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**NORTH CAROLINA**  
**WAKE COUNTY**

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**SEPARATION AGREEMENT  
and  
PROPERTY SETTLEMENT**

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**THIS SEPARATION AGREEMENT AND PROPERTY SETTLEMENT**, made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_, by and between \_\_\_\_\_ of Wake County, North Carolina (hereinafter referred to as "Husband") and \_\_\_\_\_ of Wake County, North Carolina (hereinafter referred to as "Wife");

**WITNESSETH:**

**THAT WHEREAS**, Husband and Wife were lawfully married on \_\_\_\_\_, \_\_\_\_\_, and lived together as Husband and Wife until on or about \_\_\_\_\_, at which time they separated one from the other, and intend to continuously live separate and apart; and

**WHEREAS**, because of unfortunate differences and incompatibilities which now exist between them, they are no longer able to live together in peace and harmony as man and wife; and

**WHEREAS**, Husband and Wife have independently conferred concerning this Separation Agreement and Property Settlement (hereinafter referred to as "Agreement"), and both parties agree that it is entered into mutually of their own free will and with full knowledge that either party may apply to the Court for an absolute divorce at such time as they have been continuously separated for one year or more; and

**WHEREAS**, both parties stipulate and agree that they have carefully read and understand the terms and conditions of this Agreement, and deem them to be fair, just and equitable and in full and complete satisfaction of all claims, present or future, arising out of or in any manner related to their marriage.

**NOW THEREFORE**, to that end, and for and in consideration of these premises and the mutual covenants, promises and agreements hereinafter set forth and other good and valuable consideration, Husband and Wife mutually stipulate, covenant and agree as follows:

**PROVISIONS FOR SEPARATION**

1. **Separate Maintenance.** It shall be lawful for, and the parties may at all times hereafter, live separate and apart from each other, free from each other's marital control and authority as if each were single and unmarried; to reside at such place or places and with such person or persons as each may desire; to conduct, carry on and engage in any employment, business, trade or profession as each may desire, choose or deem fit; and that all income and profits realized by either party shall be for his or her sole and separate use and benefit, free from any and all control, restraint or interference, direct or indirect, of the other party.

2. **Covenant of Non-Interference.** Husband and Wife hereby agree that, henceforth, neither of them will, in any manner, molest or interfere with the personal rights, liberties, privileges or affairs of the other, and each shall, henceforth, live his or her own personal life as he or she may see fit, unrestricted in any manner by the marriage and relationship previously existing between them.

3. **Mutual Release, Renunciation of Rights and Free Trader Provision.** Except as otherwise provided herein, either party may at any time hereafter acquire, possess, encumber, transfer, convey or otherwise deal with any and all classes of property, real or personal, tangible or intangible, or mixed, whether now owned or possessed or hereafter acquired by either of them, without the joinder of the other party and with the same force and effect as if they were unmarried.

Except as expressly set forth herein, each party does hereby waive any and all rights -- past, present and future -- which either party may have against the other for support, alimony, alimony *pendente lite*, and claims under the Equitable Distribution Act, and all other claims which the parties may have by reason of the marriage; and, except as herein provided, each party may dispose of his or her property in any way; and each party does hereby release and forever

discharge the other, his or her heirs, executors, administrators, assigns, property and estate, from any and all rights, claims, demands and obligations of every kind and character for past and future support and maintenance, homestead rights, widow's year's allowance, rights of inheritance, dissent and distribution and specifically relinquishes the right to act as executor or administrator of the estate of the other, rights of election against the Will of the other, and from all other rights, claims, demands and obligations of every kind and character arising out of or by virtue of the marital relationship of the parties, except as in this Agreement may be otherwise expressly provided, and each is forever barred from having or asserting any right, claim, demand or obligation at any time hereinafter for any purpose, except only things which may arise under this Agreement.

Nothing herein shall be construed as waiving the Husband's or Wife's right to take whatever real property the parties own as tenants by the entirety by right of survivorship prior to obtaining an absolute divorce.

