COPY

(1) $ 63.00

LAST WILL AND TESTAMENT

OF

JANE B. RUSH a/k/a HENRIETTA JANE RUSH

Davidson County WILL
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I, JANE B. RUSH, domiciled in and a resident of Davidson County, Tennessee, make, publish and declare this to be my Last Will and Testament. I hereby revoke all wills and codicils heretofore made by me.

ITEM I: **Payment of Debts and Expenses of Administration**. I direct that all my legally enforceable debts, any unpaid charitable pledges, my funeral expenses, and the costs of administration of my estate be paid as soon as practicable after my death; provided, however, that my Executors shall not be required to pay any obligation in advance of its maturity. My Executors, in their sole discretion, may pay from my domiciliary estate all or any portion of the costs of ancillary administration and similar proceedings in other jurisdiction.

ITEM II: **Payment of Taxes**.

A. I direct that there shall be paid out of my Residuary Estate, without apportionment, all estate, inheritance, succession and other taxes, (together with any interest or penalty thereon) assessed by reason of my death, but excluding any additional tax imposed under Section 2032A of the Code, (relating to farm and business property) or under successor provisions, or under corresponding provision of state law, assessed by reason of my death, imposed by the government of the United States, or any state or territory thereof, or by any foreign government or political subdivision thereof, in respect of all property required to be included in my gross estate for estate or like tax purposes by any of such governments, whether the property passes under this Will or otherwise, without contribution by any recipient of any such property.

B. I direct that any generation-skipping transfer tax (including any interest and penalties thereon) imposed by reason of Chapter 13 of the Code or corresponding provisions of state law, with respect to property passing under

this will or otherwise, shall be paid as provided in Section 2603 of the Code.

C. Notwithstanding the foregoing, if any such death tax (including any interest and penalties thereon) is imposed on property included in my gross estate by reason of Section 2044 (relating to marital deduction property) of the Code or under corresponding provisions of state law, I direct that my Executors recover such tax as provided in Section 2207A of the Code or under corresponding provisions of state law.

ITEM III: **Specific Bequests.**

A. I bequeath to CLARA C. RATHER, if she is employed by me at the time of my death, the sum of Seven Thousand Five Hundred ($7,500). If she is not in my employ, this bequest is void.

B. I bequeath the sum of Ten Thousand Dollars ($10,000) to ST. GEORGE'S EPISCOPAL CHURCH in Nashville, Tennessee, to be used for the upkeep of the stained-glass window donated by me in memory of my husband, Kenneth E. Rush.

C. I bequeath any automobile which I may own at the time of my death to my son STEPHEN K. RUSH, if he survives me.

D. I give, devise and bequeath the real property which I own located at 3716 West End Avenue, Nashville, TN. to my son PHILLIP V. RUSH, if he survives me.

E. I bequeath the following items of jewelry:

(1) To my son, STEPHEN K. RUSH, if he survives me, the diamond that my husband, KENNETH E. RUSH, gave to me on the occasion of our 40th wedding anniversary;

(2) To my son, PHILLIP V. RUSH, if he survives me, my gold necklace with the 5 carat diamond;

(3) to my daughter-in-law, NANCY RUSH, if she survives me, my diamond watch;

(4) To my granddaughter, STEPHANIE RUSH, if she survives

me, one earring of my set of blue diamond earrings of 3 and 1/2 carats each and the two horses from Vienna;

(5) To my grandson, JEFFREY RUSH, if he survives me, one earring of my set of blue diamond earrings of 3 and 1/2 carats each;

(6) The remainder of my jewelry shall be distributed in accordance with the provisions of a certain memorandum written entirely in my handwriting, signed by me, and placed with my Will. If for any reason this memorandum is not found and properly identified as such by my Executors within thirty (30) days after the probate of my Will, then all of the aforesaid property shall pass in accordance with the provisions of Item III F below.

F. All the rest of my clothing, jewelry, personal effects, automobiles, and all other tangible personal property (except cash on hand or on deposit) owned by me at the time of my death, I bequeath to my children living at the time of my death in equal shares, to be divided between them in such manner as they shall agree. Any property not so distributed shall be sold and the proceeds added to my Residuary Estate.

It is my strong desire that my sons will toss a coin to determine which of them has first choice of my personal property. The son winning the toss will chose one item, my other son will then chose one item, and they will alternate until all personal property has been divided.

