***AGREEMENT IN PARTITION OR EXCHANGE***

***(POST MARITAL PROPERTY AGREEMENT)***

***[HUSBAND]***

***and***

***[WIFE]***

**EACH PARTY TO THIS AGREEMENT UNDERSTANDS THAT BY SIGNING THIS DOCUMENT, HE OR SHE MAY PERMANENTLY SURRENDER CLAIMS HE OR SHE WOULD OTHERWISE HAVE UNDER TEXAS LAW.**

**EACH PARTY TO THIS AGREEMENT HAS CAREFULLY AND THOUGHTFULLY CONSIDERED THE CONTENTS OF THIS AGREEMENT AND HAS ENTERED INTO THIS AGREEMENT VOLUNTARILY AND ONLY AFTER CONSULTING INDEPENDENT COUNSEL OR WAIVING CONSULTATION WITH INDEPENDENT COUNSEL.**

**AS INDUCEMENT TO THE OTHER PARTY TO ENTER INTO THIS AGREEMENT, EACH PARTY REPRESENTS TO THE OTHER THAT THIS AGREEMENT IS FAIR, REASONABLE, AND THE VOLUNTARY ACT OF THE FREE WILL AND INDEPENDENT JUDGMENT OF EACH OF THE PARTIES.**

**THE PORTION OF THIS DOCUMENT ENTITLED: “WAIVER OF DISCLOSURE OF FINANCIAL INFORMATION” WAS EXECUTED PRIOR TO THE EXECUTION OF THIS AGREEMENT BY THE PARTIES.**

**Parties**

The parties to this Partition or Exchange Agreement are [HUSBAND], of McLennan County, Texas, and [WIFE], of McLennan County, Texas.

**Stipulations**

1. The parties are entering into this agreement in accordance with article XVI, section 15, of the Texas Constitution, as amended, and relevant sections of the Texas Family Code, as amended. Section 3.001 of the Texas Family Code defines a spouse's separate property as the property owned or claimed by the spouse before marriage; the property acquired by the spouse during marriage by gift, devise, or descent; and the recovery for personal injuries sustained by the spouse during marriage, except any recovery for loss of earning capacity during marriage. Section 3.002 of the Texas Family Code defines community property as the property, other than separate property, acquired by either spouse during the marriage. Texas law provides that income from separate property during the marriage is community property. A partition and exchange agreement makes what would otherwise be community property instead be separate property. The parties understand that this agreement is enforceable without consideration.

2. The parties acknowledge and agree that they are making and entering into this agreement voluntarily and without the intention to defraud or prejudice preexisting creditors.

3. The parties own as community property certain real and personal property as described in Schedules A and B, which are attached to this agreement. The parties intend by this agreement to partition or exchange those properties between themselves.

4. Each party desires to partition or exchange that community property in order for each party, following the execution of this agreement, to hold and possess his or her share of the property as his or her sole and separate property.

5. The parties intend to clarify their respective property rights to eliminate any uncertainty about those rights.

6. The parties intend by this agreement that no community property will be created during the remainder of their marriage.

In consideration of the mutual promises, agreements, partitions, exchanges, releases, and waivers contained in this agreement and in consideration of the parties' desire to establish certain rights and obligations by this agreement, and with the intent to be fully bound by the terms of this agreement, the parties covenant, agree, and contract as follows:

**Article 1**

**Statement of Facts**

*1.1 Property of Parties*

The parties own as community and separate property all the property described in Schedules A and B attached to this agreement.

*1.2 Disclosure*

Each party represents and warrants to the other party that he or she has, to the best of his or her ability, made to the other party a fair and reasonable disclosure of the nature and extent of the community and separate property of the parties, including values, and financial obligations, contingent or otherwise, and that the disclosure includes but is not limited to the property and liabilities set forth in Schedules A, B, C, and D attached to this agreement and other documentation exchanged between the parties before their signing of this agreement. Each party additionally acknowledges that, before the signing of this agreement, he or she has been provided a fair and reasonable disclosure of the community and separate property and financial obligations of the parties. Furthermore, and before the execution of this agreement, each party has previously offered to provide, or has provided, to the other party all information and documentation pertaining to all community property, including income and value, and all financial obligations that have been requested by the other party. Each party acknowledges that he or she has, or reasonably could have had, full and complete knowledge of the community estate of the parties and of all financial obligations of the community estate of the parties.

**Article 2**

**Partition of Property**

*2.1 Property Partitioned to [HUSBAND]*

The parties agree that [HUSBAND] will own, possess, and enjoy as his sole and separate estate, free from any claim of [WIFE], the property listed in Schedule A attached to this agreement. [WIFE] partitions and exchanges to [HUSBAND] all her community-property interest in and to all the property listed in Schedule A, together with any insurance policies covering the property and any escrow accounts that relate to it. [WIFE] grants, releases, and confirms to [HUSBAND] and to his heirs and assigns all right, title, and interest in and claims to the property listed in Schedule A, to have and to hold the same, with all and singular the hereditaments and appurtenances thereto belonging forever.

*2.2 Property Partitioned to [WIFE]*

The parties agree that [WIFE] will own, possess, and enjoy as her sole and separate estate, free from any claim of [HUSBAND], all the property listed in Schedule B attached to this agreement. [HUSBAND] partitions and exchanges to [WIFE] all his community-property interest in and to all the property listed in Schedule B, together with all insurance policies covering the property and all escrow accounts that relate to it. [HUSBAND] grants, releases, and confirms to [WIFE] and to her heirs and assigns all right, title, and interest in and claims to the property listed in Schedule B, to have and to hold the same, with all and singular the hereditaments and appurtenances thereto belonging forever.

*2.3 Asset Descriptions*

The parties have tried to use the correct legal description for each asset listed in any schedule attached to this agreement. If any asset is incorrectly described, the description used is adequate for the purposes of this agreement and accompanying schedules, and the parties agree to execute any additional paperwork required to confirm ownership in the name of the party in whose schedule the asset appears.

*2.4 No Community Estate Will Arise*

The parties agree that, following the partition or exchange of property as set forth in this agreement, no community estate will arise or be created during the remainder of their marriage. Therefore, the parties agree that all earnings for personal services and services rendered, income, employee benefits, partnership benefits, corporate benefits, including bonuses, director's compensation, commissions, and wages or salary of each party, as well as all other income received by a party, including interest and dividend income, profits, distributions, revenues, royalties, stock, stock options , warrants, and other compensation and benefits of any type and any income and property derived from the reinvestment of such earnings and income, will be the separate property of the respective party.

**Article 3**

**Separate Property of the Parties**

*3.1 Separate Property of [HUSBAND]*

[WIFE] covenants and agrees that, following the parties' execution of this agreement, the following will constitute the separate property of [HUSBAND]:

1. all properties listed in Schedule A attached to this agreement;

2. all mutations, changes, and increases in kind or in value of [HUSBAND]'s separate property;

3. all increases in kind or in value of [HUSBAND]'s separate property resulting from the time, talent, labor, or personal efforts of either or both parties;

4. all income and revenues from [HUSBAND]'s separate property, all income and property acquired as a result of [HUSBAND]'s separate property, and all income and property resulting from the reinvestment of that income, including interest and dividend income;

5. all of [HUSBAND]'s interest in or claim to any future profits of any partnership, joint venture, or corporation owned by [HUSBAND] at the time of the parties' execution of this agreement or acquired by [HUSBAND] thereafter, whether the profits are distributed or undistributed;

6. all profits, commissions, distributions, revenues, royalties, wages, salary, earnings, income, employee benefits, partnership benefits, corporate benefits, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any type earned or received by [HUSBAND] after the date of the parties' execution of this agreement, and all income and property derived from the reinvestment of [HUSBAND]'s profits, commissions, distributions, revenues, royalties, wages, salary, earnings, income, employee benefits, partnership benefits, corporate benefits, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any type earned or received by [HUSBAND] during the remainder of the marriage, together with all interest and dividend income received by [HUSBAND] during the remainder of the marriage;

7. all future contributions to all individual retirement accounts, all retirement plans, and all other employee benefit plans made by or on behalf of [HUSBAND] after the date of the parties' execution of this agreement, together with all increases in value of all such plans;

8. all interests in any trust in which [HUSBAND] has an interest, including but not limited to all corpus of the trusts, as well as all distributed and undistributed income from the trusts;

9. all recovery for personal injuries or property losses sustained by [HUSBAND] during the marriage, including any recovery for loss of earning capacity during the marriage; and

10. all property and property rights acquired by [HUSBAND] by gift, devise, or descent.

