWane, nor my daughter, Anna McLester McWane, nor any issue

of my son, Charles Phillip McWane, survives me and if any issue of my daughter, Anna McLester McWane, survives me, my executor shall divide said stock among such living issue, in equal shares per stirpes, and with respect to each living issue entitled to a share, I give and bequeath such share to the trustees hereinafter named in paragraph 1 of ITEM EIGHTEEN, in trust, nevertheless, to be held, managed and disposed of as a separate trust for the primary benefit of such issue in accordance with the provisions of ITEM TEN.

E. If neither my son, Charles Phillip McWane, nor my daughter, Anna McLester McWane, nor any issue of either of them survives me and if my wife, Ada French McWane, survives me, I give and bequeath said stock to the trustees hereinafter named in paragraph 1 of ITEM EIGHTEEN, in trust, nevertheless, to be held, managed and disposed of as a separate trust for the primary benefit of my said wife in accordance with the provisions of ITEM TEN.

F. If none of the foregoing subparagraphs A through E is effective, said stock shall become a part of my residuary estate.

2. If the said W. Ralph Cook does not survive me or if he survives me but is then either over the age of sixty-five (65) years or not a stockholder of National Commerce Corporation, the following provisions shall be applicable:

A. If my son, Charles Phillip McWane, survives me, I give and bequeath said stock to him.

B. If my son, Charles Phillip McWane, does not survive me and if my daughter, Anna McLester McWane, survives me, I give and bequeath said stock to her, subject to the provisions of ITEM SIXTEEN.

C. If neither my son, Charles Phillip McWane, nor my daughter, Anna McLester McWane, survives me and if any issue of my son, Charles Phillip McWane, survives me, I give and bequeath said stock to such living issue, in equal shares per stirpes, subject to the provisions of ITEM SIXTEEN.

D. If neither my son, Charles Phillip McWane, nor my daughter, Anna McLester McWane, nor any issue of my son, Charles Phillip McWane, survives me and if any issue of my daughter, Anna McLester McWane, survives me, I give and bequeath said stock to such living issue, in equal shares per stirpes, subject to the provisions of ITEM SIXTEEN.

E. If neither my son, Charles Phillip McWane, nor my daughter, Anna McLester McWane, nor any issue of either of them survives me and if my wife, Ada French McWane, survives me, I give and bequeath said stock to my said wife.

F. If none of the foregoing subparagraphs A through E is effective, said stock shall become a part of my residuary estate.

ITEM SIX

I dispose of any Class A common stock of McWane, Inc. owned by me at the time of my death (hereinafter "said stock") as follows:

1. If my son, Charles Phillip McWane, survives me, I give, devise and bequeath said stock to him.

2. If my son, Charles Phillip McWane, does not survive me and if my daughter, Anna McLester McWane, survives me, I give and bequeath said stock to my said daughter, subject to the provisions of ITEM SIXTEEN, if either:



A. she has attained the age of thirty (30) years at the time of my death, or

B. she has not then attained the age of thirty (30) years but my wife, Ada French McWane, is unable or unwilling to serve as the trustee hereinafter named in paragraph 2 of ITEM EIGHTEEN with respect to said stock;

provided, however, that if neither provision A nor B above is applicable, I give and bequeath said stock to my said wife as the trustee hereinafter named in paragraph 2 of ITEM EIGHTEEN, in trust, nevertheless, to be held, managed and disposed of as a separate trust for the primary benefit of my daughter, Anna McLester McWane, in accordance with the provisions of ITEM ELEVEN.

3. If neither my son, Charles Phillip McWane, nor my daughter, Anna McLester McWane, survives me and if any issue of my son, Charles Phillip McWane, survives me, I give and bequeath said stock to such living issue, in equal shares per stirpes, subject to the provisions of ITEM SIXTEEN.

4. If neither my son, Charles Phillip McWane, nor my daughter, Anna McLester McWane, nor any issue of my son, Charles Phillip McWane, survives me and if any issue of my daughter, Anna McLester McWane, survives me, I give and bequeath said stock to such living issue, in equal shares per stirpes, subject to the provisions of ITEM SIXTEEN.

5. If neither my son, Charles Phillip McWane, nor my daughter, Anna McLester McWane, nor any issue of either of them survives me and if my wife, Ada French McWane, survives me, I give and bequeath said stock to her.

6. If none of the foregoing paragraphs 1 through 5 is effective, said stock shall become a part of my residuary estate.

ITEM SEVEN

If my wife, Ada French McWane, survives me and if either my son, Charles Phillip McWane, my daughter, Anna McLester McWane, or any issue of either of them survives me, I give and bequeath to such of my said son and daughter, in equal parts or all to the survivor of them, the following:

A sum equal to the largest amount that can pass free of federal estate tax under this Item by reason of the unified credit and the state death tax credit (provided use of this credit does not require an increase in the state death taxes paid) allowable to my estate but no other credit and after taking into account all interests in property included in my gross estate for federal estate tax purposes that pass or have passed from me under previous Items of this will or outside of this will and that do not qualify (other than by reason of disclaimer or election or non-election) for the marital or charitable deduction and after taking into account all charges to principal that are not allowed as deductions in computing my federal estate tax;

provided, however, that if either my said son or said daughter predeceases me leaving issue surviving me, such issue shall take, in equal shares per stirpes, subject to the provisions of ITEM SIXTEEN, the part which the one who predeceased me would have taken had he or she survived me

If my wife, Ada French McWane, does not survive me or if I am not survived by either my son, Charles Phillip McWane, my daughter, Anna McLester McWane, or any issue of my said son or daughter, the gift herein provided shall lapse, and the above sum shall become a part of my residuary estate.

In determining the above sum, the following shall be applicable:



A. Values as finally determined for federal estate tax purposes shall control.

B. Elections made with respect to the alternate valuation date and with respect to taking certain deductions for income tax purposes (rather than estate tax purposes) shall be final and binding and shall govern in all computations.

I recognize that no sum may be disposed of by this Item.

In satisfying the above sum, the following shall be applicable:

A. The sum may be satisfied in kind, or partly in kind, by transferring securities or other property, including real estate and interests therein, at values as of the date of distribution.

B. The sum shall be satisfied to the extent possible by transferring assets, or the proceeds of assets, which would not qualify for the federal estate tax marital deduction if such assets passed from me to my said wife.

C. Except as required in the next preceding paragraph B, the selection of assets used in satisfying the sum shall not be subject to question by any legatee, devisee or beneficiary of any trust, and no adjustment shall be made for a disproportionate allocation of unrealized gain for federal income tax purposes.

ITEM EIGHT

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 my wife, Ada French McWane, survives me, I give, devise and bequeath my residuary estate to the trustee hereinafter named in paragraph 3 of ITEM EIGHTEEN, in trust, nevertheless, to be held, managed and disposed of as a separate trust (herein designated as the "marital trust") in accordance with the provisions of ITEM TWELVE.

2. If my wife, Ada French McWane, does not survive me and 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, the following provisions shall be applicable:

A. My executor shall first transfer, convey and pay over such part, if any, of my residuary estate as may be required by, and in the manner directed by, the so-called "Residuary Estate Equalization Provisions" hereinafter set forth in § I and § II, and further elaborated upon in § III, of this ITEM EIGHT.

B. Any part of my residuary estate not effectively disposed of under the so-called "Residuary Estate Equalization Provisions" as directed in the next preceding paragraph A shall be divided into a sufficient number of equal shares so that there shall be set aside one equal share for my son, Charles Phillip McWane, if he survives me, one equal share for my daughter, Anna McLester McWane, if she survives 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:

(i) 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:

(a) 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;

(b) 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;

(c) Any part or all of such share not payable to such child under subparagraphs (a) and (b) of this paragraph I give, devise and bequeath to the trustee hereinafter named in paragraph 4 of ITEM EIGHTEEN, 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 of ITEM THIRTEEN.

(ii) 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 paragraph 4 of ITEM EIGHTEEN, in trust, nevertheless, to be held, managed and disposed of as a separate trust for



his or her benefit in accordance with the provisions of ITEM FOURTEEN.

3. If I am survived neither by my wife, Ada French McWane, nor 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 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 wife, Ada French McWane, nor 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 son, James Ransom McWane, Jr., and if I am survived by any issue of my son, James Ransom McWane, Jr., 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 SIXTEEN.

5. If I am survived neither by my wife, Ada French McWane, nor by any issue of mine and if my sister, Bee McWane Reid, survives me, I give, devise and bequeath my residuary estate to my said sister.

6. If I am survived neither by my wife, Ada French McWane, nor by any issue of mine nor by my sister, Bee McWane Reid, I give, devise and bequeath my residuary estate to the McWane Foundation.

**§ I. RESIDUARY ESTATE EQUALIZATION
PROVISIONS WITH RESPECT TO
NATIONAL COMMERCE CORPORATION STOCK**

If upon my death a distribution of Class A common stock of National Commerce Corporation ("NCC") is due to be made pursuant to subparagraphs A, B, C or D of ¶ 1 or ¶ 2 of ITEM FIVE to or for the benefit of either my son, Charles Phillip McWane, my daughter, Anna McLester McWane,



or any issue of my said son or my said daughter (such child individually or such issue collectively, as the case may be, being hereinafter called "THE BENEFICIARY"), my executor shall transfer, convey and pay over from my residuary estate, free of trust except as provided in ITEM SIXTEEN, a sufficient number of shares of Class B common stock of NCC as will equal the number of shares of Class A common stock of NCC that is due to be distributed to or for the benefit of THE BENEFICIARY under ITEM FIVE as follows:

(a) If THE BENEFICIARY of Class A shares under ITEM FIVE is my son, Charles Phillip McWane, the distribution of Class B shares hereunder shall be made to my daughter, Anna McLester McWane, if she survives me, or if my said daughter does not survive me, to her issue collectively surviving me, such issue to take in equal shares per stirpes;

(b) If THE BENEFICIARY of Class A shares under ITEM FIVE is my daughter, Anna McLester McWane, the distribution of Class B shares hereunder shall be made to the issue collectively surviving me of my son, Charles Phillip McWane, such issue to take in equal shares per stirpes;

(c) If THE BENEFICIARY of Class A shares under ITEM FIVE is the issue of my son, Charles Phillip McWane, the distribution of Class B shares hereunder shall be made to the issue collectively surviving me of my daughter, Anna McLester McWane, such issue to take in equal shares per stirpes;

provided, however, that if upon my death there is not sufficient Class B common stock of NCC available in my residuary estate to satisfy provision (a), (b) or (c) above, as the case may be, my executor shall use cash or other property from my residuary estate of sufficient



value to make up any deficiency (as computed in accordance with the next succeeding sentence) in the Class B stock, using values as to such cash and other property as are finally determined for federal estate tax purposes in my estate. For purposes of computing any deficiency in the Class B stock distributable under provision (a), (b) or (c) above, my executor shall first determine the excess, if any, of the number of Class A shares distributable to or for the benefit of THE BENEFICIARY under ITEM FIVE over the number of Class B shares distributable under provision (a), (b) or (c) above and shall then multiply such excess by the per share value of the Class A stock as finally determined for federal estate tax purposes in my estate. Any deficiency in the Class B stock shall be prorated among those receiving property from my residuary estate under provision (a), (b) or (c) above in the same proportion as they are so receiving such property.