The parties acknowledge and ratify that this Agreement, through the operation of the laws of the State of North Carolina, shall become null and void as to those executory provisions as herein contained, should the parties, at any time, resume marital relations pursuant to the provisions of North Carolina General Statutes § 52-10.2. The parties realize and recognize that, under the laws of the State of North Carolina, any resumption of marital relations pursuant to the provisions of North Carolina General Statutes § 52-10.2 shall negate and terminate this Agreement as to those provisions which are of executory nature. Upon a resumption of marital relations, pursuant to North Carolina General Statutes § 52-10.2, however, the provisions executed shall continue in full force and effect unless and until they are canceled or rescinded or modified in a written agreement duly executed by both the Husband and the Wife.

4. **Act for Equitable Distribution of Marital Property.** Husband and Wife are fully aware of the nature and extent of the assets titled to each other and to the parties jointly. The parties acknowledge that each has made a full and fair disclosure of all property and interests in property owned by them. Each party does hereby release, relinquish and quitclaim unto each other any other properties now held by the parties in their own individual names and all rights they may have which may arise out of the enactment of North Carolina General Statutes §50-20, *et seq.*,

more commonly known as the "Act for Equitable Distribution of Marital Property," except as herein set out.

### **PROVISIONS FOR PROPERTY SETTLEMENT**

It is the purpose of this Article to make arrangements to divide the assets and debts owned by the Husband and Wife.

5. **Division of Household Goods.** The parties have divided all household goods in an equitable and satisfactory manner prior to the execution of this agreement. Each party shall keep all household goods currently in their own possession. The Parties agree to and do by these presents, bargain, sell, grant, convey, quitclaim and relinquish to the other all right, title and interest in the items of tangible household goods not in their own possession on the date of execution of this agreement.

6. **Division of Personal Property.** The parties have agreed to division of personal property of the marriage. The Wife shall have the personal property specified in Exhibit A, which is attached and hereby incorporated by reference. Husband shall have the personal property specified in Exhibit B, which is attached and hereby incorporated by reference. Husband shall have thirty days from the date of this Agreement to remove the personal property set forth in exhibit B from the marital residence. Wife shall cooperate in good faith with Husband in scheduling a time and providing access for Husband to the marital home to remove the property. All property designated for Wife in exhibit A is currently in Wife's possession.

The Parties agree to and do by these presents, bargain, sell, grant, convey, quitclaim and relinquish to the other all right, title and interest in the items of tangible personal property as set forth herein.

7. **Automobiles**

- A. The Wife shall hereafter have the \_\_\_\_\_ currently in her possession. Husband hereby agrees that he will take all necessary steps to insure Wife's sole

ownership of said vehicle including signing title over to Wife if necessary. There is no loan securing this vehicle.

- B. The Husband shall hereafter have all remaining vehicles owned by the parties including the \_\_\_\_\_. Wife hereby agrees that she will take all necessary steps to insure Husband's sole ownership of said vehicles including signing title over to Husband if necessary. There is a loan with \_\_\_\_\_ in the approximate amount of \_\_\_\_\_ secured by this vehicle. Husband agrees to refinance this loan (or pay off the loan) into his name alone within 90 days from the execution of this Agreement.
- C. Each party is responsible for all insurance, upkeep and taxes associated with their vehicles.
- D. Each party agrees that subsequent to the date of execution of this Agreement, each party shall be and remain separately and individually responsible and liable for any and all past, present or future motor vehicle loan payments on and pertaining to the separate motor vehicles of the parties. For so long as any vehicle obtained in the this agreement is secured by a loan in the name of the other party or both parties, all loan payments as referenced herein must be made in a timely manner on or before the due date, time being of the essence.
- E. In the event any vehicle acquired as separate property by either party pursuant to the terms of this agreement, is secured by a loan in the name of the other party (or both parties) the party taking possession of said vehicle shall refinance that vehicle into their separate name within 30 days of this agreement.

**8. Division of Banking Accounts and Other Funds and Interests.**

- (I). Husband and Wife have the following joint checking, money market and savings accounts:
  - a. Checking account ending in \_\_\_\_\_ at \_\_\_\_\_ bank with an approximate date of separation balance of \_\_\_\_\_.
  - b. Savings account ending in \_\_\_\_\_ at \_\_\_\_\_ bank with an approximate date of separation balance of \_\_\_\_\_.

- c. Money market account ending in \_\_\_\_\_ at \_\_\_\_\_ bank with an approximate date of separation balance of \_\_\_\_\_.

The parties agree that the funds in these accounts shall be divided in the following manner:

\_\_\_\_\_ on or before \_\_\_\_\_.

