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WILLS 1/26

**LAST WILL AND TESTAMENT**

**OF**

**JOHN E. SHEPHERD**

**Dated August 24, 1999**

This instrument was prepared by:  
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# LAST WILL AND TESTAMENT

OF

**JOHN E. SHEPHERD**

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I, JOHN E. SHEPHERD, a resident of the State of Alabama, Jefferson County, being of sound mind and disposing memory, do hereby make, publish and declare this instrument as and for my Last Will and Testament and hereby expressly revoke all prior wills and codicils that I have made.

## ITEM I.

### INTRODUCTION

My name is JOHN E. SHEPHERD. I am married to ANNE T. SHEPHERD, hereinafter sometimes referred to as my wife. As of the date of this Will, I have one (1) child, whose name is BARBARA S. MALKOVE. For the purposes of this Will, references to my "child" shall mean the child named herein.

## ITEM II.

### PERSONAL PROPERTY

A. I give and devise all my jewelry, wearing apparel, automobile(s), books, pictures, art objects, hobby equipment, club memberships, furniture and furnishings, china, crystal, and all other articles of personal and household use, together with any insurance thereon, to my wife, if she survives me.

B. If my wife shall not survive me, then I give and devise all of said property to my child. If my child shall not survive me, said property shall pass to her then living descendants, in equal shares, per stirpes. In the absence of agreement of the beneficiaries as to the division of said property, the Personal Representative shall make such division in the Personal Representative's absolute discretion, having due regard for the personal preference of such beneficiaries, and such division shall be conclusive and binding; provided, however, that there shall be no adjustment if the value of any shares exceeds the value of any other share.

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C. I hereby vest in the Personal Representative full power and authority to determine what objects of property are included in the foregoing description contained in this Item of my Will.

D. The Personal Representative shall be discharged as to any payment or transfer hereunder without liability for the subsequent application thereof. The reasonable costs of safeguarding, insuring, packing and storing my tangible personal property before its distribution, and of delivering each item to the place of residence of the beneficiary of that item of property shall be expenses of administration of my estate.

E. I may prepare a memorandum in conjunction with this Will which indicates my desires with regard to the disposition of special personal property of mine. If I prepare such memorandum, it will be an expression of my desires with regard to the disposition of such personal property. Although I realize that such memorandum shall not be binding upon the Personal Representative, I hope and expect that the Personal Representative and my beneficiaries will honor this expression of my desires.

**ITEM III.**

**OUTRIGHT PECUNIARY MARITAL DEVISE.**

A. If my wife survives me, I give and devise to her, absolutely and forever, the smallest amount of the assets of my estate that qualify for the marital deduction which will be sufficient to result in the lowest federal estate tax being imposed upon my estate, after taking into account the Unified Credit Against Estate Tax available to my estate for federal estate tax purposes, and the state death tax credit against such tax (but only to the extent that the use of such state death tax credit does not increase the state death tax payable to any state). In making the computations necessary to determine the amount of this devise, the final determinations for federal estate tax purposes shall control.

B. The Personal Representative shall have full power and discretion to satisfy this devise wholly or partly in cash or property selected by the Personal Representative; provided, however, that the Personal Representative shall value all property selected by the Personal Representative as a part of this devise at the value of such property at the date or dates of distribution thereof; and provided further that in no event shall there be

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included in this devise any asset or the proceeds of any asset which does not qualify for the marital deduction for federal estate tax purposes.

C. The following assets, or the proceeds of such assets, if any, shall be the last to be used to satisfy this devise:

1. any assets with respect to which any estate or death taxes are paid to any foreign country or any of its possessions or subdivisions; or
2. any assets with respect to which any tax credit or deduction shall be available because it shall be subject to both federal estate and federal income tax.

D. It is my intent to secure for my estate the marital deduction allowable by the Code in force on the occasion of my death, to the extent set forth in paragraph A of this Item of my Will, and I direct the Personal Representative to take whatever action may be necessary to obtain the marital deduction. If the effect of any provision of this Will would be to prevent the allowance of the marital deduction with respect to this devise, except as hereinabove set forth, then I direct that such offending provisions shall not apply to this devise, and this Will shall be construed as if such offending provisions did not exist.

E. If my wife does not desire, for any reason whatsoever, to take all or any portion of this devise under the provisions of this Item, then my wife may disclaim in whole or in part the devise described hereinabove by making a qualified disclaimer as permitted by the Code. In the event of such disclaimer, the said property, or portion thereof to which the disclaimer applies, shall be merged with and become a part of the residue of my estate.

F. If my wife predeceases me, I direct that this devise shall lapse, and the assets of my estate which would have constituted the devise to my wife under the terms of this Item of my Will shall be merged with and become a part of the residue of my estate.

**ITEM IV.**

**DISPOSITION OF RESIDUE**

All of the rest, residue and remainder of the property which I may own at the time of my death, real, personal and mixed, tangible and intangible, of whatsoever nature and wheresoever situated, including all property which I may acquire or become entitled to after the execution of this Will, including all lapsed legacies and devises, and including any property over or concerning which I may have any power of appointment (hereinafter for

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convenience referred to as the "Family Trust"), I give and devise unto the Trustee hereinafter named, in trust, nevertheless, for the uses and purposes, upon the terms and conditions, and with the powers and duties hereinafter stated.