*3.2 Separate Property of [WIFE]*

[HUSBAND] covenants and agrees that, following the parties' execution of this agreement, the following will constitute the separate property of [WIFE]:

1. all property listed in Schedule B attached to this agreement;

2. all mutations, changes, and increases in kind or in value of [WIFE]'s separate property;

3. all increases in kind or in value of [WIFE]'s separate property resulting from the time, talent, labor, or personal efforts of either or both parties;

4. all income and revenues from [WIFE]'s separate property, all income and property acquired as a result of [WIFE]'s separate property, and all income and property resulting from the reinvestment of that income, including interest and dividend income;

5. all of [WIFE]'s interest in or claim to any future profits of any partnership, joint venture, or corporation owned by [WIFE] at the time of the parties' execution of this agreement or acquired by [WIFE] thereafter, whether the profits are distributed or undistributed;

6. all profits, commissions, distributions, revenues, royalties, wages, salary, earnings, income, employee benefits, partnership benefits, corporate benefits, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any type earned or received by [WIFE] after the date of the parties' execution of this agreement, and all income and property derived from the reinvestment of [WIFE]'s profits, commissions, distributions, revenues, royalties, wages, salary, earnings, income, employee benefits, partnership benefits, corporate benefits, director's compensation, bonuses, stock, stock options, warrants, or other compensation or benefits of any type earned or received by [WIFE] during the remainder of the marriage, together with all interest and dividend income received by [WIFE] during the remainder of the marriage;

7. all future contributions to all individual retirement accounts, all retirement plans, and all other employee benefit plans made by or on behalf of [WIFE] after the date of the parties' execution of this agreement, together with all increases in value of all such plans;

8. all interests in any trust in which [WIFE] has an interest, including but not limited to all corpus of the trusts, as well as all distributed and undistributed income from the trusts;

9. all recovery for personal injuries or property losses sustained by [WIFE] during the marriage, including any recovery for loss of earning capacity during the marriage; and

10. all property and property rights acquired by [WIFE] by gift, devise, or descent.

*3.3 No Commingling Intended*

Neither party intends to commingle his or her respective separate property with the separate property of the other party, except when intentionally done in a joint financial account, and neither party may claim an interest in any separate property of the other party as a result of such commingling, except as provided in this agreement.

*3.4 Certain Events Not Evidence of Community Property*

The following events may not, under any circumstances, be considered evidence of any intention to create community property:

1. the filing of joint tax returns;

2. the taking of title to property, whether real or personal, in joint tenancy or in any other joint or common form;

3. the designation of one party by the other party as a beneficiary of his or her estate or as trustee or any other form of fiduciary;

4. the combining or mixing by one party of that party's separate funds or property with the separate funds or property of the other party, including the pledging of joint or separate credit for the benefit of the other party's separate estate;

5. any oral statement by either party;

6. any written statement by either party, other than a written agreement signed by both parties to convert separate property to community property pursuant to the Texas Family Code;

7. the payment from the funds of either party for any obligations, including but not limited to the payment of mortgages, interest, or real property taxes, repairs, or improvements on a separately or jointly held residence; and

8. the joint occupation of a separately owned residence, even though designated as a homestead.

The provisions of this section 3.4 are not comprehensive.

*3.5 No Legal Action against Separate Property of [HUSBAND]*

In recognition of the fact that all property described on Schedule A of this agreement is stipulated and agreed to be the separate property of [HUSBAND], [WIFE] expressly disclaims any right to take any legal action against any of the entities listed on Schedule A in connection with any divorce proceeding or other legal action regarding this agreement. Specifically, [WIFE] agrees that she is not entitled to, and shall not seek, any temporary restraining order, injunctive relief, receivership, or other legal relief that would in any way restrict, inhibit, or affect the ability of any of the entities listed on Schedule A of this agreement from operating their business affairs as each entity deems appropriate, including each such entity's right to sell, purchase, or alienate property, to transfer or pledge property, to incur or pay debt, to exercise stock options or warrants, to issue stock, to raise capital, to liquidate any assets, to enter into or change any contractual relationships, to make expenditures or incur any indebtedness, or to merge or in any way alter its business organization or form.

*3.6 No Legal Action against Separate Property of [WIFE]*

In recognition of the fact that all property described on Schedule B of this agreement is stipulated and agreed to be the separate property of [WIFE], [HUSBAND] expressly disclaims any right to take any legal action against any of the entities listed on Schedule B in connection with any divorce proceeding or other legal action regarding this agreement. Specifically, [HUSBAND] agrees that he is not entitled to, and shall not seek, any temporary restraining order, injunctive relief, receivership, or other legal relief that would in any way restrict, inhibit, or affect the ability of any of the entities listed on Schedule B of this agreement from operating their business affairs as each entity deems appropriate, including each such entity's right to sell, purchase, or alienate property, to transfer or pledge property, to incur or pay debt, to exercise stock options or warrants, to issue stock, to raise capital, to liquidate any assets, to enter into or change any contractual relationships, to make expenditures or incur any indebtedness, or to merge or in any way alter its business organization or form.

*3.7 Other Temporary Orders during Dissolution*

If either party files a dissolution proceeding, the parties agree that during the pendency of the action neither party will request or seek to enforce any restraining order or injunction that could have the effect of inhibiting or prohibiting a party from making decisions concerning or disposing of his or her separate property. Further, neither party will have the right to the temporary use or possession of any separate property owned solely by the other party, either real or personal. Nothing in this section 3.7 affects the ability of either party to request or seek to enforce any order for the benefit of a child of both parties.

**Article 4**

**Income or Property Derived from Separate Property**

*4.1 Income from [HUSBAND]'s Separate Property*

Except as noted below, and as provided in Article 8, [WIFE] agrees that all income, changes, mutations, and increases in kind or in value of [HUSBAND]'s separate property following the execution of this agreement and all property that he may hereafter acquire, including all property acquired as a result of the reinvestment of income from his separate property, will be the separate property of [HUSBAND]. Income from separate property includes but is not limited to interest, rents, royalties, stocks, splits, and dividends. Except as noted below, [WIFE] forever releases, relinquishes, and renounces any interest in such income, changes, mutations, and increases in kind or in value derived from [HUSBAND]'s separate property, including all property acquired as a result of the reinvestment of income from his separate property, in consideration of [HUSBAND]'s reciprocal agreement and release, relinquishment, and renunciation. All future earnings and income arising from [HUSBAND]'s separate property will be the separate property of [HUSBAND] unless the parties agree in writing to the contrary.

*4.2 Income from [WIFE]'s Separate Property*

Except as noted below, [HUSBAND] agrees that all income, changes, mutations, and increases in kind or in value of [WIFE]'s separate property following the execution of this agreement and all property that she may hereafter acquire, including all property acquired as a result of the reinvestment of income from her separate property, will be the separate property of [WIFE]. Income from separate property includes but is not limited to interest, rents, royalties, stocks, splits, and dividends. Except as noted below, [HUSBAND] forever releases, relinquishes, and renounces any interest in such income, changes, mutations, and increases in kind or in value derived from [WIFE]'s separate property, including all property acquired as a result of the reinvestment of income from her separate property, in consideration of [WIFE]'s reciprocal agreement and release, relinquishment, and renunciation. All future earnings and income arising from [WIFE]'s separate property will be the separate property of [WIFE] unless the parties agree in writing to the contrary.

*4.3 Waiver of Claims*

Except as otherwise provided in this agreement, each party agrees that the property being partitioned or exchanged between the parties as their respective separate property will be free from all claims that the other party may have before the date of this agreement, as well as all claims that may arise following the execution of this agreement. Any money used for the benefit of the other party will be presumed to be a gift to the other party, as contrasted with a payment for which reimbursement or repayment is later expected, unless the parties agree otherwise in writing. This waiver applies during the lifetime of both parties, as well as on the death of either or both parties. This waiver extends to any rights, whether choate or inchoate, that may arise under the laws of Texas or any other jurisdiction. Each party further agrees that, by signing this agreement and accepting any benefit whatsoever under it, he or she is estopped from making any claim of any kind at any time to any separate property or the separate estate of the other party, except as may expressly be provided for in this agreement.