**§ II. RESIDUARY ESTATE EQUALIZATION PROVISIONS
WITH RESPECT TO MCWANE, INC., STOCK.**

If upon my death a distribution of Class A common stock of McWane, Inc. ("McWane") is due to be made pursuant to subparagraphs 1, 2, 3 or 4 of ITEM SIX to or for the benefit of either my son, Charles Phillip McWane, my daughter, Anna McLester McWane, or any issue of my said son or my said daughter (such child individually or such issue collectively, as the case may be, being hereinafter called "THE BENEFICIARY"), my executor shall transfer, convey and pay over from my residuary estate, free of trust except as provided in ITEM SIXTEEN, a sufficient number of shares of Class B common stock of McWane as will equal the number of shares of Class A common stock of McWane that is due to be distributed to or for the benefit of THE BENEFICIARY under ITEM SIX as follows:



(a) If THE BENEFICIARY of Class A shares under ITEM SIX is my son, Charles Phillip McWane, the distribution of Class B shares hereunder shall be made to my daughter, Anna McLester McWane, if she survives me, or if my said daughter does not survive me, to her issue collectively surviving me, such issue to take in equal shares per stirpes;

(b) If THE BENEFICIARY of Class A shares under ITEM SIX is my daughter, Anna McLester McWane, the distribution of Class B shares hereunder shall be made to the issue collectively surviving me of my son, Charles Phillip McWane, such issue to take in equal shares per stirpes;

(c) If THE BENEFICIARY of Class A shares under ITEM FIVE is the issue of my son, Charles Phillip McWane, the distribution of Class B shares hereunder shall be made to the issue collectively surviving me of my daughter, Anna McLester McWane, such issue to take in equal shares per stirpes;

provided, however, that if upon my death there is not sufficient Class B common stock of McWane available in my residuary estate to satisfy provision (a), (b) or (c) above, as the case may be, my executor shall use cash or other property from my residuary estate of sufficient value to make up any deficiency (as computed in accordance with the next succeeding sentence) in the Class B stock, using values as to such cash and other property as are finally determined for federal estate tax purposes in my estate. For purposes of computing any deficiency in the Class B stock distributable under provision (a), (b) or (c) above, my executor shall first determine the excess, if any, of the number of Class A shares distributable to or for the benefit of THE BENEFICIARY under ITEM SIX over the number of Class B shares distributable under provision



(a) or (b) above and shall then multiply such excess by the per share value of the Class A stock as finally determined for federal estate tax purposes in my estate. Any deficiency in the Class B stock shall be prorated among those receiving property from my residuary estate under provision (a), (b) or (c) above in the same proportion as they are so receiving such property.

§ III. GENERAL EXPRESSION OF INTENT
WITH RESPECT TO RESIDUARY
ESTATE EQUALIZATION PROVISIONS

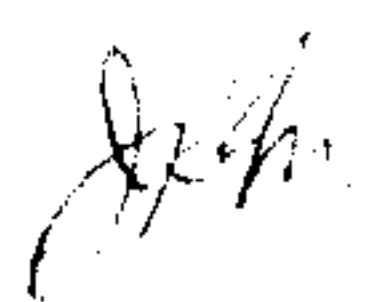
It is my intention to treat equally under the provisions of this will my son, Charles Phillip McWane, or his issue, on the one hand, and my daughter, Anna McLester McWane, or her issue, on the other. In using terms such as "equally," "equalize" or "equalization" in the "Residuary Estate Equalization Provisions," I intend to indicate only that the aggregate amount of property passing to my said son (or his issue) and my said daughter (or her issue) shall be approximately the same and not that the value of the property passing to any beneficiaries shall be the same. I recognize, for example, that the value of the Class A NCC common stock and Class A McWane common stock that may be allocated to the share of one beneficiary may not be equal to the value of the Class B NCC common stock or Class B McWane common stock that may be allocated to the share of another beneficiary.

ITEM FIVE and ITEM SIX of this will dispose of all my Class A NCC common stock and Class A McWane common stock, respectively. Said Items give and bequeath such stock outright to, or in a trust for the benefit of (i) my son, Charles Phillip McWane, if alive, (ii) otherwise my daughter, Anna McLester McWane, if alive, (iii) otherwise the living issue, if any, of my son, Charles Phillip McWane, per stirpes, (iv) otherwise the living issue, if



any. of my daughter, Anna McLester McWane, per stirpes. Thus, the provisions of ITEM FIVE and ITEM SIX might result in either my son, Charles Phillip McWane, or my daughter, Anna McLester McWane, or the issue of my said son (such child individually or such issue collectively, as the case may be, being hereinafter called "THE BENEFICIARY") receiving, either outright or in a trust for his or her benefit, a substantial bequest of NCC and McWane Class A common stock with no comparable provision being made for the other of my said two children or for such other child's issue, as the case may be.

It is my intention that, if my wife predeceases me, upon my death my residuary estate shall be used to equalize, to the extent herein described, (a) the aggregate amount of assets passing from my estate to or for the benefit of THE BENEFICIARY, and (b) the aggregate amount of assets passing from my estate to or for the benefit of the other of my said two children or for such other child's issue, as the case may be. It is also my intention that, to the extent practicable, such equalization shall be accomplished by using shares of Class B common stock of NCC and of McWane, respectively, to match on a share-for-share basis (and not necessarily on a value-for-value basis) the shares of Class A common stock passing to or for the benefit of THE BENEFICIARY under ITEM FIVE or ITEM SIX. For example, assuming that both my son, Charles Phillip McWane, and my daughter, Anna McLester McWane, survive me, and assuming further that under ITEM FIVE and ITEM SIX 500 shares of Class A common stock of NCC and 25,593 shares of Class A common stock of McWane are due to be distributed to or for the benefit of my said son, then it is my intention that, upon my death, 500 shares of Class B common stock of NCC and 25,593 shares of Class B common stock of McWane shall, to the



extent available in my residuary estate, be transferred, conveyed and paid over, subject to the provisions of ITEM SIXTEEN, to my daughter, Anna McLester McWane, if she is then living, otherwise to her issue collectively then living, in equal shares per stirpes.

To the extent that there is insufficient Class B common stock either of NCC or of McWane available in my residuary estate to accomplish the equalization herein described, it is my intention that my executor shall use cash or other property from my residuary estate, to the extent available, to make up any deficiency (as computed in the manner heretofore specified) in the Class B common stock, using values as to such cash and other property as are finally determined for federal estate tax purposes in my estate.

I recognize that the problems of equalization inherent in the "Residuary Estate Equalization Provisions" may be complicated and difficult and that I may not have covered all these problems fully or precisely in this will. It is therefore my intention to vest in my executor absolute authority and discretion in applying the "Residuary Estate Equalization Provisions," and I direct that the actions of my executor in this regard shall be final and binding on all concerned.

ITEM NINE

My wife or her guardian, executor or administrator may disclaim all or any portion of the bequest for her benefit under paragraph 1 of ITEM EIGHT at any time within nine (9) months after the date of my death. Any such disclaimer shall be made by duly acknowledged written instrument, executed by my wife or her guardian, executor or administrator, delivered to my executor, and filed in the court in which this will is admitted to probate.

Any disclaimed portion shall not pass under the preceding provisions of this will. I give, devise and bequeath such disclaimed portion to the trustee hereinafter named, in paragraph 3 of ITEM EIGHTEEN, in trust, nevertheless, to be held, managed and disposed of as a separate trust (herein designated as the "disclaimer trust") for the use and benefit of my wife (my wife being herein called the "beneficiary") in accordance with the following:

1. The trustee may pay so much, if any, of the net income of the disclaimer trust to or for the benefit of such one or more or all or none of the group consisting of the beneficiary, my son, Charles Phillip McWane, and my daughter, Anna McLester McWane, as shall be living at the time of such payment, in such amounts and proportions, equal or unequal, as the trustee, in the trustee's sole and absolute discretion, shall deem advisable, it being my intention that the trustee may pay all or part or none of the net income, may make unequal payments, may from time to time exclude one or more of such persons from income hereunder, and may make payment to any member of such group who is living at the time of such payment even though such person was not living at the time of the creation of the trust. 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 disclaimer trust.

2. The trustee may pay so much, if any, of the principal of the disclaimer trust to or for the benefit of such one or more or all or none of such group as shall be living at the time of such payment, in such amounts and proportions, equal or unequal, as the trustee, in the trustee's sole and absolute discretion, shall deem advisable, it being my intention that the trustee may pay all or part or none of the principal and may make payment to

any member of such group who is living at the time of such payment even though such person was not living at the time of the creation of the trust.

3. The support and maintenance of the beneficiary is of paramount importance, and the trustee shall pay to the beneficiary as much income and principal as is needed to support and maintain the beneficiary in the beneficiary's accustomed manner of living. I wish, but do not require, that the trustee consider the suggestions of the beneficiary as to the income and principal needs of each member of such group (including the beneficiary), although the trustee shall not in any event be obligated to follow any such suggestions. Before making any payment of income or principal to any member of such group, the trustee shall consider, but is not bound by, all resources and income of or available to such person reasonably known to the trustee.