**ITEM V.**

**FAMILY TRUST**

A. The Trustee shall hold the Family Trust in trust for the use and benefit of my wife, for and during her lifetime. During the lifetime of my wife, the Trustee shall pay over to my wife the entire net income from the Family Trust, in such installments as may be convenient to my wife. In addition to the income from the Family Trust, my wife may appoint to herself, from the principal of the Family Trust, such amount as from time to time may be necessary for her education, support in her accustomed manner of living, and maintenance in health and reasonable comfort. I further direct that any Trustee who shall be serving and acting may appoint to or for the benefit of my wife from the principal of the Family Trust pursuant to the standards set forth hereinabove. The power granted hereunder is intended to be limited by an ascertainable standard as the term is interpreted under Sections 2041(b)(1)(A) and 2514(c)(1) of the Code.

B. If all or any part of any home which I may own at the time of my death may be included as an asset in the Family Trust, then, so long as my wife shall live, I direct that she shall be permitted to use and occupy such home. During the occupancy of the home by my wife, she shall not be liable for waste and shall not be required to furnish security of any kind. My wife shall, however make all ordinary repairs on the premises, maintain adequate fire insurance coverage, pay all taxes and assessments, and make all mortgage payments, whether of interest or of principal. The Trustee shall otherwise allow my wife the full use of the home, free of rent or other charge.

C. Upon the death of the last to die of my wife and me (the "apportionment date"), the Trustee shall apportion the Family Trust into the shares hereinafter set forth. Each share apportioned for the beneficiaries shall be a separate and distinct trust. I hereby authorize the Trustee, in the Trustee's discretion, for the sake of convenience, to refrain from making a physical separation of the assets of these trusts into separate trusts, if such treatment will facilitate the administration of the trusts. I also authorize the Trustee

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to mingle and commingle investments, but I wish it specifically understood that I am creating independent trusts for all purposes. I direct that the Trustee apportion the Family Trust as follows:

1. Fifty-five percent (55%) for my child.
2. Fifteen percent (15%) for my grandchild, JOHN M. G. SCHMOHL, JR.
3. Fifteen percent (15%) for my grandchild, COURTNEY S. BARRACK.
4. Fifteen percent (15%) for my grandchild, DAVID S. SCHMOHL.

D. As soon as reasonably practical after the apportionment date, the Trustee shall transfer and pay over to each of the beneficiaries his or her entire share of the Family Trust, free from this trust.

E. If a beneficiary entitled to share in the Family Trust under the terms hereof shall predecease me, or shall die prior to the apportionment date or thereafter, then upon the last to occur of the death of such beneficiary or the apportionment date, the Trustee shall transfer and pay over such beneficiary's share of the Family Trust as follows:

1. If such deceased beneficiary leaves any descendants of him or her then living, to the descendants then living of such deceased beneficiary, per stirpes; provided that, although each descendant's share of the Family Trust shall immediately vest in him or her, and subject to the time limitation required by law described hereinafter in the Item of my Will entitled MISCELLANEOUS, the Trustee shall continue to hold each descendant's share of the Family Trust in trust for him or her upon the following terms and provisions. During the continuance of the trust as to such descendant's share of the Family Trust, the Trustee shall use and apply for such descendant's health, education, support, and maintenance, taking into account other resources available to him or her, such part of the net income from such descendant's share of the Family Trust, and the principal thereof, as may be deemed necessary or desirable by the Trustee for said purposes. Any undistributed net income shall be accumulated and added to the principal of such descendant's share of the Family Trust. In addition to payments or distributions of principal in the discretion of the Trustee as hereinabove set forth, the Trustee shall pay and distribute the principal of each such descendant's share of the Family Trust to such descendant upon attaining the age of twenty-five (25) years. If any of such descendants

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shall have attained the age of twenty-five (25) years at the apportionment date, the Trustee shall immediately pay and distribute to such descendant the principal of his or her share of the Family Trust. If any of such descendants shall die before attaining the age of twenty-five (25) years, the Trustee shall immediately pay and distribute to the estate of such deceased descendant the principal of his or her share of the Family Trust.

2. If a grandchild leaves no descendants of him or her then living, to my other grandchildren, in equal shares, per stirpes; provided, however, that if any descendant of a deceased grandchild shall then have other property held in trust for him or her under the terms hereof, then his or her share in the share of such deceased grandchild shall be added to, merged in, administered and disposed of like such other property held in trust for him or her.

3. If all of my grandchildren are deceased and leave no then living descendants, to my child.

4. If all of the beneficiaries are deceased and leave no then living descendants, to such person or persons as would be entitled to inherit the property constituting such share, and in the proportions in which they would be entitled to inherit the same from me under the laws of Alabama then in force, had I died at the time a resident of Alabama, intestate and owned said property.

F. My wife, by signed instrument delivered from time to time to the Trustee during the lifetime of my wife specifically referring to this limited power of appointment, or by specific reference thereto in her Will, shall have the power to direct the Trustee to alter the disposition of the Family Trust by dividing it among my descendants (regardless of whether or not their parents are living or deceased) and/or any charitable organization, as hereinafter defined, in such manner and in such equal or unequal proportions, even to the extent of totally eliminating one or more descendants as a beneficiary, in trust or otherwise, as my wife may desire; provided, however, that under no condition may my wife appoint any part of the Family Trust to herself, to her estate, to her creditors or to the creditors of her estate. As used herein, the term "charitable organization" shall refer to those organizations described in Sections 170(c), 2055 and 2522 of the Code. Any provisions hereinabove to the contrary notwithstanding, in exercising the limited power of appointment

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given to my wife by creating a trust for the benefit of any of my descendants, she is expressly prohibited from including in any such trust any provisions which may be interpreted as violating the rule against perpetuities as applicable in the State of Alabama or any other applicable jurisdiction.