**Article 5**

**Liabilities**

*5.1 Liabilities of [HUSBAND]*

The liabilities and obligations described in Schedule C, which is attached to this agreement and made a part of it for all purposes, and all other liabilities and obligations of [HUSBAND] as of the date of the parties' execution of this agreement that are not included in Schedule C are partitioned to [HUSBAND] as the sole and separate property liabilities and obligations of [HUSBAND] and must be satisfied and paid solely from his separate estate. [HUSBAND] agrees to forever hold harmless, indemnify, and defend [WIFE] and her property from any claim arising from these liabilities and obligations.

Any taxes, interest, or penalties that [HUSBAND] may owe to any taxing authority, foreign or domestic, for years or taxable periods before the date of the parties' execution of this agreement are the sole and separate property liabilities and obligations of [HUSBAND], to be satisfied and paid solely from his separate estate and from which he agrees to forever hold harmless, indemnify, and defend [WIFE] and her property from any claim.

*5.2 Liabilities of [WIFE]*

The liabilities and obligations described in Schedule D, which is attached to this agreement and made a part of it for all purposes, and all other liabilities and obligations of [WIFE] as of the date of the parties' execution of this agreement that are not included in Schedule D are partitioned to [WIFE] as the sole and separate property liabilities and obligations of [WIFE] and must be satisfied and paid solely from her separate estate. [WIFE] agrees to forever hold harmless, indemnify, and defend [HUSBAND] and his property from any claim arising from these liabilities and obligations.

Any taxes, interest, or penalties that [WIFE] may owe to any taxing authority, foreign or domestic, for years or taxable periods before the date of the parties' execution of this agreement are the sole and separate property liabilities and obligations of [WIFE], to be satisfied and paid solely from her separate estate and from which she agrees to forever hold harmless, indemnify, and defend [HUSBAND] and his property from any claim.

*5.3 Future Business Transactions of [HUSBAND]*

To protect [WIFE]'s separate property from liability associated with any future business transactions conducted by [HUSBAND], excluding transactions conducted by [HUSBAND] on behalf of his employer, [HUSBAND] agrees to take all reasonable steps and perform all reasonable actions to ensure that all future business transactions in which [HUSBAND] is involved during the parties' marriage are handled either through a separate-property entity of [HUSBAND] that exists now or through a new entity capitalized with [HUSBAND]'s separate property in the future. [HUSBAND] further agrees to take all steps and perform all actions necessary to prevent [WIFE]'s separate property from being an obligor, a guarantor, or in any way liable for any future business transactions in which [HUSBAND] participates.

*5.4 Future Business Transactions of [WIFE]*

To protect [HUSBAND]'s separate property from liability associated with any future business transactions conducted by [WIFE], excluding transactions conducted by [WIFE] on behalf of her employer, [WIFE] agrees to take all reasonable steps and perform all reasonable actions to ensure that all future business transactions in which [WIFE] is involved during the parties' marriage are handled either through a separate-property entity of [WIFE] that exists now or through a new entity capitalized with [WIFE]'s separate property in the future. [WIFE] further agrees to take all steps and perform all actions necessary to prevent [HUSBAND]'s separate property from being an obligor, a guarantor, or in any way liable for any future business transactions in which [WIFE] participates.

*5.5 Pending or Future Litigation*

[HUSBAND] agrees to indemnify and hold [WIFE] and her property harmless from all costs and liabilities arising from all pending and future litigation caused or alleged to have been caused solely by [HUSBAND]'s acts or omissions.

[WIFE] agrees to indemnify and hold [HUSBAND] and his property harmless from all costs and liabilities arising from all pending and future litigation caused or alleged to have been caused solely by [WIFE]'s acts or omissions.

**Article 6**

**Management of Properties**

*6.1 Management of Properties*

Each party has the full, free, and unrestricted right to manage the separate property over which he or she has control under section 3.101 of the Texas Family Code or succeeding provisions of similar import and nature, including without limitation the right to convey or encumber the property; to dispose of it by sale, gift, or otherwise; and to deal with it without taking into consideration any rights or interests of the other party. If the joinder of [HUSBAND] or [WIFE] ("joining party") should be required by law in connection with the execution of any document by the other party with respect to the separate property of the other party, on request and from time to time, the joining party must execute all such documents necessary to effect the desires of the other party, including gift tax returns, but without any personal liability of the joining party. Neither party has the authority to encumber or dispose of the other party's separate property without the other party's express written consent. Notwithstanding any of the provisions set forth in this section 6.1, the parties agree that any gift, other than any gifts agreed to by the parties pursuant to this agreement, in excess of the annual gift tax exclusion that would be applied to either party's unified lifetime credit must be consented to in writing by the parties before the making of the gift.

**Article 7**

**Future Credit Transactions**

*7.1 Future Credit Transactions of Parties*

If either party enters into a transaction wherein either party becomes obligated on any debt, and unless a contrary intent is specifically and expressly stated, the obligation must be satisfied by the party incurring the obligation or liability wholly from that party's separate property, and that party must hold the other party and the other party's property harmless from the obligation and indemnify the other party if the other party is ever required to satisfy the obligation. The assets, if any, acquired through any such credit transactions will be and remain the separate property of a party to the extent the party obligates his or her separate property for the credit extended in acquiring the assets or resulting in the acquisition of the assets. Similarly, any business failure of the parties or any bankruptcy, reorganization, composition, arrangement, or other debtor/creditor action of or against a party will in no way affect the other party, and neither party is relying or will rely on the other party for any credit, accommodation, or indulgence in these regards.

**Article 8**

**Partition of Certain Expenses**

*8.1 Partition of Certain Direct Expenses from [HUSBAND] to [WIFE] or for the Benefit of [WIFE] or [CHILD]*

Notwithstanding any other provision in this agreement, the parties agree that, whether or not the parties remain married, income or property derived from [HUSBAND]’s separate property shall be responsible for the following expenses:

1. Health and Dental insurance premiums for [CHILD] and [WIFE] at least until [CHILD] attains age 25;
2. All Health Care expenses ("Health-care expenses" include, without limitation, medical, surgical, prescription drug, mental health-care services, dental, eye care, ophthalmological, and orthodontic charges but do not include expenses for travel to and from the provider or for nonprescription medication) for [CHILD], other than co-pays for medical visits and prescriptions at least until [CHILD] attains age 25;
3. All of [CHILD]’s tuition expenses and associated fees, including any K-12 education as well as post-secondary (or post-graduate) education (including room, board, fees and travel to and from school), other than expenses for books or basic school supplies. This shall not include any of [WIFE]’s gas or transportation expenses for transporting [CHILD] to elementary school, middle school, or high school;
4. All expenses related to [CHILD]’s extracurricular activities, including, but not limited to, sports, camps, or clubs, etc. and equipment and uniforms for those activities.

*8.2 Partition of Property from [HUSBAND] to [WIFE]*

Notwithstanding any other provision in this agreement, the parties agree that, [HUSBAND] shall partition the following property to [WIFE], as her separate property:

1. Monthly payments of Twenty Thousand and No/100 Dollars ($20,000.00) in cash to be partitioned to [WIFE] with the first installment payable on the date of the execution of this agreement and the following partition made on the first date of the first month following the execution of this agreement. Partitions under this section 8.2(a) shall occur every month during the marriage of [WIFE] and [HUSBAND] and shall terminate upon a final divorce decree of the marriage of [WIFE] and [HUSBAND].
2. Three Million and No/100 Dollars ($3,000,000.00) in cash to be payable to [WIFE] in monthly installments with the first installment payable on the first day of the month following a final divorce decree and the following payments payable on the first day of each month thereafter until the total payment of $3,000,000.00 is made to [WIFE].
   1. Each installment shall be a minimum of Twenty Thousand and No/100 Dollars ($20,000.00). However, [HUSBAND] may make an installment which exceeds such amount, if he so chooses.
3. In the event that the marriage between [WIFE] and [HUSBAND] is dissolved due to the death of [HUSBAND], then the estate of [HUSBAND] shall be responsible for the aforementioned payments under paragraph 8.2(b) of Three Million and No/100 Dollars ($3,000,000) in cash to [WIFE] in monthly installments with the first installment payable on the first day of the month following the appointment of a personal representative of the estate of [HUSBAND] and the following payments payable on the first day of each month thereafter until the total payment of $3,000,000 is made to [WIFE].
   1. Each installment shall be a minimum of Twenty Thousand and No/100 Dollars ($20,000.00). However, the personal representative of [HUSBAND] may make an installment which exceeds such amount, if he or she so chooses.
   2. *Taxes from Partition under Article 8*

Notwithstanding any other provision of this agreement, any tax liability regarding any property partitioned pursuant to Article 8 shall be the responsibility of [HUSBAND] and all property partition pursuant to Article 8 shall pass free and clear to [WIFE] of any outstanding tax liability.