4. No member of such group shall have the right to require that any distribution of income or principal be made under the preceding paragraphs of this Item, the decision of the trustee being final and binding. The trustee shall be fully discharged with respect to all amounts of income or principal paid to any member of such group without obligation on the part of any such person to account therefor to the trustee or any other person, firm or corporation. No distribution of income or principal to any member of such group shall be taken into account in any way on the final termination of this trust.

5. The disclaimer trust shall terminate upon the death of the beneficiary. Upon termination, the then remaining principal and undistributed income of the disclaimer trust shall be added to, merged with and thereafter administered and disposed of like the property then held in the marital trust.

ITEM TEN

The following provisions shall govern any separate trust herein created under the provisions of ITEM FIVE for the primary benefit of either my son, Charles Phillip McWane, my daughter, Anna McLester McWane, any issue of either my said son or daughter, or my wife, Ada French McWane, such child, issue or wife, as the case may be, being herein called the "beneficiary," and the trustees are directed as follows:

1. During the continuance of the trust the trustees shall pay to or for the benefit of the beneficiary the entire net income from the trust in such installments, at least as often as quarterly, as shall be convenient to the beneficiary.

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

A. The date W. Ralph Cook, the current president and chief executive officer of National Bank of Commerce of Birmingham, Alabama, dies,

B. The date the said W. Ralph Cook attains the age of sixty-five (65) years.

C. The date the said W. Ralph Cook ceases to be a stockholder of National Commerce Corporation of Birmingham, Alabama.

D. The date the trustees dispose of all shares of Class A common stock of National Commerce Corporation held in the trust (pursuant to the power granted the trustees in paragraph 6(a) of ITEM EIGHTEEN), or

E. The date the beneficiary dies.

3. If the trust terminates under subparagraph A, B, C or D of paragraph 2, the trustees shall transfer, convey and pay over, free of trust except as provided in ITEM SIXTEEN, the then principal of the trust, together



with any undistributed income thereof (all of which is hereinafter referred to as the "trust estate"), to the beneficiary.

4. If the trust terminates under subparagraph E of paragraph 2, the following provisions shall be applicable:

A. If my son, Charles Phillip McWane, was the beneficiary at the termination of the trust, the trust estate shall be held or disposed of as follows:

(i) If the "Equalization Provisions" herein set forth either in § I of ITEM EIGHT or in § I of ITEM TWELVE have been applied prior to the beneficiary's death (as might be the case if my wife, Ada French McWane, predeceases the beneficiary), the following provisions shall be applicable:

(a) If any issue of my son, Charles Phillip McWane, survives the termination of the trust, the trustees shall divide the trust estate among such issue, in equal shares per stirpes, and shall continue to hold each such issue's share as so divided as a separate trust under this Item for his or her benefit, paying the entire net income from such issue's share to him or her, subject to the provisions of the next succeeding subparagraph (h).

(b) If the foregoing subparagraph (a) is not effective and if my daughter, Anna McLester McWane is living at the termination of the trust, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my said daughter, paying the entire net income from the trust estate to her, subject to the provisions of the next succeeding subparagraph (h).

(c) If neither of the foregoing subparagraphs (a) or (b) is effective and if any issue of my daughter, Anna McLester McWane, is living at the termination of the trust, the trustees shall divide the trust estate among the issue of my said daughter then living, in equal shares per stirpes, and shall continue to hold each such issue's share as so divided as a separate trust under this Item for his or her benefit, paying the entire net income from such issue's share to him or her, subject to the



provisions of the next succeeding subparagraph (h).

(d) If none of the foregoing subparagraphs (a) through (c) is effective and if my wife, Ada French McWane, is living at the termination of the trust, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my wife, Ada French McWane, if she is then living, paying the entire net income from the trust estate to her, subject to the provisions of the next succeeding subparagraph (h).

(e) If none of the foregoing subparagraphs (a) through (d) is effective and if my son, James Ransom McWane, Jr., is living at the termination of the trust, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my son, James Ransom McWane, Jr., if he is then living, paying the entire net income from the trust estate to him, subject to the provisions of the next succeeding subparagraph (h).

(f) If none of the foregoing subparagraphs (a) through (e) is effective and if any issue of my son, James Ransom McWane, Jr., is living at the termination of the trust, the trustees shall divide the trust estate among the issue of my son, James Ransom McWane, Jr., then living, in equal shares per stirpes, and shall continue to hold each such issue's share as so divided as a separate trust under this Item for his or her benefit, paying the entire net income from such issue's share to him or her, subject to the provisions of subparagraph (h).

(g) If none of the foregoing subparagraphs (a) through (f) is effective, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my sister, Bee McWane Reid, if she is then living, otherwise for the benefit of the McWane Foundation, paying the entire net income from the trust estate to my said sister if alive, otherwise to the McWane Foundation, subject to the provisions of the next succeeding subparagraph (h).

(h) Any trust created or continued under the foregoing subparagraphs (a) through (g) shall terminate on the first to occur of the dates listed in subparagraphs A, B, C, D or E of paragraph 2 of this Item. If the trust terminates under subparagraphs A, B, C, or D of paragraph 2, the provisions of paragraph 3 of this Item shall govern the disposition of the remaining trust estate. If the trust terminates under subparagraph E of paragraph 2, the provisions of this paragraph 4 shall apply and shall continue to apply until a termination

- of the trust eventually occurs under subparagraph A, B, C, or D of paragraph 2.

(ii) If the said "Equalization Provisions" have not been applied prior to the beneficiary's death (as would be the case if my wife, Ada French McWane, does not predecease the beneficiary), the following provisions shall be applicable:

(a) If my daughter, Anna McLester McWane is living at the termination of the trust, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my said daughter, paying the entire net income from the trust estate to her, subject to the provisions of the next succeeding subparagraph (h).

(b) If the foregoing subparagraph (a) is not effective and if any issue of my son, Charles Phillip McWane, survives the termination of the trust, the trustees shall divide the trust estate among such issue, in equal shares per stirpes, and shall continue to hold each such issue's share as so divided as a separate trust under this Item for his or her benefit, paying the entire net income from such issue's share to him or her, subject to the provisions of the next succeeding subparagraph (h).

(c) If neither of the foregoing subparagraphs (a) or (b) is effective and if any issue of my daughter, Anna McLester McWane, is living at the termination of the trust, the trustees shall divide the trust estate among the issue of my said daughter then living, in equal shares per stirpes, and shall continue to hold each such issue's share as so divided as a separate trust under this Item for his or her benefit, paying the entire net income from such issue's share to him or her, subject to the provisions of the next succeeding subparagraph (h).

(d) If none of the foregoing subparagraphs (a) through (c) is effective and if my wife, Ada French McWane, is living at the termination of the trust, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my wife, Ada French McWane, if she is then living, paying the entire net income from the trust estate to her, subject to the provisions of the next succeeding subparagraph (h).

(e) If none of the foregoing subparagraphs (a) through (d) is effective and if

- my son, James Ransom McWane, Jr., is living at the termination of the trust, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my son, James Ransom McWane, Jr., if he is then living, paying the entire net income from the trust estate to him, subject to the provisions of the next succeeding subparagraph (h).

(f) If none of the foregoing subparagraphs (a) through (e) is effective and if any issue of my son, James Ransom McWane, Jr., is living at the termination of the trust, the trustees shall divide the trust estate among the issue of my son, James Ransom McWane, Jr., then living, in equal shares per stirpes, and shall continue to hold each such issue's share as so divided as a separate trust under this Item for his or her benefit, paying the entire net income from such issue's share to him or her, subject to the provisions of subparagraph (h).

(g) If none of the foregoing subparagraphs (a) through (f) is effective, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my sister, Bee McWane Reid, if she is then living, otherwise for the benefit of the McWane Foundation, paying the entire net income from the trust estate to my said sister if alive, otherwise to the McWane Foundation, subject to the provisions of the next succeeding subparagraph (h).

(h) Any trust created or continued under the foregoing subparagraphs (a) through (g) shall terminate on the first to occur of the dates listed in subparagraphs A, B, C, D or E of paragraph 2 of this Item. If the trust terminates under subparagraphs A, B, C, or D of paragraph 2, the provisions of paragraph 3 of this Item shall govern the disposition of the remaining trust estate. If the trust terminates under subparagraph E of paragraph 2, the provisions of this paragraph 4 shall apply and shall continue to apply until a termination of the trust eventually occurs under subparagraph A, B, C, or D of paragraph 2.

B. If my daughter, Anna McLester McWane, was the beneficiary at the termination of the trust, the trust estate shall be held or disposed of as follows:

(i) If the said "Equalization Provisions" have been applied prior to the beneficiary's death, the following provisions shall be applicable:

(a) If any issue of my daughter, Anna McLester McWane, is living at the termination of the trust, the trustees shall divide the trust estate among the issue of my said daughter then living, in equal shares per stirpes, and shall continue to hold each such issue's share as so divided as a separate trust under this Item for his or her benefit, paying the entire net income from such issue's share to him or her, subject to the provisions of the next succeeding subparagraph (g).

(b) If the foregoing subparagraph (a) is not effective and if any issue of my son, Charles Phillip McWane, survives the termination of the trust, the trustees shall divide the trust estate among such issue, in equal shares per stirpes, and shall continue to hold each such issue's share as so divided as a separate trust under this Item for his or her benefit, paying the entire net income from such issue's share to him or her, subject to the provisions of the next succeeding subparagraph (g).

(c) If neither of the foregoing subparagraphs (a) or (b) is effective and if my wife, Ada French McWane, is living at the termination of the trust, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my wife, Ada French McWane, if she is then living, paying the entire net income from the trust estate to her, subject to the provisions of the next succeeding subparagraph (g).

(d) If none of the foregoing subparagraphs (a) through (c) is effective and if my son, James Ransom McWane, Jr., is living at the termination of the trust, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my son, James Ransom McWane, Jr., if he is then living, paying the entire net income from the trust estate to him, subject to the provisions of the next succeeding subparagraph (g).

(e) If none of the foregoing subparagraphs (a) through (d) is effective and if any issue of my son, James Ransom McWane, Jr., is living at the termination of the trust, the trustees shall divide the trust estate among the issue of my son, James Ransom McWane, Jr., then living, in equal shares per stirpes, and shall continue to hold each such issue's share as so divided as a separate trust under this Item for his or her benefit, paying the entire net income from such issue's share to him or her, subject to the provisions of subparagraph (g).