G. If the death of any beneficiary will otherwise result in the payment of a generation-skipping tax under the Code, and in the further event that for purposes of computing the federal estate tax due at the death of such beneficiary, the maximum marginal estate tax bracket of such beneficiary is less than the maximum generation-skipping tax bracket, such beneficiary shall have a general power of appointment exercisable by specific reference thereto in his or her Will over that portion hereinabove set forth of the share of the Family Trust in which he or she is a beneficiary, such power being an unlimited power and right to appoint that portion of such share of the Family Trust to his or her estate, to the creditors of his or her estate or to any other appointee. The portion of the share of the Family Trust over which the beneficiary will have the general power of appointment referred to hereinabove shall equal to the maximum amount that can pass to the beneficiaries [other than a spouse of such beneficiary or a charitable organization described in Section 2055(a) of the Code] from such share of the Family Trust and be subject to federal estate taxes in the estate of such beneficiary, computed at estate tax rates that are less than the maximum estate tax rate in effect as of the date of the death of such beneficiary. If the death of such beneficiary will not result in the payment of a generation-skipping tax, the foregoing general power of appointment shall be void and of no effect. If the beneficiary shall die having failed to exercise the foregoing general power of appointment, the Trustee shall pay to the personal representative of the estate of such beneficiary an amount equal to the increase in federal and state taxes and any increased administration expenses which his or her estate would have to pay because of the inclusion of the share of the Family Trust in his or her estate for tax or administrative purposes, and the balance of the assets of the share of the Family Trust shall be transferred, delivered and paid over in accordance with the provisions hereinabove set forth.

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**ITEM VI.**

**APPOINTMENT OF PERSONAL REPRESENTATIVE**

A. I hereby nominate and appoint ANNE T. SHEPHERD to serve as Personal Representative under this Will. If ANNE T. SHEPHERD shall fail to qualify, die, resign, become incompetent, or otherwise fail or cease to serve as Personal Representative, then I nominate and appoint BARBARA S. MALKOVE to serve as Personal Representative hereunder, with all of the rights, title, powers and exemptions granted to the original Personal Representative.

B. No Personal Representative named herein shall be required to give bond or other security; or to file an inventory, accounting or appraisal in any court; or to render any report in court upon final settlement of my estate. Notwithstanding the foregoing, the Personal Representative shall make out and keep an inventory and maintain records of all transactions relating thereto, and shall exhibit the same to any party in interest at any reasonable time.

C. I direct that any Personal Representative serving hereunder shall be entitled to receive fair and reasonable compensation for services rendered in such capacity.

**ITEM VII.**

**POWERS OF PERSONAL REPRESENTATIVE**

During the administration of my estate, I hereby vest in the Personal Representative the same full powers of management, control and disposition of my estate which are granted to the Trustee under any provision of this Will, regardless of whether or not any trust authorized by this Will shall become operative.

**ITEM VIII.**

**APPOINTMENT OF TRUSTEE**

A. I appoint ANNE T. SHEPHERD to serve as Trustee. If ANNE T. SHEPHERD shall fail to qualify, die, resign, become incompetent, or otherwise fail or cease to serve as Trustee, then I appoint BARBARA S. MALKOVE to serve as Trustee hereunder.

B. Any individual Trustee who does not have an individual successor Trustee named, shall have the right at any time acting as a Trustee hereunder (whether named herein or acting hereunder) to appoint any bank or trust company authorized to accept and

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administer trusts, or any individual, to: (i) act as successor Trustee in such individual's place, such appointment to take effect upon the death, resignation or incapacity of the individual making such appointment, or (ii) act as a Co-Trustee along with such individual Trustee making such appointment. Any such appointments may be revoked or changed prior to the appointment becoming effective. Any such appointments, revocations or changes shall be by an acknowledged instrument delivered to all Trustees then serving. Each successor Trustee appointed pursuant to the provisions of this paragraph shall accept such appointment by an acknowledged instrument.

C. Any Trustee may resign at any time by giving sixty (60) days written notice to the beneficiary or beneficiaries to whom the current income may or must be distributed. If upon the resignation of a Trustee no successor Trustee appointed hereunder is able and willing to serve, the majority of the adult beneficiaries named herein shall substitute for such Trustee, any bank or trust company authorized to accept and administer trusts. The adult beneficiaries and the parents or conservators of adult or minor beneficiaries may approve the accounts of any resigning Trustee, and such approval shall be binding upon all persons whomsoever and shall be a full and complete discharge and acquittance of such Trustee. Upon any such change in the trusteeship, the title to any trust property shall vest forthwith in any successor Trustee acting pursuant to the foregoing provisions hereof without the necessity of any court order or of any conveyance or transfer of trust assets.

D. Any successor Trustee shall have all of the rights, title, powers and exemptions granted to the original Trustee.

E. No Trustee named herein shall be required to give bond or other security; or to file an inventory, accounting or appraisal in any court; or to render any report in court upon the final settlement of the trust estate or any share thereof. Notwithstanding the foregoing, the Trustee shall make out and keep an inventory and maintain records of all transactions relating thereto, and shall exhibit the same to any party in interest at any reasonable time.

F. If a successor Trustee is not appointed as provided hereinabove within ninety (90) days after receipt of notice of such resignation by the person entitled to make such appointment of a successor Trustee, then the Trustee wishing to resign may petition a

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court of competent jurisdiction for the appointment of a successor Trustee and the judicial settlement of such Trustee's account.