G. I direct my Executors to defer or postpone payments due under the Deed of Trust and Promissory Note dated November 23, 1987 from Robert Clayton Boyle and Marcella Louise Boyle as Trustors and Borrowers and Jane B. Rush as Beneficiary and Lender for the property Unit 212, Gunsite Arizona Street, Fountain Hills, Arizona, for so long as Marcella Louise Boyle shall

maintain her legal residence at such property. It is my intention that she shall be able to reside at the property without worry that the aforementioned note will be called due. In the event the property is sold, transferred, mortgaged or otherwise disposed of or encumbered or when Marcella Louise Boyle is deceased, whichever occurs first, then my Executors are authorized to collect the full amount of the principal and interest due on said note. In the even my Executors decide, in their sole discretion, that further documents must be executed by Marcella Louise Boyle in order to protect the interests of my estate or to effectuate my intention in this Paragraph G, then I specifically make the bequest herein conditional upon the execution of said documents by Marcella Louise Boyle.

ITEM IV: **Disposition of Residuary Estate.**

A. All the rest and residue of the property owned by me at the time of my death, of whatever kind and wherever situated (my Residuary Estate) shall be divided into two equal shares. One such share shall be distributed to my son, STEPHEN K. RUSH, in fee, if he is then living and one such share shall be distributed to my son, PHILLIP V. RUSH, in fee, if he is then living. If either of my sons is not living, then this share shall pass to the Trustee named later in this Will, in trust, to be held, managed and distributed as follows.

B. The Trustee shall hold that deceased child's share of my estate for the benefit of any then-surviving children of my deceased son, upon the following terms and conditions: That son's trust estate shall be divided into as many equal shares as there are then-living children of that deceased son (my grandchildren), and one such share shall remain in trust for the benefit and use of each such grandchild. For each such trust share the Trustee is hereby authorized to accumulate the net income (and to incorporate any such income into principal annually) or to pay or apply so much of the net income of each such trust in quarterly installments, to the use and benefit of each such grandchild in such amounts and proportions as the Trustee shall deem advisable

in its sole discretion. My Trustee is further authorized to encroach upon the principal of each such trust for the benefit of such grandchild in order to provide for his or her necessary health, maintenance, support and educational requirements. My Trustee is further authorized to pay to the widow, if any, of my deceased son, so much of the net income and principal as is necessary to provide for her health, maintenance, support and education in the manner to which she was accustomed prior to the death of my said son, taking into consideration all other sources of income available to her. This power shall terminate on the earlier of such daughter-in-law's remarriage or the termination of the trusts created in this paragraph. Subject to the provisions of Item VII A below, each such share shall terminate upon the earlier of such grandchild's death or such grandchild's attaining forth (40) years of age. At the time of termination, such share, including principal and any accumulated income, shall be distributed to such grandchild, in fee, if he or she is then living, or to his or her estate, if he or she is not then living.

C. If either of my sons shall die before receiving his share of my estate and shall leave no children surviving, then the share of such deceased son shall be held for the benefit of my other son who does survive, per stirpes, and such share shall be distributed to or for the benefit of my surviving son (or his issue) at the time and in the manner provided for such son (or his issue) to receive his own share.

ITEM V: **Power of Appointment**. Under the terms of Item IV of the Last Will and Testament of my husband, KENNETH E. RUSH, who died on March 20, 1984 (which Will is duly recorded in the office of the Davidson County Probate Court Clerk), a testamentary trust was created, and I was given a general power of appointment over the property in that trust. I specifically decline to exercise the aforementioned power of appointment, except that I direct the Trustee of such trust to distribute outright to my Estate the amount of tax, if any, attributable to the inclusion of said property in my Estate for federal estate tax purposes. For this limited purpose, I do

hereby exercise the aforementioned power of appointment.

ITEM VI: **Statutory Powers Granted to Fiduciaries**. I authorize my Executors and my Trustee (including any substitute or successor personal representative or Trustee) in the exercise of a reasonable discretion with respect to all property, real and personal, at any time forming part of my estate or any trust, to exercise any or all the powers set forth in Section 35-50-110, Tennessee Code Annotated, to the extent applicable, all of which provisions and powers are incorporated herein by reference as fully as if copied herein verbatim. These powers (as set out in said statute on the date of the execution of this Will) are granted, notwithstanding that said statute may be amended hereafter or repealed at the time of my death.

ITEM VII: **Additional Fiduciary Powers and Limitations on Trust**.