(f) If none of the foregoing subparagraphs (a) through (e) is effective, the

trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my sister, Bee McWane Reid, if she is then living, otherwise for the benefit of the McWane Foundation, paying the entire net income from the trust estate to my said sister if alive, otherwise to the McWane Foundation, subject to the provisions of the next succeeding subparagraph (g)

(g) Any trust created or continued under the foregoing subparagraphs (a) through (f) shall terminate on the first to occur of the dates listed in subparagraphs A, B, C, D or E of paragraph 2 of this Item. If the trust terminates under subparagraphs A, B, C, or D of paragraph 2, the provisions of paragraph 3 of this Item shall govern the disposition of the remaining trust estate. If the trust terminates under subparagraph E of paragraph 2, the provisions of this paragraph 4 shall apply and shall continue to apply until a termination of the trust eventually occurs under subparagraph A, B, C, or D of paragraph 2.

(ii) If the said "Equalization Provisions" have not been applied prior to the beneficiary's death, the following provisions shall be applicable:

(a) If any issue of my son, Charles Phillip McWane, survives the termination of the trust, the trustees shall divide the trust estate among such issue, in equal shares per stirpes, and shall continue to hold each such issue's share as so divided as a separate trust under this Item for his or her benefit, paying the entire net income from such issue's share to him or her, subject to the provisions of the next succeeding subparagraph (g).

(b) If the foregoing subparagraph (a) is not effective and if any issue of my daughter, Anna McLester McWane, is living at the termination of the trust, the trustees shall divide the trust estate among the issue of my said daughter then living, in equal shares per stirpes, and shall continue to hold each such issue's share as so divided as a separate trust under this Item for his or her benefit, paying the entire net income from such issue's share to him or her, subject to the provisions of the next succeeding subparagraph (g).

(c) If neither of the foregoing subparagraphs (a) or (b) is effective and if my wife, Ada French McWane, is living at the termination of the trust, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my wife, Ada French McWane, if



she is then living, paying the entire net income from the trust estate to her, subject to the provisions of the next succeeding subparagraph (g).

(d) If none of the foregoing subparagraphs (a) or (c) is effective and if my son, James Ransom McWane, Jr., is living at the termination of the trust, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my son, James Ransom McWane, Jr., if he is then living, paying the entire net income from the trust estate to him, subject to the provisions of the next succeeding subparagraph (g).

(e) If none of the foregoing subparagraphs (a) through (d) is effective and if any issue of my son, James Ransom McWane, Jr., is living at the termination of the trust, the trustees shall divide the trust estate among the issue of my son, James Ransom McWane, Jr., then living, in equal shares per stirpes, and shall continue to hold each such issue's share as so divided as a separate trust under this Item for his or her benefit, paying the entire net income from such issue's share to him or her, subject to the provisions of subparagraph (g).

(f) If none of the foregoing subparagraphs (a) through (e) is effective, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my sister, Bee McWane Reid, if she is then living, otherwise for the benefit of the McWane Foundation, paying the entire net income from the trust estate to my said sister if alive, otherwise to the McWane Foundation, subject to the provisions of the next succeeding subparagraph (g).

(g) Any trust created or continued under the foregoing subparagraphs (a) through (f) shall terminate on the first to occur of the dates listed in subparagraphs A, B, C, D or E of paragraph 2 of this Item. If the trust terminates under subparagraphs A, B, C, or D of paragraph 2, the provisions of paragraph 3 of this Item shall govern the disposition of the remaining trust estate. If the trust terminates under subparagraph E of paragraph 2, the provisions of this paragraph 4 shall apply and shall continue to apply until a termination of the trust eventually occurs under subparagraph A, B, C, or D of paragraph 2.

C. If any issue of my son, Charles Phillip McWane, or any issue of my daughter, Anna McLester McWane, was the beneficiary at the termination of the trust; the trustees shall continue to hold the trust estate on the following terms and conditions:



(a) If any issue of the beneficiary survives the termination of the trust, the trustees shall divide the trust estate among such issue, in equal shares per stirpes, and shall continue to hold each such issue's share as so divided as a separate trust under this Item for his or her benefit, paying the entire net income from such issue's share to him or her, subject to the provisions of the next succeeding subparagraph (g).

(b) If the foregoing subparagraph (a) is not effective and if any issue of mine (other than my son, James Ransom McWane, Jr., or his issue) is living at the termination of the trust, the trustees shall divide the trust estate among such issue of mine as would be entitled to inherit from, and in the proportions in which they would be entitled to inherit from, the beneficiary under the laws of descent and distribution of Alabama in force at that time had the beneficiary died at that time a resident of Alabama, intestate, unmarried and owned the trust estate, if any such issue of mine be then living, and shall continue to hold each such issue's share as so divided as a separate trust under this Item for his or her benefit, paying the entire net income from such issue's share to him or her, subject to the provisions of the next succeeding subparagraph (g).

(c) If neither of the foregoing subparagraphs (a) or (b) is effective and if my wife, Ada French McWane, is living at the termination of the trust, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my wife, Ada French McWane, if she is then living, paying the entire net income from the trust estate to her, subject to the provisions of the next succeeding subparagraph (g).

(d) If none of the foregoing subparagraphs (a) through (c) is effective and if my son, James Ransom McWane, Jr., is living at the termination of the trust, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my son, James Ransom McWane, Jr., if he is then living, paying the entire net income from the trust estate to him, subject to the provisions of the next succeeding subparagraph (g).

(e) If none of the foregoing subparagraphs (a) through (d) is effective and if any issue of my son, James Ransom McWane, Jr., is living at the termination of the trust, the trustees shall divide the trust estate among the issue of my son, James Ransom McWane, Jr., then living, in equal shares per stirpes, and shall continue to hold each such issue's share as so divided

- as a separate trust under this Item for his or her benefit, paying the entire net income from such issue's share to him or her, subject to the provisions of subparagraph (g).

(f) If none of the foregoing subparagraphs (a) through (e) is effective, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my sister, Bee McWane Reid, if she is then living, otherwise for the benefit of the McWane Foundation, paying the entire net income from the trust estate to my said sister if alive, otherwise to the McWane Foundation, subject to the provisions of the next succeeding subparagraph (g).

(g) Any trust created or continued under the foregoing subparagraphs (a) through (f) shall terminate on the first to occur of the dates listed in subparagraphs A, B, C, D or E of paragraph 2 of this Item. If the trust terminates under subparagraphs A, B, C, or D of paragraph 2, the provisions of paragraph 3 of this Item shall govern the disposition of the remaining trust estate. If the trust terminates under subparagraph E of paragraph 2, the provisions of this paragraph 4 shall apply and shall continue to apply until a termination of the trust eventually occurs under subparagraph A, B, C, or D of paragraph 2.

D. If my wife, Ada French McWane, was the beneficiary at the termination of the trust, the trust estate shall be held or disposed of as follows:

(i) Irrespective of whether the said "Equalization Provisions" have been applied prior to the beneficiary's death, the following provisions shall be applicable:

(a) If any issue of mine survives the termination of the trust, the trustees shall divide the trust estate among such issue, in equal shares per stirpes, and shall continue to hold each such issue's share as so divided as a separate trust under this Item for his or her benefit, paying the entire net income from such issue's share to him or her, subject to the provisions of the next succeeding subparagraph (c).

(b) If the foregoing subparagraph (a) is not effective, the trustees shall continue to hold the trust estate as a separate trust under this Item for the benefit of my sister, Bee McWane Reid, if she is then living, otherwise for the benefit of the McWane Foundation, paying the entire net income from the trust estate to my said



- sister if alive, otherwise to the McWane Foundation, subject to the provisions of the next succeeding subparagraph (c).

(c) Any trust created or continued under the foregoing subparagraphs (a) or (b) shall terminate on the first to occur of the dates listed in subparagraphs A, B, C, D or E of paragraph 2 of this Item. If the trust terminates under subparagraphs A, B, C, or D of paragraph 2, the provisions of paragraph 3 of this Item shall govern the disposition of the remaining trust estate. If the trust terminates under subparagraph E of paragraph 2, the provisions of this paragraph 4 shall apply and shall continue to apply until a termination of the trust eventually occurs under subparagraph A, B, C, or D of paragraph 2.

ITEM ELEVEN

The following provisions shall govern any separate trust herein created for the primary benefit of my daughter, Anna McLester McWane under the provisions of ITEM SIX, my daughter being herein called the "beneficiary," and the trustee is directed as follows:

1. During the continuance of the trust the trustee shall pay to the beneficiary the entire net income from the trust in such installments, at least as often as quarterly, as shall be convenient to the beneficiary.

2. The trust may be terminated at any time upon the execution and delivery to the trustee of a written instrument, duly signed both by the beneficiary and by John J. McMahon, Jr. (the current president of McWane, Inc.), expressly indicating the intention of the two signators to terminate the trust. Such instrument shall be duly acknowledged as required by law in the case of deeds and shall be duly filed in the Office of the Judge of Probate in the County in which this will is admitted to probate. If John J. McMahon, Jr., be dead or incapacitated or otherwise unable or unwilling to execute such an instrument, the trust shall not be terminated under this paragraph 2. If the trust is properly terminated under



this paragraph 2, 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.

3. If the trust has not been previously terminated under paragraph 2 above, it shall terminate on the first to occur of

A. The date the beneficiary attains the age of thirty (30) years,

B. The date my wife, Ada French McWane, dies or otherwise ceases to act as trustee of the trust,

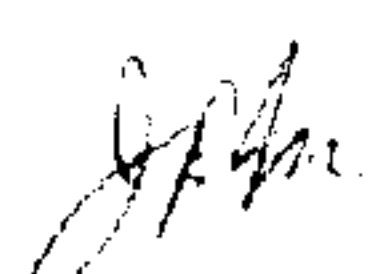
C. The date the trustee sells or otherwise disposes of all shares of Class A common stock of McWane, Inc. held in the trust (pursuant to the power granted the trustee in paragraph 6(b) of ITEM EIGHTEEN), or

D. The date the beneficiary dies.

4. If the trust terminates under subparagraph A, B, or C of paragraph 3, the trustee shall transfer, convey and pay over, free of trust except as provided in ITEM SIXTEEN, the then principal of the trust, together with any undistributed income thereof (all of which is hereinafter referred to as the "trust estate"), to the beneficiary.