G. No successor Trustee shall be personally liable or responsible in any way for any act or failure to act of any predecessor Trustee, nor bear any loss or expense from or occasioned by anything done or omitted by the predecessor Trustee, but such successor Trustee shall be liable only for its own acts and omissions in respect to property actually received as such Trustee. With the approval of a majority of the adult beneficiaries hereunder, or the parent, conservator or guardian of any minor or adult beneficiary, any Trustee appointed hereunder may accept the account rendered and the assets and property delivered to it by the predecessor Trustee as a full and complete discharge of the predecessor Trustee, and shall incur no liability or responsibility to any beneficiary by reason of so doing, all without necessity of any court proceeding or judicial supervision or approval, regardless of any beneficial, vested or contingent interest of any minor, incompetent or unborn beneficiaries.

H. I direct that any Trustee serving hereunder shall be entitled to receive fair and reasonable compensation for services rendered in such capacity.

#### ITEM IX.

#### REDESIGNATION AND REMOVAL OF TRUSTEE

Notwithstanding anything herein to the contrary, my wife shall have the right to rearrange the order in which the successor Trustee named herein shall serve, and/or to substitute for any successor Trustee any bank or trust company authorized to accept and administer trusts, or any individual. If my wife should so redesignate any successor Trustee who has not at that time commenced serving as Trustee, then such redesignation shall be a writing signed by my wife, properly notarized, and filed in the Probate Court in which my Will was probated. A duplicate original copy shall be delivered to the Trustee then serving. If my wife should so redesignate any successor Trustee who is at that time serving as Trustee hereunder, then such redesignation shall be by a writing signed by my wife, properly notarized, addressed and delivered to the Trustee, advising the Trustee of such removal and naming therein the successor and confirming that the successor has accepted the trusteeship. A duplicate original copy shall be filed in the Probate Court in

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which my Will was probated. Ninety (90) days after receipt of such written notice as aforesaid, the Trustee shall thereupon be removed. Unless specified in writing, any successor Trustee shall be vested with all of the rights, powers, duties, and discretion herein vested in the original Trustee.

**ITEM X.**

**STATUS OF SUCCESSOR FIDUCIARY**

A. Any successor fiduciary shall be vested with all the duties, rights, titles, powers (whether discretionary or otherwise), and exemptions as if originally named as fiduciary.

B. Any successor fiduciary appointed hereunder may accept the account rendered and the assets and property delivered to it by the predecessor fiduciary as a full and complete discharge of the predecessor fiduciary, and shall incur no liability or responsibility to any beneficiary by reason of so doing, all without the necessity of any court proceedings or judicial supervision or approval, regardless of any beneficial vested or contingent interests of any minors, incompetent beneficiaries, or unborn beneficiaries. Any superseded fiduciary shall, at the cost and expense of the trust or estate, execute and deliver all conveyances and assignments, and do or cause to be done any and all acts and things as may be necessary to vest in the remaining fiduciary, if any, and the successor fiduciary all of the rights, titles and interests of the superseded fiduciary hereunder, and to confirm to such successor fiduciary the authority to act as such. Such action shall be taken by the superseded fiduciary within ninety (90) days after the receipt of the notice of such removal or the giving of notice of resignation.

**ITEM XI.**

**PAYMENT OF TAXES AND EXPENSES; PROBATE OF WILL**

A. All estate, inheritance, succession, transfer, legacy, and other taxes (together with any interest or penalty thereon) of the same nature which are payable with respect to the property comprising my estate for such tax purposes, excluding "adjusted taxable gifts" as the term is defined in Section 2001 of the Code, whether or not such property passes under this Will, shall be allocated as set forth hereinafter among the beneficiaries of my estate who have received or will receive property or any benefit under the terms of this Will,

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by operation of law, through life insurance policies or otherwise, either at my death or at any time during my life, and having a value for federal estate tax purposes of at least Ten Thousand and No/100 Dollars (\$10,000.00), but only to the extent that such property or benefit is included in my estate for federal estate tax purposes. Such allocation shall be made in the proportions that the value of the property, interest, or benefit of each such person bears to the total value of the property, interest, and benefits received by all such persons interested in the estate; provided, however, that such allocation shall be made only among those persons who are the beneficiaries of devises which do not qualify for the federal estate tax marital or charitable deductions.

B. So far as practicable the Personal Representative shall deduct the amount of such taxes allocable to each beneficiary from the amount distributable to such beneficiary, and shall recover from all other persons for the benefit of my estate their allocable parts of such taxes as permitted under Sections 2206, 2207, 2207A, 2207B of the Code, or otherwise. Where I have referred to the "value" of any property or benefit, I intend such reference to mean the value of such property as finally determined for federal estate tax purposes in my estate.

C. Generation-skipping transfer taxes (together with any interest or penalty thereon) which are payable with respect to the property comprising my gross estate for estate tax purposes, whether or not such property passes under this Will, shall be allocated as set forth under Section 2603 of the Code.

D. I direct the Personal Representative to pay all of my debts, my funeral expenses (including the cost of a suitable monument at my grave), any unpaid charitable pledges (whether the same are legally enforceable obligations of my estate or not), and the costs of administration of my estate, out of and charge such items to the residue of my estate. If there is any unsecured indebtedness owing by me which has not matured at the time of my death, I authorize the Personal Representative to pay such indebtedness either in full or according to the terms and tenor of any instrument evidencing such indebtedness, as the Personal Representative may deem most desirable under the then existing circumstances.