*8.4 Non-Modification of Other Portions of this Agreement*

The parties agree that the partitions set forth in this Article are only to remain in effect for the time periods set forth above and subject to the conditions as set forth above. The partitions in this Article shall not be construed to permit any other payments of any kind from [HUSBAND] to [WIFE] or her estate and shall not be construed to waive or modify any other section in this Agreement, including, but not limited to the waiver of temporary spousal support, spousal maintenance, and alimony as set forth in section “*11.5 Waiver of Temporary Spousal Support, Spousal Maintenance, and Alimony”*.

**Article 9**

**Joint Acquisition of Assets**

*9.1 Joint Acquisition of Assets*

The parties have the option, but not the obligation, to acquire assets together in their joint names. If the parties jointly acquire assets following the execution of this agreement, such property shall be deemed to be owned as an undivided 50 percent of the separate property of [HUSBAND] and an undivided 50 percent as the separate property of [WIFE]. This ownership shall occur regardless of each party’s contribution to such asset and regardless of any capital contributions to such asset. Additionally, any asset held jointly by both parties shall pass to the survivor of the two parties upon the death of the first party, regardless of anything to the contrary. The parties shall take reasonable efforts to ensure that such assets are properly designated to pass to the surviving party. In the event a designation or action fails or does not exist, the personal representative of the deceased party shall effectuate the transfer of the deceased party’s share in the jointly-held property to the surviving party, regardless of any previously-executed beneficiary designation, will, or testamentary disposition.

**Article 10**

**Taxes**

*10.1 Tax Liability*

The parties agree to execute separate income tax returns following the execution of this agreement unless they agree that it is to their mutual advantage to file a joint tax return for any year.

For all tax years following the execution of this agreement, [HUSBAND] must report all of his separate-property income. In calculating [HUSBAND]'s separate-property tax liability, he is entitled to use all withholding, estimated tax payments, exemptions, deductions, charitable contributions, and tax credits (sometimes collectively called "adjustments") that are solely attributable to his separate-property estate and income. [HUSBAND] is entitled to use all current and prior year carryforwards (as well as all carryforwards arising in the future), including but not limited to net operating losses, passive losses, suspended losses, long-term capital losses, and short-term capital losses (sometimes collectively called "carryforwards") that are strictly associated with his separate-property estate and income. The income tax liability arising from [HUSBAND]'s separate property is the sole liability of [HUSBAND], who agrees to fully discharge that tax liability, including penalties and interest, if any, out of his separate-property estate. [HUSBAND] further agrees to indemnify and hold [WIFE] and her separate property harmless from (and [HUSBAND] releases [WIFE] and her separate property from) all such tax liability, including penalties and interest, if any, together with all tax liens of every kind and character that might hereafter arise from the filing of his separate return or the failure to file necessary or proper returns or to pay the required taxes with respect to the separate-property taxable income of [HUSBAND].

For all tax years following the parties' execution of this agreement, [WIFE] must report all of her separate-property income. In calculating [WIFE]'s separate-property tax liability, she is entitled to use all withholding, estimated tax payments, exemptions, deductions, charitable contributions, and tax credits (sometimes collectively called "adjustments") that are solely attributable to her separate-property estate and income. [WIFE] is entitled to use all current and prior year carryforwards (as well as all carryforwards arising in the future), including but not limited to net operating losses, passive losses, suspended losses, long-term capital losses, and short-term capital losses (sometimes collectively called "carryforwards") that are strictly associated with her separate-property estate and income. The income tax liability arising from [WIFE]'s separate property is the sole liability of [WIFE], who agrees to fully discharge that tax liability, including penalties and interest, if any, out of her separate-property estate. [WIFE] further agrees to indemnify and hold [HUSBAND] and his separate property harmless from (and [WIFE] releases [HUSBAND] and his separate property from) all such tax liability, including penalties and interest, if any, together with all tax liens of every kind and character that might hereafter arise from the filing of her separate tax return or the failure to file necessary or proper returns or to pay the required taxes with respect to the separate-property taxable income of [WIFE].

Each party is solely obligated to pay, from his or her other separate-property estate, all estimated tax payments, if any, associated with his or her separate-property tax liability that are required to be paid for all taxable years that the parties are married.

All tax refunds that may be received in the future are the sole and separate property of the party whose separate-property estate generated the refund.

*10.2 Joint Tax Returns*

Notwithstanding the provisions of section 10.1 above and the intent and desire of the parties to file separate tax returns and to retain the wholly separate character of their respective separate properties, the parties acknowledge that the Internal Revenue Code, as amended, and the regulations thereunder, and similar codes and regulations of other states in certain instances provide, or may provide in the future, savings in taxes for married couples filing joint returns. If that is the case, the parties may file joint returns, but their election to file joint tax returns for any year of their marriage does not constitute a waiver of any provision of this agreement. At the option of either party, a party may request individual calculations to determine the pro rata share of any tax liability or tax refund as between each party's separate-property estate and the community-property estate in accordance with section 10.1 above.

**Article 11**

**Dissolution of Marriage by Court Order**

*11.1 Property to [HUSBAND]*

If either party files any proceeding for divorce, annulment, or to declare their marriage void (a "dissolution proceeding"), [WIFE] agrees that [HUSBAND] will be awarded all his separate property, including all property described in this agreement as being partitioned to him as his separate property. [WIFE] agrees to release all interests or claims she may have in [HUSBAND]'s separate property. [WIFE] further agrees to execute any documents necessary to set aside and confirm to [HUSBAND] his separate property and to release any and all claims that [WIFE] may have in and to [HUSBAND]'s separate property.

*11.2 Property to [WIFE]*

In the event of a dissolution proceeding between the parties, [HUSBAND] agrees that [WIFE] will be awarded all her separate property, including all property described in this agreement as being partitioned to her as her separate property. [HUSBAND] agrees to release all interests or claims he may have in and to [WIFE]'s separate property. [HUSBAND] further agrees to execute any documents necessary to set aside and confirm to [WIFE] her separate property and to release any and all claims [HUSBAND] may have in and to [WIFE]'s separate property.

*11.3 Liabilities to [HUSBAND]*

In the event of a dissolution proceeding between the parties, [HUSBAND] agrees to be responsible for and pay all liabilities and obligations associated with his separate property, including all property described in this agreement as being partitioned to him as his separate property. [HUSBAND] further agrees to indemnify and hold [WIFE] and her property harmless from all liabilities associated with [HUSBAND]'s separate property.

*11.4 Liabilities to [WIFE]*

In the event of a dissolution proceeding between the parties, [WIFE] agrees to be responsible for and pay all liabilities and obligations associated with her separate property, including all property described in this agreement as being partitioned to her as her separate property. [WIFE] further agrees to indemnify and hold [HUSBAND] and his property harmless from all liabilities associated with [WIFE]'s separate property.