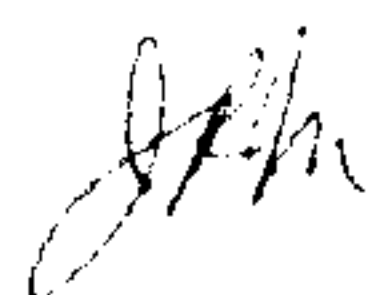
5. If the trust terminates under subparagraph D of paragraph 3, the following provisions shall be applicable:

A. If the "Equalization Provisions" herein set forth either in § I of ITEM EIGHT or in § I of ITEM TWELVE have been applied prior to the beneficiary's death (as might be the case if my wife, Ada French McWane, predeceases the beneficiary), the trustee shall transfer, convey and pay over, free of trust except as provided in ITEM FIFTEEN or ITEM SIXTEEN, the trust estate 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 then living, to the issue of my son, Charles Phillip McWane, living at the termination of the trust, in equal shares per stirpes, or if no issue of my son is then living, to my wife, Ada French McWane, or if my wife is not then living, to my son, James Ransom McWane, Jr., or if my said son is not then living, to the issue of my son, James Ransom McWane, Jr., then living, in equal shares per stirpes, or if no issue of my said son is then living, to my sister, Bee McWane Reid, or if my sister is not then living, to the McWane Foundation.

B. If the said "Equalization Provisions" have not been applied prior to the beneficiary's death (as would be the case if my wife, Ada French McWane, does not predecease the beneficiary), the trustee shall transfer, convey and pay over, free of trust except as provided in ITEM FIFTEEN or ITEM SIXTEEN, the trust estate to the issue of my son, Charles Phillip McWane, living at the termination of the trust, in equal shares per stirpes, or if no issue of my said son is then living, 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 then living, to my wife, Ada French McWane, or if my wife is not then living, to my son, James Ransom McWane, Jr., or if my said son is not then living, to the issue of my son, James Ransom McWane, Jr., then living, in equal shares per stirpes, or if no issue of my said son is then living, to my sister, Bee McWane Reid, or if my sister is not then living, to the McWane Foundation.



ITEM TWELVE

The following provisions shall govern the marital trust herein created under the provisions of paragraph 1 of ITEM EIGHT for the benefit of my wife, Ada French McWane, and the trustee is directed as follows:

1. During the lifetime of my wife, the trustee shall pay to her the entire net income from the marital trust in such installments, at least as often as quarterly, as shall be convenient to her.

2. If at any time during the lifetime of my wife, the net income from the marital trust, together with all resources and income of or available to my wife reasonably known to the trustee, is not, in the sole opinion of the trustee, sufficient for the support and maintenance of my wife, the trustee shall pay to my wife such additional sum or sums out of the principal of the marital trust as the trustee, in the trustee's absolute discretion, shall deem necessary or desirable for said purposes. My wife shall not have the right to require that any distribution of 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 my wife without obligation on the part of my wife to account therefor to the trustee or any person, firm or corporation.

3. With respect to any non-productive property in the marital trust, the trustee shall, upon the request of my wife, either make such property productive or convert it to productive property within a reasonable period of time.

4. If any principal of the marital trust shall be included in the gross estate of my wife for the purpose of any estate, inheritance, transfer, legacy, succession



or death taxes, then, unless the will of my wife directs otherwise, the trustee of the marital trust shall pay, upon written request, to the personal representative of the estate of my wife an amount equal to the difference between (a) the amount of all such taxes or duties, including any interest or penalties thereon, payable with respect to all property includable in the gross estate of the beneficiary, and (b) the amount of all such taxes or duties which would have been payable if such principal of this trust were not included in the gross estate of the beneficiary. In determining the amount so payable, the trustee of the marital trust may rely conclusively and without investigation upon the written certification of the personal representative of the estate of the beneficiary. I suggest, but do not require, that to the extent practicable, the trustee of the marital trust shall use assets other than Class B NCC common stock or Class B McWane common stock in satisfying the amount payable under this paragraph.

5. The marital trust shall terminate upon the death of my wife. Upon termination, the then remaining principal of the marital trust (all of which is hereinafter referred to as the "marital trust estate") shall be disposed of in accordance with the following provisions:

A. 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 survives the termination of the marital trust, the following provisions shall be applicable:

(i) The trustee of the marital trust shall first transfer, convey and pay over such part, if any, of the marital trust estate as may be required by, and in the manner directed by, the

so-called "Marital Trust Equalization Provisions" hereinafter set forth in § I and § II, and further elaborated upon in § III, of this ITEM TWELVE.

(ii) Any part of the marital trust estate not effectively disposed of under the so-called "Marital Trust Equalization Provisions" as directed in the next preceding paragraph (i) shall be divided into a sufficient number of equal shares so that there shall be set aside one equal share for my son, Charles Phillip McWane, if he is living at the termination of the marital trust, one equal share for my daughter, Anna McLester McWane, if she is living at the termination of the marital trust, and one equal share for the issue collectively living at the termination of the marital trust of either my said son or my said daughter who predeceases the termination of the marital trust leaving issue surviving the termination of the marital trust, such shares to be held or disposed of as follows:

(1) 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:

(a) If such child has attained the age of forty (40) years at the termination of the marital trust, the trustee shall transfer, convey and pay over, free of trust, such share to him or her;

(b) If such child has attained the age of thirty (30) years but not



forty (40) years at the termination of the marital trust, the trustee shall transfer, convey and pay over, free of trust, one-half (1/2) of such share to him or her;

(c) Any part or all of such share not payable to such child under subparagraphs (a) and (b) of this paragraph the trustee shall transfer, convey and pay over the same to the trustee hereinafter named in paragraph 4 of ITEM EIGHTEEN, 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 THIRTEEN.

(2) With respect any share so set aside for the issue collectively surviving the termination of the marital trust of either my said son or my said daughter who predeceases the termination of the marital trust leaving issue surviving the termination of the marital trust, the trustee shall further divide one of such equal shares 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, the trustee shall transfer, convey and pay over 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 the trustee shall transfer, convey and pay over the same to the trustee hereinafter named in paragraph 4 of ITEM EIGHTEEN,

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 FOURTEEN.

B. If neither my son, Charles Phillip McWane, nor my daughter, Anna McLester McWane, nor any issue of either of them survives the termination of the marital trust and if my son, James Ransom McWane, Jr., survives the termination of the marital trust, the trustee shall transfer, convey and pay over, free of trust, the marital trust estate to my said son.

C. If neither my son, Charles Phillip McWane, nor my daughter, Anna McLester McWane, nor any issue of either of them nor my son, James Ransom McWane, Jr., survives the termination of the marital trust and if any issue of my son, James Ransom McWane, Jr., survives the termination of the marital trust, the marital trust estate shall be transferred, conveyed and paid over to such living issue, in equal shares per stirpes, subject to the provisions of ITEM SIXTEEN.

D. If no issue of mine survives the termination of the marital trust and if my sister, Bee McWane Reid, survives the termination of the trust, the trustee shall transfer, convey and pay over, free of trust, the marital trust estate to my sister.

E. If neither any issue of mine nor my sister, Bee McWane Reid, survives the termination of the marital trust, the trustee shall transfer, convey and pay over, free of trust, the marital trust estate to the McWane Foundation.

§ I. MARITAL TRUST EQUALIZATION PROVISIONS WITH
RESPECT TO NATIONAL COMMERCE CORPORATION
STOCK

A. If upon my wife's death, my son, Charles Phillip McWane, my daughter, Anna McLester McWane, or any

issue of my said son or my said daughter (such child individually or such issue collectively, as the case may be, being hereinafter called "THE BENEFICIARY") either

(1) has previously received Class A common stock of National Commerce Corporation ("NCC") pursuant to ITEM FIVE or ITEM TEN (whether outright at my death or upon termination of a trust created under ITEM FIVE or ITEM TEN), or

(2) is the current income beneficiary of a trust containing Class A common stock of NCC created under ITEM FIVE or ITEM TEN,

the trustee of the marital trust shall transfer, convey and pay over, free of trust except as provided in ITEM SIXTEEN, a sufficient number of shares of Class B common stock of NCC as will equal the number of shares of Class A common stock of NCC either that THE BENEFICIARY has previously received pursuant to ITEM FIVE or ITEM TEN or that is then contained in a trust created under ITEM FIVE or ITEM TEN for THE BENEFICIARY'S benefit as follows:

(a) If THE BENEFICIARY of Class A shares under ITEM FIVE or ITEM TEN is my son, Charles Phillip McWane, or my said son's issue, the distribution of Class B shares hereunder shall be made to my daughter, Anna McLester McWane, if she is living at my wife's death, or if my said daughter is not then living, to her issue collectively then living, such issue to take in equal shares per stirpes:

(b) If THE BENEFICIARY of Class A shares under ITEM FIVE or ITEM TEN is my daughter, Anna McLester McWane, the distribution of Class B shares hereunder shall be made to the issue collectively of my son, Charles Phillip McWane, living at my wife's death, such issue to take in equal shares per stirpes:



(c) If THE BENEFICIARY of Class A shares under ITEM FIVE or ITEM TEN is the issue of my son, Charles Phillip McWane, the distribution of Class B shares hereunder shall be made to the issue collectively living at my wife's death or my daughter, Anna McLester McWane, such issue to take in equal shares per stirpes;

provided, however, that if upon my wife's death there is not sufficient Class B common stock of NCC available in the marital trust estate to satisfy provision (a), (b) or (c) above, the trustee of the marital trust shall use cash or other property from the marital trust estate of sufficient value to make up any deficiency (as computed in accordance with the next succeeding sentence) in the Class B stock, using values as to such cash and other property as are finally determined for federal estate tax purposes in my wife's estate. For purposes of computing any deficiency in the Class B stock distributable under provision (a), (b) or (c) above, the trustee shall first determine the total value of what either has been previously received by THE BENEFICIARY or is then held in trust under ITEM FIVE or ITEM TEN for THE BENEFICIARY'S benefit by adding together

(i) the value of any Class A stock held either by THE BENEFICIARY or by said trust upon my wife's death (said Class A stock to be conclusively deemed to have a per share value equal to the per share value of any Class B stock then held by the marital trust estate as finally determined for federal estate tax purposes in my wife's estate), and

(ii) the value as of the date of its receipt of any property or cash received by THE BENEFICIARY for any Class A stock disposed of by THE BENEFICIARY prior to my wife's death.



and shall then subtract from such total value the value of any Class B stock (as finally determined for federal estate tax purposes in my wife's estate) then distributable to any child of mine or to the issue collectively of any deceased child of mine under provision (a), (b) or (c) above. Any deficiency in the Class B stock shall be prorated among those receiving property from the marital trust estate under provisions (a), (b) or (c) above in the same proportion as they are so receiving such property.