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E. If, at the time of my death, my county of residence is an Alabama county other than Jefferson County, I direct that the Personal Representative may probate this Will either in the county of my residence or in Jefferson County, Alabama.

**ITEM XII.**

**TRUST POWERS**

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

1. To collect the income therefrom.
2. To compromise, adjust and settle in the Trustee's discretion any claim in favor of or against the trust.
3. To hold and retain without liability for loss or depreciation any property or securities transferred to the Trustee or to which the Trustee becomes entitled, including any partnership interest (whether general, limited or special, shares of regulated investment companies or trusts (whether open-end or closed-end), interests as members in limited liability companies, stock or interest in any family corporation, partnership or enterprise, and property which is unproductive of income (such as art work and collections), without regard to any statutory or constitutional limitations applicable to the investment of funds and though the retention might violate principals of investment diversification, so long as the Trustee shall consider the retention for the best interests of the trust; provided, however, that if unproductive property is retained, then upon the sale, exchange or other disposition of such property, the Trustee shall make such reasonable apportionment of the proceeds between income and principal as will compensate for the loss of income during the period of retention of such unproductive property.
4. To sell, auction, convey, exchange, lease or rent for a period beyond the possible termination of the trust (or for a less period) for improvement or otherwise, or to grant options for or in connection with such purposes, or otherwise dispose of, all of any portion of the trust, in such manner and upon such terms and conditions as the Trustee may approve.
5. To invest and reinvest the trust and the proceeds of sale or disposal of any portion thereof, in such loans, bonds, stocks, mortgages, common trust funds, mutual funds, securities, partnerships (whether general, limited or special), interests as members in limited liability companies or other property, real or personal, or to purchase options for such purposes, or to exercise options, rights, or warrants, to purchase securities or other property, as to the Trustee may seem suitable and to make temporary investments in securities of the United States or any agency thereof, and to purchase and sell fractional shares and subscription rights to which the trust may become entitled.
6. To hold, retain or acquire property or securities which in the Trustee's opinion is in the best interest of the trust, without regard to any statutory or constitutional limitation applicable to the investment of trust funds.
7. To vote any corporate stock held hereunder in person, or by special, limited or general proxy, with or without power of substitution, or to refrain from voting.
8. To continue or dispose of any business enterprise without liability therefor, whether such enterprise be in the form of a sole proprietorship, partnership, corporation or otherwise, and to develop, add capital to, expand or alter the business of

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such enterprise, to liquidate, incorporate, reorganize, manage or consolidate the same, or change its charter or name, to appoint directors and employ officers, managers, employees or agents (including any trustee or directors, officers or employees thereof) and to compensate and offer stock options and other employee or fringe benefits to them, and in exercising Trustee's powers in relation to such business enterprise, to receive extra or extraordinary compensation therefor.

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

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

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

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

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

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

15. To appoint, employ, remove and compensate such attorneys, accountants, custodians, agents and representatives, individual or corporate, as the Trustee deems necessary or desirable for the administration of the trust, and to treat as an expense of the trust any compensation so paid; and to delegate all or any part of the investment powers contained herein to such investment counselors, consultants or managers as the Trustee deems appropriate.

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

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

18. To determine whether any money or property coming into the Trustee's hands shall be treated as a part of the principal of the trust or a part of the income therefrom, and to apportion between principal and income any loss or expenditure in connection with the trust, in each case in accordance with the provisions of the Alabama Principal and Income Act, if applicable, or if not applicable, as the Trustee may deem just and equitable; provided, however, that (i) in no event shall the Trustee exercise such power in any manner that would deprive my spouse of income of the trust named for my spouse to which my spouse is entitled under state law, and (ii) any proceeds received by the Trustee from any "retirement plan," meaning any qualified pension, profit sharing, stock bonus, Keogh or other qualified plan, trust, contract, account, annuity, or bond, or individual retirement account, as those terms are defined in the Code, or any non-qualified deferred compensation agreement, salary continuation agreement, or similar arrangement, shall be treated by the Trustee as principal, except that any income earned within the retirement plan from such proceeds as a result of an installment or similar election or any other deferral of payment of the retirement plan's proceeds to the Trustee shall be treated by the Trustee as income when received.

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

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

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

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

23. To deal with the fiduciary or fiduciaries of any other trust or estate, even though the Trustee is also the fiduciary or one of the fiduciaries of the other trust or estate.

24. To receive any property, real or personal, to be added to the trust, if the Trustee consents in writing, from any person, by lifetime or testamentary transfer or otherwise.

25. The Trustee shall not be personally liable to any beneficiary hereunder for any claim against the trust for the diminution in value of the trust property arising from the compliance by the Trustee with any federal, state or local law, rule or regulation including:

a. the reporting of or other response to the contamination of trust property by substances or materials prohibited or regulated by federal, state, or local law or that are known to pose a hazard to the environment or to human health;

b. the reporting of or other response to violations of any other federal, state or local law, rule or regulation involving materials or substances regulated by federal, state or local law or that are known to pose a hazard to the environment or human health; or

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c. other matters relating to environmental laws.

26. The Trustee may, in its discretion, periodically inspect, review and monitor, or require the inspection, review and monitoring of, any and all property held in this trust for the purpose of determining compliance with any law, rule or regulation affecting such property, with all expenses of such inspection, review and monitoring to be paid from the income or principal of the trust.