A. Anything in this Will to the contrary notwithstanding, no trust created hereunder shall continue beyond twenty-one (21) years after the death of the last to die of those beneficiaries who are living at the time of my death; and upon the expiration of such period, all such trusts shall terminate and the principal thereof shall be distributed outright to the beneficiaries of the trust with each beneficiary receiving the share of the trust held for his or her benefit which is proportionate to the income which that beneficiary is entitled to receive. If more than one person is then an income beneficiary of a trust or trust share with discretionary distribution powers, then, at such termination, such trust or trust share shall be divided equally among the beneficiaries then entitled to receive trust income.

B. No part of any trust herein created, nor the income therefrom, is to be subject to execution or other legal process for any obligation of a beneficiary or subject to the claims of reciters of a beneficiary in any manner, nor shall a beneficiary have the power to sell or mortgage or encumber the same, or any part thereof, nor anticipate the same, or any part thereof, by assignment or otherwise.

C. It is my intention that any trust created by this Will is to be administered under the laws of the State of Tennessee.

D. The Trustee shall not be required to obtain authority or approval of any court in the exercise of any power permitted under this instrument. The Trustee shall not be required to file any accountings with any court but shall account to each beneficiary at least annually.

E. No person dealing with the Trustee shall be obligated to inquire as to the Trustee's power or authority or into the validity of any act of the Trustee, or be liable for the application of any money paid to the Trustee in the management of the trust funds.

F. Whenever income may be paid to a beneficiary or whenever the Trustee is entitled to encroach upon the principal of the trust for the benefit of a beneficiary, such income or principal may be paid to such beneficiary directly or to anyone else for the use or benefit of such beneficiary, as said Trustee deems proper, and the receipt of the person to whom paid shall be a sufficient acquittance for such Trustee, and such payments may be made without the intervention of any guardian or the approval of any court.

G. The Trustee may set up a reasonable reserve for the repair, maintenance or improvement of any real estate which it holds in trust. The reserve may be funded from trust income, and any reference to net income in this instrument shall mean gross income less expenses charged to income and less the amounts set aside under this paragraph.

H. The Trustee is authorized to commingle any and all trusts or shares herein with any other trusts for the purposes of investment and administration, provided that the Trustee shall maintain adequate records of each beneficiary's interest.

I. In the event that a corporate Trustee shall hereafter merge or consolidate, then the corporation created by such merger or

consolidation shall act as the Trustee hereunder and in such capacity shall possess and exercise all powers and authority contained under this Will to the Trustee named herein.

J. The Trustee shall be responsible only for due diligence in the administration and disbursement of any trust created hereunder and shall not be responsible for any loss or subject to any liability except by reason of its own negligence or willful default proved by affirmative evidence, and every election, determination or other exercise by the Trustee of any discretion granted to it, expressly or by implication under this Will or by law made in good faith, shall fully protect it.

K. My Trustee may terminate any trust under this Will, at any time, in its sole discretion, if the value of the principal at any time is less than $50,000, or if the administration of the trust has become illegal or impracticable for any reason and the trust assets shall be distributed to the then income beneficiaries, pro rata.

L. No Trustee hereunder shall make any distribution from any trust crated in this Will which would have the effect of discharging any person's legal obligation to support any beneficiary.

ITEM VIII: <u>Definitions and Miscellaneous Provisions</u>.

A. For purposes of this Will, the terms "child," "son" and "children" shall refer to my sons now living STEPHEN K. RUSH AND PHILLIP V. RUSH.

B. In this Will, references in the singular shall include the plural and vice versa; all personal pronouns, whether masculine, feminine or neuter, shall include all other genders.

C. Any references to Executors or Trustee shall include not only those fiduciaries originally appointed under this Will, but also their successors or substitutes as well.

D. For purposes of this Will, "education" shall include, but shall

not be limited to, college education, graduate education, and/or professional or vocational training in an accredited institution. Education shall also include training in institutions for children or adults subject to learning disabilities. Expenses incurred in education shall be deemed to include all costs incident to obtaining such education as well as transportation expenses for a reasonable number of trips between home and then educational institution.

E. I authorize (but do not direct) my Executors or Trustee, as the case may be, in the exercise of absolute discretion, to divide any trust hereunder at any time into two separate trusts with the same provisions, and in making such division, to establish the generation-skipping transfer tax inclusion ratio for each such trust as my fiduciaries shall determine.

F. Any reference herein to the Code shall mean the Internal Revenue Code of 1986, as amended from time to time until my death.