B. If upon my wife's death, my son, Charles Phillip McWane, my daughter, Anna McLester McWane, or any issue of my said son or my said daughter (such child individually or such issue collectively, as the case may be, being hereinafter called "THE BENEFICIARY") has previously received cash or other property in lieu of Class A common stock of NCC from any trust created under ITEM FIVE OR ITEM TEN on its termination (as in the case where the trustee of such trust has previously disposed of all such Class A stock pursuant to the power granted the trustee in paragraph 6(a) of ITEM EIGHTEEN), the trustee of the marital trust shall transfer, convey and pay over, free of trust except as provided in ITEM SIXTEEN, a sufficient number of shares of Class B common stock of NCC as will, as nearly as practicable, approximate the value as determined by the trustee of the marital trust, in its sole and absolute discretion, of the cash and other property which THE BENEFICIARY has so previously received as of the date of receipt as follows:

(a) If THE BENEFICIARY of such cash or other property pursuant to ITEM FIVE or ITEM TEN is my son, Charles Phillip McWane, or my said son's issue, the distribution of Class B shares hereunder shall be made to my daughter, Anna McLester McWane, if she is living at my wife's death, or if my said daughter is not then



living, to her issue collectively then living, such issue to take in equal shares per stirpes;

(b) If THE BENEFICIARY of such cash or other property pursuant to ITEM FIVE or ITEM TEN is my daughter, Anna McLester McWane, or my said daughter's issue, the distribution of Class B shares hereunder shall be made to the issue collectively of my son, Charles Phillip McWane, living at my wife's death, such issue to take in equal shares per stirpes;

(c) If THE BENEFICIARY of Class A shares under ITEM FIVE or ITEM TEN is the issue of my son, Charles Phillip McWane, the distribution of Class B shares hereunder shall be made to the issue collectively living at my wife's death of my daughter, Anna McLester McWane, such issue to take in equal shares per stirpes;

provided, however, that if upon my wife's death there is not sufficient Class B common stock of NCC available in the marital trust estate to satisfy provision (a), (b) or (c) above, the trustee of the marital trust shall use cash or other property from the marital trust estate of sufficient value to make up any deficiency (as computed in accordance with the next succeeding sentence) in the Class B stock, using values as to such cash and other property as are finally determined for federal estate tax purposes in my wife's estate. For purposes of computing any deficiency in the Class B stock distributable under provision (a), (b) or (c) above, the trustee shall first determine the total value of the cash or other property previously received by THE BENEFICIARY as of the date of its receipt and shall then subtract from such total value the value of any Class B stock (as finally determined for federal estate tax purposes in my wife's estate) then distributable to any child of mine or to the issue



collectively of any deceased child of mine under provision (a), (b) or (c) above. Any deficiency in the Class B stock shall be prorated among those receiving property from the marital trust estate under provisions (a), (b) or (c) above in the same proportions as they are so receiving property.

§ II. MARITAL TRUST EQUALIZATION PROVISIONS
WITH RESPECT TO MCWANE, INC. STOCK

A. If upon my wife's death, my son, Charles Phillip McWane, my daughter, Anna McLester McWane, or any issue of my said son or my said daughter (such child individually or such issue collectively, as the case may be, being hereinafter called "THE BENEFICIARY") either

(1) has previously received Class A common stock of McWane, Inc. ("McWane") pursuant to ITEM SIX or ITEM ELEVEN (whether outright at my death or upon termination of a trust created under ITEM SIX or ITEM ELEVEN), or

(2) then becomes entitled to receive Class A common stock of McWane upon termination of a trust created under ITEM SIX or ITEM ELEVEN, the trustee of the marital trust shall transfer, convey and pay over, free of trust except as provided in ITEM SIXTEEN, a sufficient number of shares of Class B common stock of McWane as will equal the number of shares of Class A common stock of McWane that THE BENEFICIARY either has previously received or then becomes entitled to receive as follows:

(a) If THE BENEFICIARY of Class A shares under ITEM SIX or ITEM ELEVEN is my son, Charles Phillip McWane, the distribution of Class B shares hereunder shall be made to my daughter, Anna McLester McWane, if she is living at my wife's death, or if my said daughter is not then living, to her issue collectively



then living, such issue to take in equal shares per stirpes;

(b) If THE BENEFICIARY of Class A shares under ITEM SIX or ITEM ELEVEN is my daughter, Anna McLester McWane, the distribution of Class B shares hereunder shall be made to the issue collectively of my son, Charles Phillip McWane, living at my wife's death, such issue to take in equal shares per stirpes;

(c) If THE BENEFICIARY of Class A shares under ITEM SIX or ITEM ELEVEN is the issue of my son, Charles Phillip McWane, the distribution of Class B shares hereunder shall be made to the issue collectively living at my wife's death of my daughter, Anna McLester McWane, such issue to take in equal shares per stirpes;

provided, however, that if upon my wife's death there is not sufficient Class B common stock of McWane available in the marital trust estate to satisfy provision (a), (b) or (c) above, as the case may be, the trustee of the marital trust shall use cash or other property from the marital trust estate of sufficient value to make up any deficiency (as computed in accordance with the next succeeding sentence) in the Class B stock, using values as to such cash and other property as are finally determined for federal estate tax purposes in my wife's estate. For purposes of computing any deficiency in the Class B stock distributable to any child of mine or to the issue collectively of any deceased child of mine under provision (a), (b) or (c) above, the trustee shall first determine the total value of what either has been previously received by THE BENEFICIARY or is then held in trust under ITEM SIX or ITEM ELEVEN for THE BENEFICIARY'S benefit by adding together



(i) the value of any Class A stock held either by THE BENEFICIARY or by said trust upon my wife's death (said Class A stock to be conclusively deemed to have a per share value equal to the per share value of any Class B stock then held in the marital trust estate as finally determined for federal estate tax purposes in my wife's estate), and

(ii) the value as of the date of its receipt of any property or cash received by THE BENEFICIARY for any Class A stock disposed of by THE BENEFICIARY prior to my wife's death,

and shall then subtract from such total value the value of any Class B stock (as finally determined for federal estate tax purposes in my wife's estate) then distributable to any child of mine or to the issue collectively of any deceased child of mine under provision (a), (b) or (c) above. Any deficiency in the Class B stock shall be prorated among those receiving property from the marital trust estate under provisions (a), (b) or (c) above in the same proportion as they are so receiving property.

B. If upon my wife's death, my son, Charles Phillip McWane, my daughter, Anna McLester McWane, or any issue of my said son or my said daughter (such child individually or such issue collectively, as the case may be, being hereinafter called "THE BENEFICIARY") has previously received cash or other property in lieu of Class A common stock of McWane from any trust created under ITEM SIX or ITEM ELEVEN on its termination (as in the case where the trustee of such trust has previously disposed of all such Class A stock pursuant to the power granted the trustee in paragraph 6(b) of ITEM EIGHTEEN), the trustee of the marital trust shall transfer, convey and pay over, free of trust except as provided in ITEM SIXTEEN, a sufficient number of shares of Class B common



stock of McWane as will, as nearly as practicable, approximate the value as determined by the trustee of the marital trust, in its sole and absolute discretion, of the cash and other property which THE BENEFICIARY has so previously received as of the date of receipt as follows:

(a) If THE BENEFICIARY of such cash or other property pursuant to ITEM SIX or ITEM ELEVEN is my son, Charles Phillip McWane, the distribution of Class B shares hereunder shall be made to my daughter, Anna McLester McWane, if she is living at my wife's death, or if my said daughter is not then living, to her issue collectively then living, such issue to take in equal shares per stirpes;

(b) If THE BENEFICIARY of such cash or other property pursuant to ITEM SIX or ITEM ELEVEN is my daughter, Anna McLester McWane, the distribution of Class B shares hereunder shall be made to the issue collectively of my son, Charles Phillip McWane, living at my wife's death, such issue to take in equal shares per stirpes;

(c) If THE BENEFICIARY of Class A shares under ITEM SIX or ITEM ELEVEN is the issue of my son, Charles Phillip McWane, the distribution of Class B shares hereunder shall be made to the issue collectively living at my wife's death of my daughter, Anna McLester McWane, such issue to take in equal shares per stirpes;

provided, however, that if upon my wife's death there is not sufficient Class B common stock of McWane available in the marital trust estate to satisfy provision (a), (b) or (c) above, as the case may be, the trustee of the marital trust shall use cash or other property from the marital trust estate of sufficient value to make up any deficiency (as computed in accordance with the next succeeding



sentence) in the Class B stock, using values as to such cash and other property as are finally determined for federal estate tax purposes in my wife's estate. For purposes of computing any deficiency in the Class B stock distributable under provision (a), (b) or (c) above, the trustee shall first determine the total value of the cash or other property previously received by THE BENEFICIARY as of the date of its receipt and shall then subtract from such total value the value of any Class B stock (as finally determined for federal estate tax purposes in my wife's estate) then distributable to any child of mine or to the issue collectively of any deceased child of mine under provision (a), (b) or (c) above. Any deficiency in the Class B stock shall be prorated among those receiving property from the marital trust estate under provisions (a), (b) or (c) above in the same proportion as they are so receiving property.

§ III. GENERAL EXPRESSION OF INTENT WITH
RESPECT TO MARITAL TRUST EQUALIZATION
PROVISIONS AND WITH RESPECT TO QUALIFICATION OF
MARITAL TRUST FOR MARITAL DEDUCTION.