(II) Wife has the following separate accounts:

- a. Checking account ending in \_\_\_\_\_ at \_\_\_\_\_ bank with an approximate date of separation balance of \_\_\_\_\_.
- b. Savings account ending in \_\_\_\_\_ at \_\_\_\_\_ bank with an approximate date of separation balance of \_\_\_\_\_.
- c. Money market account ending in \_\_\_\_\_ at \_\_\_\_\_ bank with an approximate date of separation balance of \_\_\_\_\_.

(III) Husband has the following separate accounts:

- a. Checking account ending in \_\_\_\_\_ at \_\_\_\_\_ bank with an approximate date of separation balance of \_\_\_\_\_.
- b. Savings account ending in \_\_\_\_\_ at \_\_\_\_\_ bank with an approximate date of separation balance of \_\_\_\_\_.
- c. Money market account ending in \_\_\_\_\_ at \_\_\_\_\_ bank with an approximate date of separation balance of \_\_\_\_\_.

These separate accounts and the proceeds therein shall be the sole property of the individual whose name they are in. Each party shall also keep possession and ownership of all separate financial accounts of any kind or description (unless otherwise set forth herein) in their own separate name. Each party does hereby quitclaim any interest they may have in the separate accounts of the other party.

Each party shall be responsible for any overdraft accounts, returned check fees, insufficient funds costs or any other fees associated with accounts in their own names or accounts acquired in this Agreement.

9. **Real Estate.** Husband and Wife purchased certain real property during the marriage consisting of the marital residence and lot otherwise known as \_\_\_\_\_. Wife currently resides at the former marital home located. The mortgage and all regular recurring expenses associated with this home are current as of the date of the execution of this Agreement. This property shall become the sole and exclusive property of \_\_\_\_\_, free and clear from any claim from \_\_\_\_\_. \_\_\_\_\_ shall not come about the property with the express consent of \_\_\_\_\_.

\_\_\_\_\_ shall be henceforth solely responsible for expenses related to the former marital residence including but not limited to utilities, mortgage, HOA, taxes, insurance, maintenance, repairs, and any all other expenses related to said property. \_\_\_\_\_ shall maintain the current homeowners insurance on the property and shall not change beneficiaries of the material policy term until such time that \_\_\_\_\_ has refinanced the property into their sole name.

The property is secured by a mortgage with \_\_\_\_\_ with an approximate date of separation balance of \_\_\_\_\_. This mortgage is in the name of both parties. There are no other loans, liens, mortgages, equity lines, or other encumbrances on the property.

\_\_\_\_\_ shall undertake to refinance the mortgage into his/her name alone immediately upon execution of this Agreement, and in any event shall refinance this mortgage into his/her name alone within 120 days from the execution of this Agreement. \_\_\_\_\_ shall cooperate with this refinance in good faith. Upon written notice of a loan commitment to refinance the property as set forth herein \_\_\_\_\_ shall sign a \_\_\_\_\_ deed transferring his/her interest to \_\_\_\_\_, and this deed shall be held in trust by the closing attorney, and recorded in the regular course of closing the refinance. All expenses of the refinance shall be paid by \_\_\_\_\_. \_\_\_\_\_ shall cooperate in good faith with the refinance by signing any all necessary documentation and attending closing if necessary. Neither party shall encumber the property in any fashion until the refinancing is complete.

Each party agrees to cooperate in good faith in any manner necessary to ensure the other parties sole ownership with good title of property acquired under this agreement, and any refinancing required herein, by signing deeds and other necessary documentation, attending closings, signing consents for payoffs and other information, and providing any other consent or

documentation necessary.

10. **Businesses, Stock, and Ownership Interests:** \_\_\_\_\_

11. **Insurance, Trusts.** Each party shall retain any and all insurance policies they own, and may direct the proceeds henceforth as they desire. Any trusts owned by or with benefets accruing to either party shall be sole and exclusive property of that owner and each party hereby waives any interest they may have asserted with regard to same.