*11.5 Waiver of Temporary Spousal Support, Spousal Maintenance, and Alimony*

As a result of the partitioning of assets between the parties in this agreement, both parties will own separate-property assets, and neither party will require the other party to pay temporary spousal support, spousal maintenance, or alimony of any kind in the event of a dissolution proceeding. Each party waives any right that may exist under law to seek or obtain temporary spousal support, spousal maintenance, or alimony from the other party. If a court of competent jurisdiction orders either party to pay to the other party, or to a third party on behalf of the other party, temporary spousal support, spousal maintenance, or alimony of any kind during the pendency of a dissolution proceeding, that temporary spousal support, spousal maintenance, or alimony paid by one party to the other in connection with such a dissolution proceeding must be reimbursed to the party paying the temporary spousal support, spousal maintenance, or alimony within five days after receipt by the receiving party. Without limiting the generality of the foregoing, thus, for example, if $1,000 in temporary alimony is paid by [HUSBAND] to [WIFE] during the pendency of a dissolution proceeding, the sum of $1,000 must be reimbursed to [HUSBAND] by [WIFE] within five days after [WIFE] receives the $1,000 from [HUSBAND].

The parties agree, in the event the receiving party fails to reimburse the paying party as required above, that the party paying the temporary spousal support, spousal maintenance, or alimony shall be allowed a dollar-for-dollar offset against all future temporary spousal support, spousal maintenance, or alimony payments to be paid by the paying party to the receiving party. In the event of a failure by the receiving party to reimburse any temporary spousal support, spousal maintenance, or alimony payment to the paying party within five days as required above, the paying party shall notify the receiving party of the paying party's intent to exercise his or her right to offset all amounts unreimbursed at that point against all subsequent temporary spousal support, spousal maintenance, or alimony payments to be paid by the paying party. The paying party shall also notify the receiving party exactly which financial obligations the unreimbursed payments will be offset against. On receipt of that notice from the paying party, the receiving party shall be discharged from the obligation of reimbursement to the extent of the amount of the offset.

*11.6 Release and Waiver*

If either party files a dissolution proceeding, neither party may request the Court to divide the property of either or both parties in a manner contrary to the terms of this agreement.

Each party relinquishes, disclaims, and waives all rights, title, and interest that he or she may have to seek a division of property and liabilities in a dissolution proceeding contrary to what is provided for in this agreement.

*11.7 Division of Community Estate*

If the parties' marriage is dissolved by court order, all community property acquired during the marriage, if any, must be equally divided between the parties according to the existing fair market value of each asset. If the parties cannot agree on the fair market value, the fair market value will be determined by appraisals. The division of the community property may be made by distributing the entire interest of certain properties to one party, with an equalizing distribution of the properties or funds to the other party.

*11.8 Attorney's Fees*

During the pendency of any dissolution proceeding, [HUSBAND] shall be responsible for all attorney’s fees, costs, or other expenses, both for himself and any such expenses attributable to [WIFE].

**Article 12**

**Dissolution of Marriage by Death**

*12.1 [HUSBAND]'s Acceptance of [WIFE]'s Will and Waivers to Be Signed on Death of [WIFE]*

[HUSBAND] agrees to accept the provisions of any last will and testament and codicils that may be in effect at the time of [WIFE]'s death in full discharge, settlement, and satisfaction of any and all right, title, and interest that he, as [WIFE]'s spouse, might otherwise acquire in her estate and property.

Unless designated as a named beneficiary under a written instrument, [HUSBAND] waives and releases to [WIFE], her executors, administrators, or assigns any and all rights of election given to him as the spouse of [WIFE], or through him to his heirs, to take against her last will and testament under any statutes, now or hereafter in force, in Texas or any other state or foreign nation in which [WIFE] may have property at the time of her death.

If the marriage of the parties is dissolved by the death of [WIFE], [HUSBAND] agrees and hereby binds his personal representatives and heirs to agree to release and convey to [WIFE]'s estate any interest he may then have or claim to have in the separate property of [WIFE], including any property described in this agreement as being the separate property of [WIFE] or as belonging to [WIFE]'s separate estate, other than any benefit conferred on [HUSBAND] in this agreement. [HUSBAND] agrees to execute on request all instruments of release or conveyance that are necessary to give effect to this agreement. [WIFE] hereby binds her personal representatives and heirs to release and convey to [HUSBAND] all of the interest, if any, that [WIFE] or her estate may have in the then separate property of [HUSBAND] and in all the property described in this agreement as being the separate property of [HUSBAND] or as belonging to [HUSBAND]'s separate estate unless otherwise provided for in this agreement.

*12.2 [WIFE]'s Acceptance of [HUSBAND]'s Will and Waivers to Be Signed on Death of [HUSBAND]*

Without limiting or affecting the death payment under section 8.2 of this agreement, [WIFE] agrees to accept the provisions of any last will and testament and codicils that may be in effect at the time of [HUSBAND]'s death in full discharge, settlement, and satisfaction of any and all right, title, and interest that she, as [HUSBAND]'s spouse, might otherwise acquire in his estate and property.

Unless designated as a named beneficiary under a written instrument, [WIFE] waives and releases to [HUSBAND], his executors, administrators, or assigns any and all rights of election given to her as the spouse of [HUSBAND], or through her to her heirs, to take against his last will and testament under any statutes, now or hereafter in force, in Texas or any other state or foreign nation in which [HUSBAND] may have property at the time of his death.

If the marriage of the parties is dissolved by the death of [HUSBAND], [WIFE] agrees and hereby binds her personal representatives and heirs to agree to release and convey to [HUSBAND]'s estate any interest she may then have or claim to have in the separate property of [HUSBAND], including any property described in this agreement as being the separate property of [HUSBAND] or as belonging to [HUSBAND]'s separate estate, other than any benefit conferred on [WIFE] in this agreement. [WIFE] agrees to execute on request all instruments of release or conveyance that are necessary to give effect to this agreement. [HUSBAND] hereby binds his personal representatives and heirs to release and convey to [WIFE] all of the interest, if any, that [HUSBAND] or his estate may have in the then separate property of [WIFE] and in all the property described in this agreement as being the separate property of [WIFE] or as belonging to [WIFE]'s separate estate unless otherwise provided for in this agreement.

*12.3 Family Allowance to Surviving Spouse*

The parties agree that the surviving spouse will have the right to petition the court for the payment of a family allowance for the support of the surviving spouse following the death of a party, in accordance with the provisions of the Texas Estates Code.

*12.4 Life Estate in Homestead*

The parties agree that the surviving spouse will have a life estate in the homestead of the parties if, at the time of a party's death, the parties are still married to each other or are sharing a homestead.

**Article 13**

**Retirement Benefits and Life Insurance**

*13.1 Waiver of Retirement Benefits by [HUSBAND]*

Unless named by a written instrument as a beneficiary by [WIFE], [HUSBAND] waives all right, title, and interest, if any, that he may acquire by virtue of his marriage to [WIFE] in all of [WIFE]'s retirement benefits and disability benefits, whether lump sum or installment, any profit-sharing interests, and any other employee benefits arising out of [WIFE]'s past, present, or future employment. [HUSBAND] acknowledges that this waiver includes all rights that he may have to receive benefits or payments from any 401(k) plan, SEP account, individual retirement account, profit-sharing plan, or any other type of employee benefit plan that [WIFE] has or may have in the future. [HUSBAND] further waives all rights he may have to participate in any decisions concerning the designation of beneficiaries or election of benefits or any other types of decisions to be made by [WIFE] under the terms of her current or future employee benefit plan or plans. [HUSBAND] agrees to consent in writing to, and accept, [WIFE]'s designation of beneficiary with respect to the plan or plans and to sign any spousal consent that might be requested or required by [WIFE] at any time with respect to any such plan or plans, even if the consent does not provide for the payment of survivor benefits on [WIFE]'s death.

*13.2 Waiver of Retirement Benefits by [WIFE]*

Unless named by a written instrument as a beneficiary by [HUSBAND], [WIFE] waives all right, title, and interest, if any, that she may acquire by virtue of her marriage to [HUSBAND] in all of [HUSBAND]'s retirement benefits and disability benefits, whether lump sum or installment, any profit-sharing interests, and any other employee benefits arising out of [HUSBAND]'s past, present, or future employment. [WIFE] acknowledges that this waiver includes all rights that she may have to receive benefits or payments from any 401(k) plan, SEP account, individual retirement account, profit-sharing plan, or any other type of employee benefit plan that [HUSBAND] has or may have in the future. [WIFE] further waives all rights she may have to participate in any decisions concerning the designation of beneficiaries or election of benefits or any other types of decisions to be made by [HUSBAND] under the terms of his current or future employee benefit plan or plans. [WIFE] agrees to consent in writing to, and accept, [HUSBAND]'s designation of beneficiary with respect to the plan or plans and to sign any spousal consent that might be requested or required by [HUSBAND] at any time with respect to any such plan or plans, even if the consent does not provide for the payment of survivor benefits on [HUSBAND]'s death.