It is my intention to treat equally under the provisions of this will my son, Charles Phillip McWane, or his issue, on the one hand, and my daughter, Anna McLester McWane, or her issue, on the other. In using terms such as "equally," "equalize" or "equalization" in the "Marital Trust Equalization Provisions," I intend to indicate only that the aggregate amount of property passing to my said son (or his issue) and my said daughter (or her issue) shall be approximately the same and not that the value of the property passing to any beneficiaries shall be the same. I recognize, for example, that the value of the Class A NCC common stock and Class A McWane common stock that may be allocated to the share of one beneficiary may



not be equal to the value of the Class B NCC common stock or Class B McWane common stock that may be allocated to the share of another beneficiary.

ITEM FIVE and ITEM SIX of this will dispose of all my Class A NCC common stock and Class A McWane common stock, respectively. Said Items give and bequeath such stock outright to, or in a trust for the benefit of, (i) my son, Charles Phillip McWane, if alive, (ii) otherwise my daughter, Anna McLester McWane, if alive, (iii) otherwise the living issue, if any, of my son, Charles Phillip McWane, per stirpes, (iv) otherwise the living issue, if any, of my daughter, Anna McLester McWane, per stirpes. Under the provisions of ITEM TEN and ITEM ELEVEN, if a person for whose initial benefit a trust is created with respect to my Class A NCC or McWane stock should die, such Class A stock could pass either vertically to descendants of such person or laterally to a sibling of such person or such sibling's descendants. Thus, the provisions of ITEM FIVE and ITEM SIX might result in either my son, Charles Phillip McWane, or my daughter, Anna McLester McWane, or the issue of my said son (such child individually or such issue collectively, as the case may be, being hereinafter called "THE BENEFICIARY") receiving, either outright or in a trust for his or her benefit, a substantial bequest of NCC and McWane Class A common stock, with no comparable provision being made for the other of my said two children or for such other child's issue, as the case may be.

It is my intention that, if my wife survives me, then upon my wife's eventual death the marital trust estate shall be used to equalize, to the extent herein described, (a) the aggregate amount of assets passing from my estate to or for the benefit of THE BENEFICIARY, and (b) the aggregate amount of assets passing from my estate to or for the benefit of the other of my said two children

or for such other child's issue, as the case may be. It is also my intention that, to the extent practicable, such equalization shall be accomplished by using shares of Class B common stock of NCC and of McWane, respectively, to match on a share-for-share basis (and not necessarily on a value-for-value basis) the shares of Class A common stock passing to or for the benefit of THE BENEFICIARY under ITEM FIVE or ITEM SIX or ITEM TEN or ITEM ELEVEN. For example, assuming that both my son, Charles Phillip McWane, and my daughter, Anna McLester McWane, are alive on my wife's death, and assuming further that under ITEM FIVE and ITEM SIX 500 shares of Class A common stock of NCC and 25,593 shares of Class A common stock of McWane have previously passed to or for the benefit of my said son, and assuming further that none of such Class A shares have been previously disposed of for cash or other property prior to my wife's death, then it is my intention that, upon my wife's death, 500 shares of Class B common stock of NCC and 25,593 shares of Class B common stock of McWane shall, to the extent available in the marital trust estate, be transferred, conveyed and paid over, subject to the provisions of ITEM SIXTEEN, to my daughter, Anna McLester McWane, if she is then living, otherwise to her issue collectively then living, in equal shares per stirpes. Assuming under the foregoing example that Charles Phillip McWane survived me but thereafter predeceased my wife leaving issue of his surviving my wife and assuming further that his death caused 500 shares of Class A common stock of NCC and 25,593 shares of Class A common stock of McWane to pass under the provisions of ITEM TEN or ITEM ELEVEN to or for the benefit of my daughter, Anna McLester McWane, then it is my intention that 500 shares of Class B common stock of NCC and 25,593 shares of Class B common stock of McWane would be transferred, conveyed

and paid over, subject to the provisions of ITEM SIXTEEN, to the then surviving issue of Charles Phillip McWane, in equal shares per stirpes.

If the shares of Class A common stock of NCC and of McWane passing to or for the benefit of THE BENEFICIARY under ITEM FIVE and ITEM SIX, respectively, have been previously disposed of for cash or other property prior to my wife's death, then it is my intention that the equalization herein described shall be accomplished by using a sufficient number of Class B shares of common stock of NCC and McWane, whose value will, as nearly as practicable, approximate the value of such cash and other property THE BENEFICIARY has so previously received as of the date of receipt.

To the extent that there is insufficient Class B common stock either of NCC or of McWane available in the marital trust estate to accomplish the equalization herein described, it is my intention that the trustee of the marital trust shall use cash or other property from the marital trust estate, to the extent available, to make up any deficiency (as computed in the manner heretofore specified) in the Class B common stock, using values as to such cash and other property as are finally determined for federal estate tax purposes in my wife's estate.

I recognize that the problems of equalization inherent in the "Marital Trust Equalization Provisions" may be complicated and difficult and that I may not have covered all these problems fully or precisely in this will. It is therefore my intention to vest in the trustee of the marital trust absolute authority and discretion in applying the "Marital Trust Equalization Provisions," and I direct that the actions of said trustee in this regard shall be final and binding on all concerned.



It is my intention that under any set of circumstances my executor shall, in my executor's sole discretion, determine whether to elect under the provisions of the Internal Revenue Code applicable to my estate to qualify all or any portion of the marital trust for the federal estate tax marital deduction. Generally, I anticipate that my executor will elect to minimize the estate tax payable by my estate. However, I would expect that some consideration be given to the estate tax payable in my wife's estate upon her death, especially if she should die prior to the time the election is made. The determination of my executor with respect to the exercise of the election shall be conclusive upon all persons.

ITEM THIRTEEN

The following provisions shall govern any separate trust herein created for the primary benefit of my son, Charles Phillip McWane, or my daughter, Anna McLester McWane, under the provisions of either paragraph 2(B)(i)(c) of ITEM EIGHT or paragraph 5(A)(ii)(1)(c) of ITEM TWELVE, 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 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 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 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 FIFTEEN or ITEM SIXTEEN 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 then living 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 wife, Ada French McWane, is then living, to my said wife, or if my said wife 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 FOURTEEN

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, under the provisions of either paragraph 2(B)(ii) of ITEM EIGHT or paragraph 5(A)(ii)(2) of ITEM TWELVE, 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 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 last to die of the issue of my mother, Louise Nevins McWane, living at the creation of the trust, or

C. The date the beneficiary dies.

If the trust terminates 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 under subparagraph C above, the trustee shall transfer, convey and pay over, free of trust except as provided in ITEM FIFTEEN or ITEM SIXTEEN, 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 then living 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 wife, Ada French McWane, is then living, to my said wife, or if my said wife 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 FIFTEEN

Unless otherwise provided in a previous Item of this will, if any issue of mine becomes entitled to any share of the principal or undistributed income of any trust herein created on its termination and if such issue has any other property then held in trust for his or her benefit pursuant to the provisions of either ITEM EIGHT, paragraph 2(B)(i) or (ii) or ITEM TWELVE, paragraph 5(A)(ii)(1) or (2) 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 pursuant to the provisions of ITEM EIGHT, paragraph 2(B)(i) or (ii) or of ITEM TWELVE, paragraph 5(A)(ii)(1) or (2).

ITEM SIXTEEN

Subject to the provisions of ITEM FIFTEEN, if any issue of mine 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 and if such issue 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 issue in my estate or in the trust so terminating shall vest in him or her, his or her share shall not be transferred, conveyed and paid over to him or her, and AmSouth Bank, National Association (or such successor corporation having trust powers as may succeed to the business of said bank by purchase, merger, consolidation or otherwise) shall hold such share 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 issue shall die prior to attaining the age of twenty-one (21) years, said 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 SEVENTEEN

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

1. The trustee or trustees are 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" or "trustees" shall be deemed to include not only the original trustee or trustees but also any successor trustee or trustees; and all powers and discretions vested in the original trustee or trustees shall be vested in, and exercisable by, any such successor trustee or trustees.



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.

5. As to the net income which by any of the provisions of this will may be payable to any person, he or



she 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 or trustees. 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, other than the marital trust, payable to any beneficiary who, in the opinion of the trustee or trustees, is incapacitated through illness, age or other cause may, in the discretion of the trustee or trustees, be paid to such beneficiary or applied by the trustee or trustees for the benefit of such beneficiary or paid to the guardian of the person of such beneficiary.

7. With respect to any benefits under employee benefit plans payable to the trustee or trustees of any trust created hereunder, the trustee or trustees shall be authorized to receive, hold and administer any such benefits and to make any election permitted by any tax law that the trustee or trustees determine is for the best interests of such of my wife and children as survive me. By way of illustration, the trustee or trustees may elect that such benefits be paid in a lump sum or in installments. To the extent that any employee benefits are not included in my estate for federal estate tax purposes, the amount thereof shall not be used in any way to pay any estate, inheritance or other tax, any claims or debts, or to satisfy any other obligation of my estate.



ITEM EIGHTEEN

1. The trustees of any trust created under ITEM FIVE and to be administered under ITEM TEN of this will shall be my wife, Ada French McWane, and John J. McMahon, Jr. If either of said individuals be dead or fails or refuses to act as a trustee or, having acted, should thereafter die, resign or become incapacitated, then and in any such event my son, Charles Phillip McWane, shall act as a trustee in his or her stead.

2. The trustee of any trust created under ITEM SIX and to be administered under ITEM ELEVEN of this will shall be my wife, Ada French McWane.

3. The trustee of any trust created under paragraph 1 of ITEM EIGHT and to be administered under ITEM TWELVE of this will shall be AmSouth Bank, National Association (or such successor corporation having trust powers as may succeed to the business of said Bank by purchase, merger, consolidation or otherwise).

4. The trustee of any trust created under either paragraph 2(B)(i) or (ii) of ITEM EIGHT or paragraph 5(A)(ii)(1) or (2) of ITEM TWELVE and to be administered under either ITEM THIRTEEN or ITEM FOURTEEN of this will shall be John J. McMahon, Jr. If the said Mr. McMahon be dead or otherwise unable or unwilling to act as trustee, then and in any such event AmSouth Bank, National Association (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.

5. No individual trustee acting at any time as to any trust created under this will shall be entitled to compensation, but each 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 its services as trustee. No trustee shall be required to give any bond or security.