12. **Pension and Retirement Accounts.** The parties acknowledge that each party has contributed to and now owns a retirement account. Husband has a 401(k) with \_\_\_\_\_ with an approximate date of separation value of \_\_\_\_\_. Wife has a 401(k) with \_\_\_\_\_ with an approximate date of separation balance of \_\_\_\_\_. Each party acknowledges that a portion of each account accrued prior to marriage, and a portion has accrued after the marriage of the parties. The parties own no other retirement, pension, deferred compensation, or any other retirement savings plan of any kind or description except as set forth herein. Each party has agreed as follows:

a. The Husband shall be entitled to sole and separate ownership of any and all pension, retirement and any other tax deferred accounts held in his individual name. The Wife hereby waives any and all interest which she has in the aforesaid pension, retirement, and tax deferred accounts of the Husband, and the same shall be the sole and separate property of the Husband.

b. The Wife shall be entitled to sole and separate ownership of all pension, retirement, and any other tax deferred accounts held in her individual name. The Husband hereby waives any and all interest which he has in the aforesaid pension., retirement, and tax deferred accounts of the Wife, and the same shall be the sole and separate property of the Wife.

13. **Unsecured Debts and Credit Cars:** The following are the unsecured marital debts



of the parties:

- A. \_\_\_\_\_ with an approximate date of separation balance of \$\_\_\_\_\_ in the names of both parties.
- B. \_\_\_\_\_ with an approximate date of separation balance of \_\_\_\_\_ in \_\_\_\_\_'s sole name.
- C. \_\_\_\_\_ with an approximate balance of \$\_\_\_\_\_ in \_\_\_\_\_'s sole name. .

Debt A shall be paid off by \_\_\_\_\_ within ten days from the date of this Agreement and each party shall notify the creditor that the account is to be closed. Neither party has or shall increase further encumber or add any further charges on this account. s A and B are in Wife's name and shall be the sole and exclusive responsibility of Wife.

Debts B and C shall become the sole and exclusive responsibility and property of the party in whose name the account is in. Each party warrants that there are no further credit accounts or unsecured debts of the parties which are not set forth herein.

It is mutually understood and agreed that the parties shall be liable and they hereby assume liability for the payment of any and all unpaid balances owing on all credit accounts held in their name alone, unless otherwise specified in this agreement.

Each party hereto agrees to save and hold harmless the other party to this Agreement from and against any and all liability in connection with any indebtedness assumed under the terms of this Agreement and does hereby agree to indemnify the other party against any and all harm, expense, loss or other damage in connection therewith, including all costs of litigation involved in connection therewith or enforcement of this provision.

14. **Indemnity for Debts.** Each party hereto agrees to save and hold harmless the other party to this Agreement from and against any and all liability in connection with any indebtedness assumed under the terms of this Agreement and does hereby agree to indemnify the other party against any and all harm, expense, loss or other damage in connection therewith, including all costs of litigation involved in connection therewith or enforcement of this provision.

15. **Future Debts and Obligations.** Each party does hereby covenant and agree that he or she will not at any time hereafter contract any debt, obligation, charge or liability whatsoever for which the other party or the property or estate of the other party may become personally and separately liable or answerable, except as herein otherwise provided.

It is hereby specifically understood and agreed, that with respect to all debts incurred by the parties hereto subsequent to the date of separation, each of the parties hereto shall be liable for his or her respective debts as created by each individually.

16. **Miscellaneous Provision: Debts:** In the event that either party shall be compelled to pay any bill or obligation of the other party which the said party is obligated to pay under the provisions of this section, then that amount shall be deducted from any money subsequently due to the other party under any provisions of this Agreement.

### **ALIMONY**

It is the purpose of this Article to make arrangements for alimony payments from the Husband to the Wife.

17. **Alimony paid by Husband to Wife.** The parties herein agree that \_\_\_\_\_ shall pay \_\_\_\_\_ Wife the sum of \_\_\_\_\_ per month as alimony for a period of \_\_\_\_\_ months (\_\_\_\_ years). These payments shall be due and payable on the first day of each month, beginning the first month following the execution of this agreement and continuing for a period of \_\_\_\_\_ consecutive months (\_\_\_\_ years). All payments must be made on or before the due date. Alimony payments shall begin on \_\_\_\_\_, 201\_ AND continue thereafter until paid. \_\_\_\_\_ accepts said payments as fulfillment of \_\_\_\_\_'s obligation with regards to alimony and post separation support and in consideration of these negotiated alimony payments, \_\_\_\_\_ waives his/her right to file an action seeking additional alimony or post separation support against \_\_\_\_\_. \_\_\_\_\_ specifically waives any claim for alimony or post separation support of any kind against \_\_\_\_\_.