G. As used throughout this Will, the term "guardian" shall mean successively in the order named (i) the court-appointed guardian of the estate, (ii) either parent, or (iii) the individual having personal custody (whether or not a court-appointed guardian) where no guardian of the estate has been appointed.

H. No fiduciary (including any originally appointed or successor executor, trustee or guardian) appointed hereunder shall be required to file an accounting or inventory with any court, nor shall any fiduciary be required to post bond.

ITEM IX: <u>Appointment of Co-Executors</u>. I appoint my sons, STEPHEN K. RUSH and PHILLIP V. RUSH, as Co-Executors of this my Last Will and Testament, to serve without bond. If either of them should not survive me, or be of any reason unable or unwilling to qualify as Executor, or, having so qualified, should become incapacitated,

die or resign, then SUNTRUST BANK IN NASHVILLE shall serve as successor Co-Executor, also without bond.

I authorize my Executors to sell, transfer and convey any property, real or personal, that I may own at the time of my death at such time and price and upon such terms and conditions (including credit) as my Executors may determine.

I further authorize my Executors to employ and compensate such appraisers deemed by my Executors to be needed for the proper appraisal of the assets of my estate and to do so without liability for any neglect, omission, misconduct or default of any such appraiser, provided such appraiser was selected and retained with reasonable care. Any penalty assessed which relates to the valuation of any asset shall be paid from my estate so long as my Executors selected such appraiser with reasonable care.

I give my Executors the power, exercisable without court approval, to allocate any exemption from the generation-skipping transfer tax to any property with respect to which I am the transferor for purposes of the said tax (whether or not such property is included in my probate estate) and to exclude any such property from such allocation, including any property transferred by me during life as to which I did not make an allocation prior to my death. The decision of my Executors in allocation such exemption shall be binding and conclusive upon all persons having an interest in my estate, and no adjustment among beneficiaries shall be made by reason of any such allocation. I specifically exonerate my Executors from all liability or accountability to any beneficiary with respect to the exercise in whole or in part or the non-exercise of the foregoing discretion.

ITEM X: **Appointment of Trustee**. I appoint SUNTRUST BANK IN NASHVILLE as Trustee of any trusts created under this my Last Will and Testament, to serve without bond.

ITEM XI: **Resignation of Trustee**. Each Trustee hereunder (whether originally designated herein or appointed as Successor) shall have the right to resign at any time by giving thirty (30) days' written notice to that effect to the current beneficiary.

Within thirty (30) days of such notification, the Trustee so resigning shall institute proceedings for the settlement of its account and deliver all assets then held to its successor, whereupon it shall have full acquittance for all assets so delivered (subject to judicial settlement of its account) and shall have no further duties hereunder. If any corporate Trustee resigns, then the current income beneficiaries or their guardians, by majority vote, shall have the right and duty within such thirty (30) day period to appoint a Successor Trustee and shall notify the Trustee of such appointment. Such Successor Trustee shall be only a bank or trust company possessing trust powers and having a combined capital and surplus of not less than Fifty Million ($50,000,000) Dollars and trust funds under management of not less than Five Hundred Million ($500,000,000) Dollars. In the event the current beneficiaries shall fail to designate a Successor Trustee within the time specified, the then acting Trustee shall petition a court of competent jurisdiction for the appointment of a successor and the judicial settlement of its account so that at all times there is an acting trustee under this Will.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name to this my Last Will and Testament, consisting of this and twelve preceding type written pages, and for the purpose of identification I have signed each such page, all in the presence of the persons witnessing it at my request on this the 2nd day of April, 1998, at Nashville, Tennessee.

Jane B. Rush
JANE B. RUSH

The foregoing instrument was signed, published and declared by the said JANE B. RUSH, as and for her Last Will and Testament on the day and year written above, in our presence and in the presence of each of us who, at her request, in her presence and in the presence of each other, have subscribed our names as witnesses this 2nd day of April, 1998, at Nashville, Tennessee.

Susan Burger residing at Nashville, Tennessee

Valarie Finimore residing at Nashville, Tennessee

STATE OF TENNESSEE)
)
COUNT OF DAVIDSON)

AFFIDAVIT OF WITNESSES TO WILL

Each of the aforesaid witnesses, being Susan Burger and Valorie Fenimore deposes and says that said witnesses subscribed to the foregoing Will of JANE B. RUSH, executed on the _____ day of _____, 1998, having been requested by the Testatrix to make and sign this Affidavit, and having first been duly sworn before the Notary Public whose name appears below, hereby states that the said JANE B. RUSH was over eighteen (18) years of age, was of sound mind, declared the foregoing instrument to be her Last Will and Testament, published and executed it freely, without undue influence or coercion, by signing each page in the presence of all of the witnesses who were all present at the same time, and that said witnesses, in her presence, at her request, and in the presence of each other, subscribed their names as witnesses on the 2 day of April, 1998.