*13.3* *Life Insurance*

The parties acknowledge that there is currently a Northwestern Mutual life insurance policy (#21140194) on the life of [HUSBAND]. The parties agree that [HUSBAND] shall be solely be responsible for the payments of such policy and shall keep such policy current. [WIFE] shall remain the primary beneficiary of such policy and [CHILD] shall be the contingent beneficiary of such policy.

**Article 14**

**Gifts**

*14.1 Gifts*

The parties acknowledge that during the remainder of their marriage, each party may, from time to time, make gifts of property to the other party. These interspousal gifts may be made on a special occasion, such as a birthday or anniversary, or on any other occasion a party may choose. The parties recognize that frequently claims of "gifts" are alleged in the context of a dissolution proceeding. To remove any uncertainty about the issue of interspousal gifts, the parties agree that:

1. Gifts of wearing apparel, jewelry, and athletic equipment may be established by parol testimony if the item or property is customarily used and enjoyed exclusively by the party claiming it as a gift to him or her;

2. Gifts of other items of personal property not covered by item 1. above, such as furnishings, artwork, cash, and collections, must be established by clear and convincing evidence; and

3. Any property that is held by title, as in a deed, in a certificate, or by account name, may not be effectively transferred to the party claiming it as a gift unless, in fact, the deed, certificate, or account is transferred by name to the party claiming the gift.

*14.2 Gift Tax Consequences*

Each party retains the right to make gifts of his or her separate property without regard to blood or other relationship of the donee. Conditional on any such gift being made from the separate property of a party, the party making the gift may deem the other party as the donor of one-half of the gift for federal tax purposes, if allowable under the relevant law, but without personal liability to the deemed donor. If the deemed donor is held responsible for the payment of federal gift tax, the actual donor must indemnify and hold harmless the deemed donor and his or her property from the liability and must reimburse the deemed donor the amount of the tax, including all penalties and interest, if any, within ten days after the deemed donor has paid any such taxes, penalties, or interest. Notwithstanding any of the provisions set forth in this section 14.2 to the contrary, the parties agree that any gift in excess of the annual gift tax exclusion that would be applied to either party's unified lifetime credit must be consented to in writing by the parties before the making of the gift.

**Article 15**

**Independent Conveyances or Bequests**

*15.1 Independent Conveyances or Bequests*

If either party voluntarily conveys to the other party an interest in his or her separate property that is declared by law, or by this agreement, to be the separate property of one party, either by will, survivorship agreement, or instrument of conveyance or by document of title signed by the transferring party, the provisions of that will, survivorship agreement, instrument of conveyance, or document of title control over the provisions of this agreement to the extent of any conflict between the two documents regarding such property other than property that is personal to the other party. Absent such a will, survivorship agreement, instrument of conveyance, or document of title expressly conveying such property, all properties remain in the ownership of the party owning or designated as owning the property as his or her separate property.

Nothing in this agreement may be construed as prohibiting one party from giving property to the other party by will, survivorship agreement, instrument of conveyance, document of title, or other written instrument between the parties.

**Article 16**

**General Agreements**

*16.1 General Agreements*

Except as specifically set forth in this agreement to the contrary, the parties agree to the following:

1. That the property described or created in this agreement as being the separate property of or belonging to the separate estate of each party is free from any claim of the other party that may arise during the remainder of the parties' marriage.

2. That any money used for the benefit of the other party is presumed to be a gift to the other party, as contrasted with a payment for which reimbursement or repayment is later expected, unless the parties agree otherwise in writing.

3. That this agreement applies during the lifetime of both parties, including on dissolution of their marriage by court order, as well as on the death of either or both parties.

4. That this agreement extends to any rights, whether choate or inchoate, that may arise under the laws of any jurisdiction.

5. That this agreement is not intended to relieve or discharge either party of any legal obligation of support to one another or to their descendants.

**Article 17**

**Reimbursement**

*17.1 No Reimbursement Claims*

[HUSBAND] waives the right to assert any claim for reimbursement that he might presently or in the future have on behalf of or against the community estate. [HUSBAND] further waives the right to assert any claim for reimbursement that he might presently or in the future have against the separate estate of [WIFE].

[WIFE] waives the right to assert any claim for reimbursement that she might presently or in the future have on behalf of or against the community estate. [WIFE] further waives the right to assert any claim for reimbursement that she might presently or in the future have against the separate estate of [HUSBAND].

**Article 18**

**Undisclosed Property**

*18.1 Undisclosed Property*

All community property not listed in any schedule attached to this agreement is owned by the parties as equal cotenants with right of survivorship. Each party hereby grants, conveys, and assigns to the other party an undivided one-half interest in any such unlisted community property owned in the name of the granting party.

**Article 19**

**Arbitration**

*19.1 Arbitration*

The provisions for binding arbitration must be in accordance with Texas arbitration laws, including but not limited to sections 6.601 and 153.0071 of the Texas Family Code.

The parties agree to submit to binding arbitration any dispute or controversy regarding the validity, interpretation, or enforceability of this agreement, as well as all issues involving its enforcement in connection with a dissolution proceeding between the parties. Each party expressly waives any right to trial by a court or trial by a jury. If a dissolution proceeding or declaratory judgment proceeding is filed in Texas, the arbitrator appointed under this agreement will simultaneously be designated as special master under the Texas Rules of Civil Procedure, and the parties agree to jointly apply to the court for any orders that are necessary to vest the arbitrator with all powers and authority of a special master under the rules.

The parties agree to appoint one arbitrator, whose decisions will be binding in all respects. Any arbitrator appointed by the parties must be an attorney who has undergone arbitration training conducted by the American Bar Association or the American Academy of Matrimonial Lawyers and is in good standing with the State Bar of Texas. The first party requesting arbitration must designate the name of an arbitrator in the request. The other party must then designate the name of an arbitrator. If the parties cannot agree on an arbitrator within fourteen days after either party's written request for arbitration, the two designees must select a qualified arbitrator, who will be designated the sole arbitrator of the dispute. If the parties cannot agree on the ground rules and procedures to be followed during the arbitration proceedings, the arbitrator shall have the sole authority to establish the ground rules and procedures to be followed during the arbitration proceeding. The parties agree to attend the arbitration on the date and at the time and place set by the arbitrator. The cost of arbitration must be borne as the arbitrator directs. The award of the arbitrator will be binding and conclusive on the parties, and a judgment setting forth the arbitration award may be entered in any court of competent jurisdiction.

**Article 20**

**General Provisions**

*20.1 Effective Date*

This agreement takes effect when it is executed by both parties and will remain in effect during the remainder of the parties' marriage and thereafter until it is fully performed, amended, or revoked, even when the parties' marriage is dissolved by death or otherwise.

*20.2 Execution of Documents*

Each party agrees to cooperate fully with each other in performing all acts and in executing, acknowledging, and delivering all instruments and documents required to accomplish the intent of this agreement, including but not limited to deeds, assignments, and promissory notes. Each party agrees to execute all documents required to accomplish the intent of this agreement within fourteen days after the documents are presented to the party for execution.

*20.3 Incorporation of Schedules*

All schedules and other instruments referred to in this agreement are incorporated into this agreement as completely as if they were copied verbatim in the body of it.

*20.4 Presumption of Separate Property*

Any property held in [HUSBAND]'s individual name is presumed to be the separate property of [HUSBAND]. Any property held in [WIFE]'s individual name is presumed to be the separate property of [WIFE]. Any property or liability inadvertently omitted from the schedules attached to this agreement is the separate property or liability of the party to whom it belongs or by whom it was incurred.