27. The Trustee shall have the power, in order to protect the assets held in any trust created hereunder, to take any and all action it shall reasonably deem necessary, in its sole discretion, to prevent, abate, "clean up", or otherwise respond to any violation of any federal, state or local law, rule, or ordinance affecting any property held in trust related to the generation, use, treatment, transportation, storage, disposal, release, discharge, or contamination by any materials or substances that are prohibited or regulated by federal, state, or local law or that are known to pose a hazard to the environment or human health. Such actions may be taken prior to the initiation of enforcement action by a federal, state or local agency. The Trustee shall obtain an estimate of the cost of such response to such violation or contamination and shall notify the beneficiaries, or the parent, guardian or conservator of any minor beneficiary, of the trust of the estimated cost of such response. Such beneficiaries shall have the right to pay for such response costs or to authorize payment of such costs by the fiduciary from trust assets. If the beneficiaries, or the parent, guardian or conservator of any minor beneficiary, of the trust for any reason fail to pay for or authorize payment of such costs from trust assets, the fiduciary shall be entitled nonetheless to use trust assets to pay such costs or, in its sole discretion, to resign in accordance with the provisions herein regarding the resignation of the fiduciary.

28. The Trustee shall have the power, in its sole discretion, to settle or compromise at any time any and all claims against the trust which may be asserted by any federal, state, or local agency or private party involving the alleged violation of any federal, state, or local law, rule or regulation affecting property held in trust.

29. The Trustee shall have the power to disclaim any power which, in the sole discretion of such fiduciary, will or may cause the Trustee to be considered an "owner" or "operator" of property held in this trust as those terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act, (CERCLA), as amended from time to time, or which shall otherwise cause the Trustee to incur liability under CERCLA or any other federal, state or local law, rule or regulation. The power to disclaim as contained in this section shall apply to any power, whether actually set forth in this Will, incorporated by reference herein, or granted or implied by any statute or rule of law.

30. The Trustee shall have the right to resign if at any time it believes there is or may be a conflict between it in its fiduciary capacity and in its individual capacity because of potential claims or liabilities which might be asserted against this trust created because of the type or condition of the assets held in this trust.

The powers granted in this Item shall be in addition to those granted by law and may be exercised after termination of all trusts or shares hereunder until the actual distribution of all trust principal, but not beyond the period permitted by any applicable rule of law relating to perpetuities. The Trustee's exercise or nonexercise of powers and discretions in good faith shall be conclusive on all persons. No person paying money or delivering property to any Trustee hereunder shall be required or privileged to see to its application.

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The certificate of the Trustee that the Trustee is acting in compliance with this instrument shall fully protect all persons dealing with the Trustee.

**ITEM XIII.**

**MISCELLANEOUS**

A. Any trust created under my Will, at the election of the Personal Representative, may be treated as operating from the date of my death, whether the trust property shall then be actually paid over to the Trustee and set aside or not, and I hereby authorize and empower the Personal Representative to make any payments which the Trustee herein shall be authorized to make after the actual establishment of the trust herein created.

B. Whenever the Trustee, in its sole and absolute discretion, shall determine that the size of any trust it holds does not warrant the cost of continuing the trust, the Trustee, without further responsibility, may terminate the trust and pay the principal balance remaining therein to the beneficiary or beneficiaries then entitled to the income from the trust. Under no circumstances shall any income beneficiary who is serving as Trustee hereunder make such decision with regard to any trust of which he or she is an income beneficiary.

C. Any person may at any time, and from time to time, add cash, securities or other property, whether real or personal, to the principal of any trust estate herein created, by deed, gift or will, in the sole and absolute discretion of the Trustee. Any addition to any trust estate herein created shall be held, administered and distributed as an integral part of the principal thereof in accordance with all of the terms and provisions of this Will applicable to the trust estate.

D. The Trustee, in its discretion, may merge and consolidate any trust created hereunder with any other trust, whether created by me or by some other person, if the terms of the trusts are substantially the same and the trustee(s) are the same; provided, however, that similar trusts shall be merged only with trusts which have the same "inclusion ratio" as defined by the Code.

E. It is my direction and intention that this Will be interpreted and administered by the Personal Representative and Trustee in accordance with the Code. The Personal

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Representative and Trustee shall not be liable to any beneficiary herein for any action taken or not taken, election made or not made, or resulting federal income tax consequences upon the apportionment or distribution in kind or otherwise of any asset of my estate, where the Personal Representative and Trustee exercised good faith and ordinary diligence in the performance of their duties.

F. As to the net income or principal which, by any of the provisions of this Will, may be payable to any of my lineal descendants, 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 to him or her by the Trustee. Nor shall such income, nor the principal of the 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 any such child or descendant, before or after my death.

G. Where I have directed that distributions be made to or for the benefit of any beneficiary under the age of twenty-one (21) years, or any beneficiary who may be under any legal disability, or any beneficiary who, in the sole discretion of the Personal Representative or Trustee, may be unable to apply the proceeds of his or her trust or share of my estate to his or her best interests and advantage, the Personal Representative or Trustee may, in the discretion of the Personal Representative or Trustee, pay over such sums in any one or more of the following ways:

1. directly to the beneficiary;
2. to the legal guardian, conservator, custodian of the beneficiary, or agent under a durable power of attorney for the use and benefit of the beneficiary;
3. to any custodial account heretofore established for the beneficiary, or if none exists, to a custodian designated by the Personal Representative or Trustee from those eligible to serve as such custodian, including the Personal Representative or Trustee, of the beneficiary under the Uniform Transfers (or Gifts) to Minors Act in effect in the state of the beneficiary's residence for the use and benefit of the beneficiary;
4. to a relative of the beneficiary upon the agreement of such relative to expend such income or principal solely for the benefit of the beneficiary; or

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5. by expending such income or principal directly for the benefit of the beneficiary to be used and applied for the purposes herein directed.