6. (a) I direct that the trustees appointed under paragraph 1 of this Item with respect to any trust created under ITEM FIVE shall ordinarily have no power to sell or otherwise dispose of any Class A common stock of National Commerce Corporation contained in said trust; provided, however, that the trustees shall have the power to sell or otherwise dispose of all of such Class A stock in connection with a merger, consolidation, recapitalization or other form of reorganization of National Commerce Corporation or in connection with a sale or other disposition of all of the Class A stock or all or substantially all the assets of National Commerce Corporation. Any such sale or other disposition permitted herein shall be made only upon the unanimous approval of all trustees who may then be serving as to such trust.

(b) I direct that the trustee appointed under paragraph 2 of this Item with respect to any trust created under ITEM SIX shall ordinarily have no power to sell or otherwise dispose of any Class A common stock of McWane, Inc. contained in said trust; provided, however, that the trustee shall have the power to sell all of such Class A stock in a single transaction or to otherwise dispose of all of such Class A stock in connection with a merger, consolidation, recapitalization or other form of reorganization of McWane, Inc. Any such sale or other disposition permitted herein shall be made only upon the joint approval of the trustee and any income beneficiary who is competent to act and who has attained his or her majority.

(c) I direct that the trustee appointed under paragraph 3 of this Item with respect to any trust created under paragraph 1 of ITEM EIGHT shall ordinarily have no



power to sell or otherwise dispose of any Class B common stock of McWane, Inc. contained in said trust; provided, however, that the trustee shall have the power to sell or otherwise dispose of all of such Class B stock in connection with a merger, consolidation, recapitalization or other form of reorganization of McWane, Inc. or in connection with a sale or other disposition of all or a majority of the Class A or B stock or all or substantially all the assets of McWane, Inc.; and provided further that the trustee shall always have the power to sell all or any part of such Class B stock to any of my three children, James Ransom McWane, Jr., Charles Phillip McWane and Anna McLester McWane, or to any trust created for the benefit of any child of mine.

7. Subject to the provisions of the next preceding paragraph 6, I hereby expressly grant to the trustee or trustees with respect to each of the trust estates herein created, including any accumulated income thereof, the powers hereinafter enumerated, all of such powers so granted to be exercised by the trustee or trustees, as the trustee or trustees may deem advisable, in the trustee's or trustees' sole and absolute discretion:

A. To retain and hold any property, including stocks, bonds or other securities, originally received by the trustee or trustees 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 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, 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 or trustees, for any purpose, with or without security or mortgage of any real estate or pledge of any personal property held by the trustee or trustees 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 of the expenses of the trust incurred in the exercise of the powers herein vested in the trustee or trustees;

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 trustees, 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 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 corpora-



tion 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 in respect to all stocks, bonds or other securities held by the trustee or trustees 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 or trustees;

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



which are in use in the vicinity of any of such real estate or which the trustee or trustees deem 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;

M. 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 or trustees 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 which 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 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 or trustees' own funds, and to be compensated therefor; and to sell or liquidate any interest in any business.

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

ITEM NINETEEN

1. Any trustee serving as to any trust created hereunder may resign 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 wife and children as are then living, over the age of twenty-one (21) years, and competent to act.

2. If a trustee resigns and if no successor trustee is designated to the resigning trustee under this will, a majority of my wife and children as are then living, and 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). Any successor trustee shall have and possess all of the rights, powers, authorities, duties and discretions herein vested in the original trustee or trustees.

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

ITEM TWENTY

I nominate and appoint my son, Charles Phillip McWane, as executor of this my last will and testament. If my said son 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 my wife, Ada French McWane, shall act as executor. If both my said son and my said wife be dead or otherwise unable or unwilling to act as executor, then and in any such event my daughter, Anna McLester McWane, shall act as executor. If my said son, my said wife and my said daughter all be dead or otherwise unable or unwilling to act as executor, then and in any such event AmSouth Bank, National Association (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 or trustees under paragraphs 6 and 7 of ITEM EIGHTEEN, subject always to the limitations of paragraph 6 of ITEM EIGHTEEN, 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.

I give to my executor the following additional powers and discretions:

1. If my executor in good faith decides that there is uncertainty as to the inclusion of particular property in my gross estate for federal estate tax purposes, such property shall be excluded from my gross estate in the estate tax return. My executor shall not be liable for any loss to my estate or to any beneficiary resulting from any decision made in good faith that there is uncertainty as to the inclusion of particular property in my gross estate.

2. The decision of my executor as to the date which should be selected for the valuation of property in my gross estate for federal estate tax purposes shall be conclusive on all concerned.

3. When a choice is available as to whether certain deductions shall be taken as income tax deductions or estate tax deductions, the decision of my executor in this regard shall be conclusive on all concerned, and if same are claimed as income tax deductions, no adjustment shall be made between principal and income by reason of such decision.



4. If my executor so determines, I authorize and empower my executor to join with my wife or her executor or administrator in filing a joint federal income tax return of the income of my wife and myself for any period or periods for which such a return may be permitted. I further authorize and empower my executor to agree with my wife or her executor or administrator:

A. As to how the burden of the liability for federal income tax, or interest thereon, arising out of the filing of a joint return by my executor and my wife or her executor or administrator shall be borne as between my estate and my wife or her estate, and

B. As to whom, as between my wife or her estate and my estate, shall be entitled

(i) to any refund or credit of any federal income tax, or interest thereon, based on the filing of a joint return by my wife and myself or by my executor and my wife or her executor or administrator.

(ii) to any refund or credit of any amount paid on account of any joint declaration of estimated federal income tax filed by my wife and myself, and of the interest on any such refund, and

(iii) to the benefit of any payment made by my wife or myself on account of any joint or separate declaration of estimated federal income tax.

5. If my executor so determines, I authorize and empower my executor to consent for federal gift tax purposes that gifts made by my wife shall be treated as having been made one-half by me and one-half by her.

The exercise by my executor of the authority and discretion hereinabove given shall not be subject to question by any person.

No individual executor at any time serving hereunder shall be entitled to compensation, but each 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.

As used in this will, the term "executor" shall mean the person, whether male or female, or bank or trust company having trust powers that is at any time acting as the personal representative of my estate.

ITEM TWENTY-ONE

The executor of my estate and the trustee or trustees of any trust created hereunder are authorized, but not required, (a) to deal with the personal representative of the estate of my wife, my father, my mother or of any issue of mine, and (b) to deal with the trustee of any trust created by me, my wife, my father, my 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 or trustees hereunder are 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 or trustees hereunder are 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 TWENTY-TWO

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 named 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 TWENTY-THREE

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 other 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 where 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.

ITEM TWENTY-FOUR

All estate, inheritance, transfer, legacy, succession or death taxes or duties (including any interest and penalties thereon, but excluding any generation-skipping tax) imposed by reason of my death by the United States or any foreign country or any state, province or

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other political subdivision of either of the foregoing shall be paid by my executor and charged as follows:

A. If my wife, Ada French McWane, survives me, against any property that passes under the provisions of ITEM SEVEN of this will or, to the extent that said property is insufficient, against any property that passes under the provisions of ITEM NINE of this will or, to the extent that said property is insufficient, against my residuary estate.

B. If my wife, Ada French McWane, does not survive me, against my residuary estate.

ITEM TWENTY-FIVE

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 TWENTY-SIX

If my wife, Ada French 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 she shall be deemed to have survived me, 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 17 day of September, 1985.

 (SEAL)
JAMES RANSOM MCWANE

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The above and foregoing was signed and published -
by James Ransom McWane as and for his last will and testa-
ment on the day the same bears date in our presence, and
we, on said date, and at his request, and in his presence,
and in the presence of each other, have hereunto affixed
our names as attesting witnesses.

Caroline Stewart - Moya ADDRESS: Birmingham, Ala.

Ronald O. Davis ADDRESS: Birmingham, Ala.

Kathy L. Linn ADDRESS: Birmingham, AL

FIRST CODICIL
TO
LAST WILL AND TESTAMENT
OF
JAMES RANSOM McWANE

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I, JAMES RANSOM McWANE, a resident of Jefferson County, State of Alabama, being of sound and disposing mind and memory, do make, publish and declare this to be a first codicil to my last will and testament executed on the 17th day of September, 1985, in the presence of Candace Stewart-Magee, Ronald O. Travis and Kirby Sevier.

1. I hereby modify and amend my last will and testament, hereinabove described, by deleting ITEM FOUR thereof in its entirety and by inserting in lieu thereof the following new ITEM FOUR:

ITEM FOUR

A. I give, devise and bequeath all my right, title and interest in and to any real property owned by me at the time of my death and located in the area known as Shoal Creek in Shelby County, Alabama, to my wife, Ada French McWane, if she survives me. If my said wife does not survive me, the gift herein provided shall lapse, and the property herein described shall become a part of my residuary estate.

B. I give, devise and bequeath all my right, title and interest in and to any real property owned by me at the time of my death and located in Linville, Avery County, North Carolina, to my wife, Ada French McWane, if she survives me. If my wife does not survive me, the gift herein provided shall lapse, and the property herein described shall become a part of my residuary estate.

2. I hereby ratify and confirm my said last will and testament, hereinabove described, insofar as not in conflict with this codicil and do republish the same as herein and hereby amended as of this date.

IN WITNESS WHEREOF, I have set my hand and seal to this, the first codicil to my last will and testament, on this the 31st day of January, 1991.

James Ransom McWane (SEAL)
JAMES RANSOM McWANE

FILED IN OFFICE THIS THE 22 DAY
OF January, 19 91 FOR
PROBATE AND RECORD.

Robert L. Reynolds
JUDGE OF PROBATE

The foregoing was signed, sealed, published and declared by JAMES RANSOM McWANE to be the first codicil to his last will and testament, in our presence, and we, at his request and in his presence and in the presence of each other, have hereunto set our signatures as attesting witnesses on the day the said instrument bears date.

Candy Stewart-Magee ADDRESS: Rt. 2, Box 243, Cdenville Ar 35121
Harold Harris ADDRESS: 5265 Woodford St. Bk 16 35242
ADDRESS: _____

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 AND CODICIL THERETO, PROOF OF WILL & CODICIL (ONE WITNESS), CERTIFICATE TO THE PROBATE OF WILL, LAST WILL AND TESTAMENT OF JAMES RANSOM 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