Susan Burger

Valorie Fenimore

Sworn to and subscribed before me, this
the 2 day of April, 1998.

Melissa A. Bailey
Notary Public

My Commission Expires: MAY 27 2001

COPY

FIRST CODICIL TO THE LAST WILL AND TESTAMENT OF JANE B. RUSH a/k/a HENRIETTA JANE RUSH

I, JANE B. RUSH, domiciled in and a resident of Davidson County, Tennessee, make, publish and declare this document to be the Codicil to my Last Will and Testament executed by me on ~~April 2, 1998~~ May 4, 2000 in the presence of SUSAN BURGER and VALERIE FENIMORE.

√ JBR srb VCF

Item I: I hereby amplify the provisions of Item III by inserting the following new paragraphs at the end thereof:

H. I bequeath the sum of One Hundred Thousand Dollars ($100,000) to my daughter-in-law, NANCY RUSH, if she survives me.

I. I direct my Executors to pay the full amount of principal and interest due on the mortgage to the residence of my son, STEPHEN K. RUSH.

J. In addition to the items of jewelry bequeathed under Item III E, I bequeath my gold necklace and bracelet to my daughter-in-law, TONYA RUSH. Subparagraph (6) of that Item III E is to be implemented after giving effect to this provision.

Item II: I am amending the provisions of Item III D by adding the following provision at the end thereof:

If such real property has been sold, then I give, devise and bequeath an amount of money equal to the net proceeds of the sale of such property to my son PHILLIP V. RUSH.

Item III: In all other respects I ratify and confirm all of the provisions of my Last Will and Testament dated April 2, 1998.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name to this the Codicil to my Last Will and Testament, consisting of this page only, all in the presence of the persons witnessing it at my request on this 4th day of ~~January~~ May, 2000, at Nashville, Tennessee.

√ JBR srb VCF

Jane B. Rush
JANE B. RUSH

The foregoing instrument was signed, published and declared by the said JANE B. RUSH to be the First Codicil to her Last Will and Testament on the day and year written above, in our presence and in the presence of each of us who, at her request, in her presence and in the presence of each other, have subscribed our names as witnesses this 4th day of May, 2000, at Nashville, Tennessee.

Susan Burger residing at Nashville, Tennessee

Valerie Fenimore residing at Nashville, Tennessee

STATE OF TENNESSEE)
COUNTY OF DAVIDSON)

AFFIDAVIT BY WITNESSES TO CODICIL TO WILL

Each of the aforesaid witnesses, being Susan Burger and Val Fenimore, deposes and says that said witnesses subscribed to the foregoing Codicil of JANE B. RUSH executed on the 4th day of ~~January~~ May, 2000, having been requested by the Testator to make and sign this affidavit, and having first been duly sworn before the Notary Public whose name appears below, hereby states that the said JANE B. RUSH was over eighteen (18) years of age, was of sound mind, declared the foregoing instrument to be her Codicil to his Last Will and Testament, published and executed it freely, without undue influence or coercion, by initialing each page and signing the final page in the presence of all of the witnesses who were all present at the same time, and that said witnesses, in her presence, at her request, and in the presence of each other, subscribed their names as witnesses on the 4th day of ~~January,~~ May 2000.

Susan Burger residing at Nashville, Tennessee

Valorie Fenimore residing at Nashville, Tennessee

Subscribed and sworn to before me, a Notary Public of the above County and State, this the 4th day of ~~January,~~ May, 2000.

J K Rush
Notary Public

My Commission Expires:
My Commission Expires JULY 27, 2002

STATE OF TENNESSEE, DAVIDSON COUNTY

I, Richard R. Rooker, Clerk of the Probate Court of the aforesaid County, State aforesaid, do certify that the foregoing is a full, true and complete copy, of the original as the same appears of record in my office. Will Book 238 Page 734

Given under my hand and official seal, at office in Nashville, this 13 of March 2001

RICHARD R. ROOKER, CLERK

By Lynn Randall
Deputy Clerk

RICHARD R. ROOKER CLERK DAVIDSON COUNTY TENNESSEE

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