Upon making any payment or transfer hereunder, the Personal Representative or Trustee shall be discharged as to any sums so paid.

H. It is my desire to permit a settlement of my estate and any trust created herein by consent which shall be effective with respect to each beneficiary hereof (notwithstanding the Personal Representative and Trustee may be the same or that a beneficiary who is legally incompetent may be entitled to receive property hereunder), by taking advantage of the provisions allowing settlement by consent without notice pursuant to Section 43-2-506 of the Code of Alabama, as amended. Accordingly, I do hereby authorize the (i) parent, guardian, conservator or custodian of any unborn or legally incompetent beneficiary, (ii) Trustee of any trust created herein, or (iii) personal representative or beneficiaries/heirs of any deceased beneficiary, to act as a virtual representative for any beneficiary with full power to consent to or contest on behalf of such beneficiary any and all matters with respect to the administration and settlement of my estate and any trust herein created; and all actions taken by such virtual representative shall completely bind such beneficiary and his or her successors and assigns.

I. Throughout this Will, the masculine gender shall be deemed to include the feminine and the singular the plural, and vice-versa, whenever the context admits such construction.

J. All headings and captions contained in this Will have been included for convenience of reference only, shall not be construed as part of this Will and shall in no way be construed as defining, limiting or affecting the scope or intent of the provisions of this Will.

K. The provisions herein made for my spouse are in lieu of elective share, homestead allowance, exempt property, family allowance, and any and all other rights in my estate, statutory or otherwise. The provisions herein made for my child are in lieu of homestead allowance, exempt property, family allowance, and any and all other rights in my estate, statutory or otherwise.

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

M. If any devises in this Will are determined by the use of formulae, it is possible that no property may be disposed of by some one or more Items in my Will which purport to contain dispositions of my said property.

N. If any property or interest in property or life insurance passing under this Will, by operation of law or otherwise, by reason of my death shall be encumbered by mortgage or lien, or shall be pledged to secure any obligation (whether the property or interest in property so encumbered or pledged shall be owned by me jointly or individually), it is my intention that such indebtedness shall not be charged to or paid from my estate, but that the devisee, legatee, joint owner taking by survivorship, or beneficiary receiving such property or interest in property shall take it subject to all encumbrances existing at the time of my death.

O. I specifically authorize and empower the Personal Representative, regardless of whether or not it affects the interest of any beneficiary under this Will, or the amount of property passing to such beneficiary now or hereafter, to exercise any election granted by the Code in effect at the time of my death which permits the Personal Representative to take as deductions for federal income tax purposes any amounts which are also allowable for federal estate tax purposes, and the Personal Representative shall incur no liability whatsoever to any beneficiary under this Will as the result of any elections so made, and no adjustment between principal and income shall be required as a result of such election.

P. I specifically authorize and empower the Personal Representative to execute and file any income tax returns for the year in which my death occurs or for any years prior thereto. I also authorize and empower the Personal Representative to execute and file any

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gift tax returns if any gift tax returns are required for the year in which my death occurs or for any year prior thereto. I also specifically authorize and empower the Personal Representative to pay any portion or all of any resulting income taxes and gift taxes. I grant full discretion to the Personal Representative to acquiesce in, compromise, or litigate any demand made against my estate for federal or state income, gift, estate or inheritance taxes. The Personal Representative shall incur no personal liability for any action taken in good faith in accordance with either of the foregoing authorizations.

Q. I hereby empower the Personal Representative to allocate any portion of my exemption under Section 2631(a) of the Code to any property as to which I am the transferor for generation-skipping purposes, including property transferred by me during life to which I did not make an allocation before my death. In exercising this power, the Personal Representative shall not be required to treat different family branches in the same manner.

R. Any fiduciary appointed hereunder may do and have done with respect to each trust estate, all things which would preclude or minimize the imposition of the generation-skipping tax imposed by Chapter 13 of the Code, including, without limitation, the powers and authorizations contained in Sections 19-5-1 et. seq. of the Code of Alabama, as amended from time to time.

S. The Trustee may exercise all of the rights, powers, duties and discretion vested in the Trustee hereunder irrespective of any inherent conflict of interest that may exist if the Trustee is also a beneficiary of any trusts created hereunder. It is my intent by this paragraph that the terms of paragraph (a) of Section 19-3-324 of the Code of Alabama, as amended from time to time, shall not apply to any trusts created hereunder.

T. Any trusts created under this Will shall be construed and governed in all respects by the laws of the State of Alabama; however, the Trustee shall have the power to change the situs of any trust held hereunder by written instrument signed and acknowledged by the Trustee and filed for record in the Probate Court in which this Will is initially probated. In conjunction with any such change and without any need to obtain the approval of any court, the Trustee shall have the power to elect that such trust shall be subject to the jurisdiction of, and to move the assets of such trust to, the state of the new

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situs; and, if that election shall be made, such trust shall be administered and the validity and effect of the provisions of this Will applicable to such trust shall be determined in accordance with the laws of such jurisdiction.