18. **Termination of Alimony.** Alimony payments from \_\_\_\_\_ to \_\_\_\_\_ shall terminate upon the occurrence of any of the following:

- a. Death of either party;
- b. Wife's remarriage;
- c. Wife's cohabitation as the term "cohabitation" is defined by N.C.G.S. §50-16.9;
- d. After sixty (60) consecutive payments of \$1,600.00 from Husband to Wife.

### **PROVISIONS REGARDING THE NATURE AND EFFECT OF THE AGREEMENT**

19. **Modification and Waiver.** This Agreement can be altered and amended only by further formal written agreement duly executed by the parties. Any failure by either party to specifically perform or enforce performance exactly according to the letter of this Agreement shall not constitute an alteration of the same by way of enlargement, reduction, estoppel or otherwise, unless confirmed in writing by the parties and duly executed by both parties, except as may be otherwise provided above. It is understood that the parties may, by mutual agreement, make temporary modifications from time to time as conditions require, but this Agreement shall nonetheless be binding upon the parties as written, except in the event of a material breach. No custom or practice which may develop between the parties in the course of the performance of this Agreement shall be construed as a waiver of the right of either party to insist upon compliance with the provisions hereof by the other.

20. **Situs and Jurisdiction.** This Agreement shall be construed and governed in accordance with the laws of the State of North Carolina and each party agrees and does hereby consent and submit himself/herself to the jurisdiction of the General Court of Justice of the State of North Carolina for any suits or any other legal action based upon or arising out of or in connection with this Agreement.

21. **Partial Invalidity.** In the event that any clause or clauses herein shall be declared by the laws of this State or any other State that shall assume jurisdiction over the parties herein involved or by decision of any court in this or any other State or in the United States, illegal, void or inoperative, it is expressly agreed between the parties hereto that all other clauses or provisions herein shall be and remain in full force and effect.

22. **Cooperation and Additional Instruments.** It is agreed by each party that in the event of a sale, transfer or other conveyance of property, both real and personal, now owned or hereafter acquired by either party, if it should become incidental or necessary to guarantee or pass good title thereto, or that either party to this Agreement should be called upon by the other to execute any deed, conveyance, bill of sale, document of election or any other legal instrument or document concerning any property or otherwise affecting the terms of this Agreement, then in such event, the other party to this Agreement agrees to and will sign any instrument, document or conveyance which may be reasonably required or incident to giving effect to the provisions of this Agreement; it is further covenanted and agreed between the parties that each of them shall and will at any time or times hereafter, make, execute and deliver any and all such other and further assurances as either of said parties shall reasonably require for the purpose of giving full effect to the provisions of this Agreement and to this covenant.

23. **Effect of Reconciliation on Property Settlement.** In the event Husband and Wife end their separation and resume marital cohabitation, the executory provisions of this Agreement shall be rescinded and canceled, but all the provisions contained herein, which have been executed or partially executed at that time, shall continue in full force and effect, unless they are canceled or rescinded or modified in a written agreement duly executed by both Husband and Wife. All real and personal property transferred by and under the terms of this Agreement from one party to the other shall remain the sole and separate property of the party receiving the property, and shall not be considered marital property in the event of any reconciliation between the parties.

24. **Tax Matters.** Husband and Wife agree that for the year 20\_\_\_ they separate individual income tax returns for the Internal Revenue Service and the State of North Carolina. They shall file separate tax returns for all subsequent years thereafter.

Neither party shall do any act which will cause the other to suffer any liability for the tax liability of the other party. Each party shall be individually liable for any tax liability, including capital gains, realized on any property awarded to him/her under this Agreement. Each party agrees to indemnify and hold the other harmless for any and all amounts wrongly charged to the other and hereby covenant and agree that if any action, claim, or proceeding shall be brought seeking to hold the other liable, the other party shall defend against such claim, and hold the other harmless therefrom, together with attorney's fees and costs incurred in connection with any defense there against.

25. **Subsequent Divorce.** Nothing herein contained shall be deemed to prevent either party from maintaining a suit for absolute divorce against the other in any Court of competent jurisdiction.