*20.5 Enforceability*

This agreement may be enforced by suit in law or equity by either of the parties or by their heirs, executors, attorneys, or assigns. Each party agrees that by signing this agreement and accepting any benefit whatsoever under it, he or she is estopped and barred from making any claim of any kind at any time to any separate property or the separate estate of the other party or to any property described in this agreement as being the separate property of the other party. Each party waives his or her right to make claims to any separate property of the other party or to any property designated as belonging to the separate estate of the other party, whether the property is acquired before or after this agreement is signed.

*20.6 Successors*

This agreement, including any gift or obligation of either party, binds and inures to the benefit of the parties and their respective legatees, devisees, heirs, executors, legal and personal representatives, trustees, assigns, transferees, and successors in interest.

*20.7 Amendment or Modification*

This agreement may be waived, abandoned, modified, amended, discharged, or terminated only by a written instrument signed by both parties that specifically identifies the waiver, abandonment, modification, amendment, discharge, or termination.

*20.8 Attorney's Fees and Expenses for Enforcement*

If either party brings an action or other proceeding to enforce this agreement or to enforce any judgment, decree, or order made by a court in connection with this agreement, the prevailing party will be entitled to recover reasonable attorney's fees and other necessary costs from the other party. If either party files a declaratory judgment proceeding to determine the enforceability of this agreement, neither party will be entitled to an award of attorney's fees unless a party successfully challenges the validity of this agreement, in which event the court will be authorized to award attorney's fees. If either party seeks to invalidate some or all of this agreement or seeks to recover property in a manner at variance with this agreement, the successful party will be entitled to recover reasonable attorney's fees and other necessary costs from the other party.

*20.9 Exclusive Remedy for Nonmonetary Breach*

Except as expressly provided otherwise in this agreement, the exclusive judicial remedy of either party against the other for failure to perform any nonmonetary duty or obligation under any provision of this agreement is judicial enforcement by judgment for specific performance or mandatory injunction and writ of execution to compel performance, plus reasonable attorney's fees. Neither party is entitled to recover any damages, actual or consequential, for any nonmonetary breach. No failure of either party to perform any nonmonetary duty or obligation under this agreement diminishes or impairs the full effectiveness of its provisions.

*20.10 Waiver of Breach or Term*

The waiver of any breach of any provision of this agreement does not waive any other breach of that or any other provision. Waiver of any term of this agreement may be accomplished only concerning future performance and only by a written instrument signed by both parties expressly stating the provisions waived.

*20.11 Partial Invalidity*

If any provision of this agreement is for any reason found to be unenforceable, all other provisions nonetheless remain enforceable.

*20.12 Assignment Prohibited*

This agreement is personal to the parties, and neither party may assign or delegate any of his or her rights or obligations under it.

*20.13 Entire Agreement*

This instrument contains the parties' entire agreement on the subject it purports to cover. This agreement replaces any earlier agreements or understandings, whether written or oral, and there are no contemporaneous written or oral agreements that are not fully expressed in it.

*20.14 Titles and Captions*

Article headings, titles, and captions contained in this agreement are merely for reference and do not define, limit, extend, or describe the scope of this agreement or any provision.

*20.15 No Construction against Draftsman*

No provision of this agreement may be interpreted for or against any party because the party or the party's legal representative drafted the provision.

*20.16 Representation*

The law firms representing [HUSBAND] are the Law Office of Jason S. Bashara and Drought, Drought & Bobbitt. The law firm representing [WIFE] is Naman, Howell, Smith & Lee, PLLC. [HUSBAND] has not received any legal, financial, or other kind of advice from [WIFE] or from her law firm, Naman, Howell, Smith & Lee, PLLC, in connection with the advisability or nonadvisability of entering into this agreement. [WIFE] has not received any legal, financial, or other kind of advice from [HUSBAND] or from his law firms, Law Office of Jason S. Bashara and Drought, Drought & Bobbitt in connection with the advisability or nonadvisability of entering into this agreement. [HUSBAND] is relying on his own judgment and the advice of his lawyer in entering into this agreement. [WIFE] is relying on her own judgment and the advice of her lawyer in entering into this agreement.

*20.17 Nondisqualification*

If any dispute arises out of this agreement, whether by arbitration or litigation, each party waives any claim of disqualification against representation of the other party by the attorneys who participated in negotiating and drafting this agreement.

*20.18 Place of Performance; Governing Law; Application*

All rights, duties, and obligations under this agreement are payable and enforceable in the county in which [WIFE] is residing at the time such obligation accrues.

Texas law in effect as of the date this agreement is signed governs the construction, interpretation, and enforcement of this agreement to the maximum extent permitted by law.

The parties expressly intend and agree that this agreement applies to and governs all real and personal property, wherever situated, owned by either party at the time this agreement is signed or acquired by either party thereafter, regardless of any change of domicile of the parties or the location of the real estate. [WIFE] is domiciled in Minnesota at the time of execution of this agreement. Notwithstanding the current domicile of [WIFE], if one or both of the parties is, at the time of execution of this agreement, or ever becomes, domiciled in a jurisdiction other than Texas, the status of all property thereafter acquired by that party must be controlled to the maximum extent by the terms of this agreement interpreted under Texas law in effect when this agreement is signed. The desire of the parties that each preserve his or her separate property or separate estate under Texas law and keep it free from the claims of the other party corresponds to their desire that each party should have and hold the property free from the claims of the other party under the laws of all other jurisdictions, even if the other jurisdictions do not recognize community property but instead speak of "marital property" and "nonmarital property" or like terms. For any property of either party whose ownership is not controlled by the marital property laws of Texas, when this agreement speaks of property as being the separate property of a party, reference is made to property acquired in such a manner that it would meet the definition of separate property under the Texas Constitution or the Texas Family Code, as amended.

*20.19 Multiple Originals*

This agreement is executed in multiple originals. This agreement is signed after the execution of the Waiver of Disclosure of Financial Information.

*20.20 Confidentiality*

This agreement shall remain confidential amongst the parties and neither party shall disclose this agreement or any portion of this agreement to any third-party without the written permission of the other party.

*20.21 Severability*

In case any provision in this agreement shall be prohibited or held to be void or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**Article 21**

**Representations and Warranties**

WARNING

EACH PARTY TO THIS AGREEMENT UNDERSTANDS THAT BY SIGNING THIS DOCUMENT HE OR SHE IS PERMANENTLY SURRENDERING RIGHTS AND CLAIMS HE OR SHE WOULD OTHERWISE HAVE UNDER TEXAS LAW AND UNDER THE LAW OF OTHER JURISDICTIONS.

*21.1 Representations and Warranties of [HUSBAND]*

My name is [HUSBAND]. I represent and warrant that:

1. I have carefully read each and every page of this agreement and all schedules attached or referred to, in their entirety.

2. I am fully and completely informed by my attorney about the law relating to the subject matter of this agreement and about the spousal rights and liabilities of both parties.

3. I AM ENTERING INTO THIS AGREEMENT VOLUNTARILY AFTER RECEIVING THE ADVICE OF INDEPENDENT COUNSEL.

4. I have given careful and mature thought to the making of this agreement.

5. I fully and completely understand each provision of this agreement, concerning both the subject matter and the legal effect. I further acknowledge that this agreement was not procured by fraud, duress, or overreaching.

6. I have investigated the property and financial obligations of [WIFE] sufficiently to satisfy any questions I have in that regard, and I expressly waive any right to disclosure of the property and financial obligations of [WIFE] beyond the disclosures provided.

7. I am not relying on any fiduciary obligations owed by one party to the other or on any duty of disclosure founded on a confidential or other relationship between the parties. Furthermore, I am not relying on any legal or accounting advice or representation of fact or law provided by [WIFE] or anyone acting on her behalf.

8. I fully understand that, by signing this agreement and accepting any benefit whatsoever under it, I will be estopped from making any claim of any kind at any time to any separate property or the separate estate of [WIFE], except as expressly provided for in this agreement.

9. I fully understand that by executing this agreement I may be adversely affecting my inheritance rights and property and that I am permanently surrendering rights to income and property I would otherwise have under Texas law.

10. I am executing this agreement with intent to be bound fully by all its terms.

[HUSBAND]

*21.1 Representations and Warranties of [WIFE]*

My name is [WIFE]. I represent and warrant that:

1. I have carefully read each and every page of this agreement and all schedules attached or referred to, in their entirety.