U. Notwithstanding any other provision of this Will, if at my death I own stock of an S corporation (as defined in Section 1361(a) of the Code) and the Personal Representative determines in its sole discretion that the stock cannot practically be distributed or disposed of in accordance with this Will other than pursuant to this provision without causing the corporation to lose its status as an S corporation, then it is my intent that any trust estate created under this Will consisting of stock in a S corporation shall qualify as either a Qualified Subchapter S Trust within the meaning of Section 1361(d) of the Code or an Electing Small Business Trust within the meaning of Section 1361(e) of the Code; provided, however, that the Personal Representative shall not exercise this discretion in a manner which is inconsistent with my overall testamentary objectives. If the effect of any provision hereunder would prevent any trust estate from so qualifying, then I direct that such offending provision shall not apply, and that this Will shall read and take effect as if such offending provision did not exist. The Personal Representative may exercise or release this power within five (5) years after my death and shall not be required to exercise it and shall have no liability for releasing it or failing to exercise it.

#### ITEM XIV.

#### SURVIVORSHIP CONDITION

If my wife should die within thirty (30) days after my death, I direct that my wife shall be deemed to have predeceased me for the purposes of this Will, and I direct further that the provisions of this Will shall be construed upon that assumption, irrespective of any provisions of law establishing a contrary presumption or requiring survivorship for a fixed period as a condition of taking property by inheritance. If any beneficiary under this Will other than my wife shall not be living on the ninetieth (90th) day after the date of my death, I direct that such beneficiary shall be deemed to have predeceased me for the purposes of this Will, and I direct further that the provisions of this Will shall be construed upon that assumption.

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ITEM XV.

DEFINITIONS

A. The terms "issue", "descendants" and "lineal descendants" are intended to include any persons heretofore or hereafter born or adopted by any descendant of mine, and my child, but any person who is adopted on or after the age of twenty-one (21) years, and the descendants of such adopted person, are intended to be excluded from these terms.

B. The terms "Personal Representative" and "Trustee" and words of reference to the Personal Representative or the Trustee shall mean, collectively, any and all persons or entities serving in those capacities, without regard to gender or number.

C. The term "Code" shall mean the Internal Revenue Code of 1986, as from time to time amended.

IN WITNESS WHEREOF, I, JOHN E. SHEPHERD, the Testator, sign my name to this, my Last Will and Testament, on this 24<sup>th</sup> day of August, 1999, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my Last Will and Testament and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am nineteen (19) years of age or older, of sound mind, and under no constraint or undue influence.

  
JOHN E. SHEPHERD

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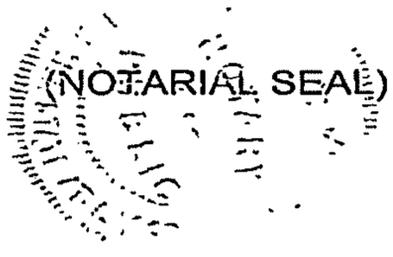
We, the undersigned witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the Testator signs and executes this instrument as his Last Will and Testament and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the Testator, hereby signs this Will as witness to the Testator's signing, and that to the best of our knowledge, the Testator is nineteen (19) years of age or older, of sound mind and under no constraint or undue influence.

Gregory D. Hyde  
Address: 2000 South Bridge Pkwy.  
Birmingham, AL 35209

Rheba Myers  
Address: 2000 South Bridge Pkwy.  
Birmingham, AL 35209

**SUBSCRIBED, SWORN TO AND ACKNOWLEDGED** before me, a Notary Public in and for the State of Alabama at Large, by JOHN E. SHEPHERD, the Testator, and subscribed and sworn to before me by Gregory D. Hyde and Rheba Myers, witnesses, this the 24<sup>th</sup> day of August, 1999.

Janet C. Miller  
Notary Public  
My Commission Expires: AUGUST 28, 2001



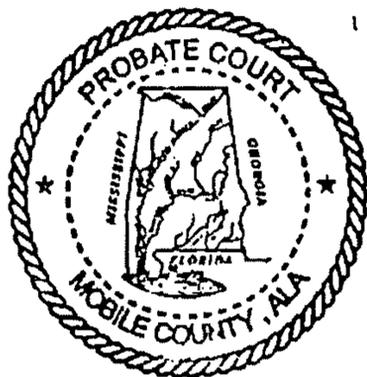
STATE OF ALABAMA ) PROBATE COURT OF SAID COUNTY  
 ) CASE NO. 2021-0963  
 MOBILE COUNTY ) CERTIFICATE

I, **DON DAVIS**, Judge of the Probate Court in and for said County and State do hereby certify that the within instrument of writing, has this day in said Court, and before me as the Judge thereof, been duly proved, pursuant to §43-3-132, *Code of Alabama 1975*, as amended, which Section provides for self-proving wills, to be the genuine last will and testament of JOHN E SHEPHERD, deceased, and that said will, together with the acknowledgment of the Testator and affidavit of the witnesses thereof, have been recorded in my office in Book of Wills No 286 and on page 388 et seq

IN WITNESS of all which I have hereunto set my hand and the Seal of the said Court, this 3rd day of June, 2021.



\_\_\_\_\_  
**DON DAVIS, Judge of Probate**



Filed and Recorded  
 Official Public Records  
 Judge of Probate, Shelby County Alabama, County  
 Clerk  
 Shelby County, AL  
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*Allen S. Bayl*

The foregoing is a  
**CERTIFIED TRUE COPY**  
 Probate Court of Mobile Co., AL  
 Don Davis, Judge

Signature *C. Mark Erwin*  
 C. Mark Erwin, Chief Clerk  
 Date 30 June 2021