26. **Breach or Default.** In the event that either party to this Agreement breaches any of his or her obligations under this Agreement, the aggrieved party shall have the right to sue for damages for such breach, to sue to rescind the Agreement and/or to maintain any action at law or in equity or seek any and all other remedies or relief as may be available to him or her.

It is understood and agreed by the parties hereto that every provision of this Agreement is a material one and any breach of one provision of this Agreement is a breach of the entire Agreement.

27. **Voluntary Execution and Acceptance.** The Husband and Wife acknowledge that they have entered into this Agreement of their own free will and volition and acknowledge that no undue influence, coercion, pressure or force has been used against them in the acceptance or execution of this Agreement, either by the other party or by any other person. The parties acknowledge that the provisions of this Agreement are fair, adequate and satisfactory to them.

28. **Representation of Parties and Attorney's Fees Pertaining to this Agreement.**

29. **Suit Costs.** In the event either party shall institute an action to enforce the provisions of this agreement, the party prevailing in said action shall be entitled to recover suit costs, including reasonable attorney's fees, from the other party. This obligation shall exist regardless of either parties ability to pay.

30. **Transfers Of Property Incident To Divorce.** The parties agree (i) that the transfer of property hereunder is related to the divorce; (ii) that the transfer of property hereunder is a transfer incident to divorce and is related to the cessation of the marriage; (iii) that the intent and purpose of this Agreement is for the transfer of property hereunder to be tax free pursuant to Section 1041 of the Internal Revenue Code and the applicable provisions of North Carolina law and for no gain or loss to be recognized by either party as a result of such transfer; and (iv) that they will file a formal election if necessary or otherwise take such actions as may be required by applicable provisions of the state or federal income tax law and regulations to give full force and effect to their aforesaid intent and purpose.

30. **Covenant of Full Disclosure.** Each party covenants with and represents to the other that a full and fair disclosure of all property owned or believed to be owned by the parties at the time of separation has been made to the other party prior to the execution of this Agreement. Except as specifically set forth herein, no further disclosure shall be requested or made following the date of the parties' separation.

31. **Release as to Third Parties.** Husband, by signing this Agreement, agrees that he waives and releases any claims he has or may have against any person or persons under the law of any state for alienation of affections, for criminal conversation, or any other type action allowed as a result of any relationship between Wife and any third person. Any third person against whom

an action is brought by Husband for criminal conversation, or alienation of affections, or for any other reason as a result of the relationship of Wife and that third party may plead this Agreement as a third party beneficiary as a plea in bar to any claim Husband has or thinks he has. It is acknowledged that part of the consideration of this Agreement is the release and waiver.

Wife, by signing this Agreement, agrees that she waives and releases any claims she has or may have against any person or persons under the law of any state for alienation of affections, for criminal conversation, or any other type action allowed as a result of any relationship between Husband any third person. Any third person against whom an action is brought by Wife for criminal conversation, or alienation of affections, or for any other reason as a result of the relationship of Husband and that third party may plead this Agreement as a third party beneficiary as a plea in bar to any claim Wife has or thinks she has. It is acknowledged that a part of the consideration of this Agreement is this release and waiver.

32. **Address of the Parties.** Each party shall at all times keep the other informed of a valid mailing address and telephone number and shall promptly notify the other of any changes thereto, so long as either party has obligations under this Agreement.

33. **Recordation of Agreement.** A Memorandum of said Agreement written in accordance with the terms of North Carolina General Statutes, §39-13.4 shall be executed by the parties at the written request of either party and recorded in the Wake County Register of Deeds office. The purpose of the recording of a Memorandum of Agreement is to allow the transfer of property pending a divorce action.

34. **Entire Agreement.** This Agreement contains the entire understanding of the parties, and there are no representations, warranties, covenants or undertakings other than those expressly set forth herein and the same constitutes a merger or integration of the Separation Agreement and Property Settlement of the parties.

35. **Binding Effect.** Except as otherwise stated herein, all of the provisions of this

Agreement shall be binding upon the parties, their respective heirs, next of kin, executors, administrators and the like.

IN WITNESS WHEREOF, the parties have signed, sealed and acknowledged this Agreement in duplicate originals, on the day and year first above written.

\_\_\_\_\_ (SEAL)

\_\_\_\_\_ (SEAL)