2. I am fully and completely informed by my attorney about the law relating to the subject matter of this agreement and about the spousal rights and liabilities of both parties.

3. I AM ENTERING INTO THIS AGREEMENT VOLUNTARILY AFTER RECEIVING THE ADVICE OF INDEPENDENT COUNSEL.

4. I have given careful and mature thought to the making of this agreement.

5. I fully and completely understand each provision of this agreement, concerning both the subject matter and the legal effect. I further acknowledge that this agreement was not procured by fraud, duress, or overreaching.

6. I have investigated the property and financial obligations of [HUSBAND] sufficiently to satisfy any questions I have in that regard, and I expressly waive any right to disclosure of the property and financial obligations of [HUSBAND] beyond the disclosures provided.

7. I am not relying on any fiduciary obligations owed by one party to the other or on any duty of disclosure founded on a confidential or other relationship between the parties. Furthermore, I am not relying on any legal or accounting advice or representation of fact or law provided by [HUSBAND] or anyone acting on his behalf.

8. I fully understand that, by signing this agreement and accepting any benefit whatsoever under it, I will be estopped from making any claim of any kind at any time to any separate property or the separate estate of [HUSBAND], except as expressly provided for in this agreement.

9. I fully understand that by executing this agreement I may be adversely affecting my inheritance rights and property and that I am permanently surrendering rights to income and property I would otherwise have under Texas law.

10. I am executing this agreement with intent to be bound fully by all its terms.

[WIFE]

EXECUTED in multiple originals on the dates and at the times of the acknowledgments shown below.

STATE OF TEXAS )

COUNTY OF [COUNTY] )

This instrument was acknowledged before me at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_.M. on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by [HUSBAND].

Notary Public, State of Texas

I, the notary public whose signature appears above, certify that I am not an attorney representing either party to this agreement.

STATE OF TEXAS )

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_ )

This instrument was acknowledged before me at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_.M. on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ by [WIFE].

Notary Public, State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I, the notary public whose signature appears above, certify that I am not an attorney representing either party to this agreement.

**Schedule A**

To Partition or Exchange Agreement between

[HUSBAND] and [WIFE]

**Property of [HUSBAND]**

1. All sums of cash in the possession of or subject to the control of [HUSBAND], together with all interest income, mutations, enhancements, and increases therefrom, including money on account in banks, savings institutions, or other financial institutions, which accounts stand in [HUSBAND]'s name or from which [HUSBAND] has a right to withdraw funds or which are subject to [HUSBAND]'s control, including but not limited to money on account in the following banks, savings institutions, or other financial institutions:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.**

2. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases, mutations, enhancements, interest income, and the proceeds therefrom, and all other rights related to any Keogh plan, profit-sharing plan, retirement plan, pension plan, annuity, money market investment account, individual retirement account, or like benefit program existing by reason of [HUSBAND]'s past, present or future employment, including but not limited to:

**None**

3. All wearing apparel, jewelry, and other personal effects in the possession of or subject to the control of [HUSBAND] or otherwise owned by him as of the date of this agreement.

4. All personal property, household furnishings, fixtures, artwork, antiques, china, silver, crystal, equipment, guns, and other household items currently in the possession of or subject to the control of [HUSBAND], as well as all other items otherwise owned by him as of the date of this agreement.

5. All policies of life insurance, including all cash values and any increases, mutations, enhancements, interest income, and dividend income received therefrom, insuring the life of [HUSBAND], including but not limited to the following:

|  |  |
| --- | --- |
| Life insurance company | Policy number |
|  |  |

**[HUSBAND]**

**[HUSBAND] shall be solely be responsible for the payments of this policy and shall keep such policy current. [WIFE] shall remain the primary beneficiary of this policy and [CHILD] shall be the contingent beneficiary of such policy.**

6. The [VEHICLES]

7. All business entities owned by [HUSBAND], including but not limited to the following:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

9. All other property and property rights set aside to [HUSBAND] under the terms of this Partition or Exchange Agreement.

[HUSBAND]

**Schedule B**

To Partition or Exchange Agreement between

[HUSBAND] and [WIFE]

**Property of [WIFE]**

1. All sums of cash in the possession of or subject to the control of [WIFE], together with all interest income, mutations, enhancements, and increases therefrom, including money on account in banks, savings institutions, or other financial institutions, which accounts stand in [WIFE]'s name or from which [WIFE] has a right to withdraw funds or which are subject to [WIFE]'s control, including but not limited to money on account in the following banks, savings institutions, or other financial institutions:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.**

2. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases, mutations, enhancements, interest income, and the proceeds therefrom, and all other rights related to any Keogh plan, profit-sharing plan, retirement plan, pension plan, annuity, money market investment account, individual retirement account, or like benefit program existing by reason of [WIFE]'s past, present or future employment, including but not limited to:

**None**

3. All wearing apparel, jewelry, and other personal effects in the possession of or subject to the control of [WIFE] or otherwise owned by her as of the date of this agreement, including, but not limited to all Tiffany jewelry and any jewelry gifted to [WIFE] by [HUSBAND], including gifts of jewelry that previously belonged to [HUSBAND]’s mother, as well as all jewelry currently located in a safe deposit box at Frost Bank in San Antonio, Texas.

4. All personal property, household furnishings, fixtures, artwork, antiques, china, silver, crystal, equipment, guns, and other household items currently in the possession of or subject to the control of [WIFE], as well as all other items otherwise owned by her or as of the date of this agreement, including any property selected by [WIFE] from her and [HUSBAND]’s current homestead and storage units.

5. All policies of life insurance, including all cash values and any increases, mutations, enhancements, interest income, and dividend income received therefrom, insuring the life of [WIFE], including but not limited to the following:

|  |  |
| --- | --- |
| Life insurance company | Policy number |
|  |  |

**[HUSBAND]**

6. The Partition obligations from [HUSBAND] to [WIFE] as set forth in this Partition and Exchange Agreement, including, but not limited to, Article 8.

7. [VEHICLES]

8. The following real property including but not limited to all rental income, sales proceeds, warranties, keys, house plans, service contracts, and utility deposits relating to it, and more particularly described as follows:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

9. All other property and property rights set aside to [WIFE] under the terms of this Partition or Exchange Agreement.

[WIFE]

**Schedule C**

To Partition or Exchange Agreement between

[HUSBAND] and [WIFE]

**Liabilities of [HUSBAND]**

1. All indebtedness due on any separate-property asset listed in Schedule A of this agreement, unless specifically provided herein to the contrary, including any debts personally guaranteed by [HUSBAND].

2. All obligations of [HUSBAND] specifically referred to in article 5 of this agreement.

3. All ad valorem taxes, personal property taxes, and assessments or other charges due or to become due in connection with any asset owned by [HUSBAND] as his separate property.

4. The balance due, including principal and interest, on all credit cards and charge accounts in [HUSBAND]'s name or [WIFE]’s name that are due and payable as of the date of his execution of this agreement, together with all amounts that may be charged or outstanding as of the date of the funding of the $1,000,000 to [WIFE]’s bank account, namely:

5. Outstanding [BILLS]

6. The partition obligations from [HUSBAND] to [WIFE] as set forth in this Partition and Exchange Agreement, including, but not limited to, Article 8, including any tax liabilities associated therewith.

7. All attorney's fees and other costs incurred by [HUSBAND] or [WIFE] in connection with the preparation of this Partition and Exchange Agreement, including reimbursement of all fees previously paid by [WIFE] with regards to this agreement.

8. All foreign, federal, and state income tax liabilities, including all penalties and interest, if any, of [HUSBAND] for the year 2020 and all prior years.

[HUSBAND]

**Schedule D**

To Partition or Exchange Agreement between

[HUSBAND] and [WIFE]

**Liabilities of [WIFE]**

1. All indebtedness due on any separate-property asset listed in Schedule B of this agreement, unless specifically provided herein to the contrary.

2. All obligations of [WIFE] specifically referred to in article 5 of this agreement.

3. All ad valorem taxes, personal property taxes, and assessments or other charges due or to become due in connection with any asset owned by [WIFE] as her separate property.

4. All foreign, federal, and state income tax liabilities, including all penalties and interest, if any, of [WIFE] for the year 2020 and all prior years.

[WIFE]