

**STATE OF NORTH CAROLINA
MECKLENBURG COUNTY**

**SEPARATION AND PROPERTY
SETTLEMENT AGREEMENT**

This Separation and Property Settlement Agreement between Jane Doe, of Mecklenburg County, North Carolina, hereinafter referred to as "Wife," and John Doe, of Mecklenburg County, North Carolina, hereinafter referred to as "Husband," (hereinafter referred to as the "Agreement") shall become effective as of the date that it has been executed by each party hereto;

WITNESSETH:

WHEREAS, Husband and Wife were lawfully married on _____ and lived together as husband and wife until on or about _____, at which time they separated with the intention of remaining separate and apart; and

WHEREAS, there were no children born of the marriage; and

WHEREAS, each of the parties is more than eighteen (18) years of age, and they desire to confirm their separation and to make arrangements in connection therewith, including the settlement and adjustment of their property rights and other rights, responsibilities, and obligations growing out of their marital relationship; and

WHEREAS, after consideration, each party having been advised of their right to seek independent legal, financial, or other professional counsel before entering into this Agreement, believes it is his or her own best interests to enter into this Agreement. Neither party is represented by an attorney, and both parties are proceeding *pro se*; and

WHEREAS, each party has read this Agreement, fully understands the terms, conditions, and provisions hereof and deems such to be fair, just, and equitable; and

WHEREAS, the parties desire to enter into this Agreement for the purpose of confirming in writing their mutual agreement to separate from each other, to release their rights to claim that their mutual separation itself constitutes an abandonment, constructive abandonment, or other ground for assigning fault, and, except as provided herein, to reserve all other rights and obligations that either party may have with respect to the marriage.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein contained and for other good and valuable consideration, the receipt of which is hereby acknowledged, each party stipulates, agrees, and covenants with the other as follows:

1. Representation of Parties. Neither party is represented by legal counsel, and both parties are proceeding *pro se*. Both parties acknowledge that they have the right to have counsel represent their interests with reference to all matters concerning the execution of this Agreement. Both parties further acknowledge that they are executing this Agreement of their own free will.
2. Agreement to Live Separate. It shall be lawful for each of the said parties at all times hereafter to live, and continue to live, separate and apart from each other; to reside from time to time at such place or places, and with person or persons, as either such party shall choose or deem fit; and to conduct, carry on and engage in any employment, business, trade, or profession that such

party may choose or deem fit, free from any control, authority, restraining, or interference, direct or indirect, by the other party, as fully and in all respects as if he or she were unmarried.

3. No Molestation or Interference. Neither party shall molest, harass, or interfere with the other party, nor compel, nor attempt to compel, the other party to cohabit or dwell with him or her by any means whatsoever.

4. Subsequent Divorce. This Agreement has not been entered into for the purpose of facilitating a divorce between the parties, but the parties do recognize the possibility that either of them may at some future time seek an absolute divorce from the other. Nothing herein contained shall be construed to prevent either party from instituting an action for absolute divorce against the other party in any jurisdiction. In the event that such action is instituted, the resulting decree of absolute divorce shall not impair or destroy the right of the Wife or the Husband to continue to receive the benefits and rights provided for under the terms of this Agreement but, on the contrary, all terms and provisions of this Agreement shall survive the same and be forever binding and conclusive on the parties hereto. Each party shall be responsible for paying his or her attorney's fees concerning the aforementioned divorce should either party choose to file for divorce at the appropriate time.

5. Division of Household and Personal Effects. Husband and Wife have split all household and personal effects by mutual agreement and the party having possession of said item(s) shall retain said item(s) as his or her personal property. Each party hereby renounces any and all title, claim, right, or interest in such property in the others' possession.

6. Vehicles. Each party shall take as their sole separate property their own vehicles. Each party shall be responsible for any and all payments, maintenance, repairs, insurance, and taxes for their respective vehicles. Contemporaneously with the execution of this Agreement, each party shall execute any and all instruments or documents necessary to effectuate transfer of title. Each party shall indemnify the other party and hold them harmless of any further obligations in regards to their respective vehicles.

7. Intangible Personal Property. The parties agree that they have divided all items of intangible personal property in a fair and equitable manner. Each of the parties hereby waives, releases, and relinquishes unto the other any and all right, title, claim and/or interest in the respective intangible personal property allotted to the other herein. Hereafter, neither party shall make any claim against the other inconsistent with this Agreement for any intangible personal property in the possession or under the control of the other.

8. Tangible Personal Property. Husband and Wife agree that they have divided all other items of personal property in a fair and equitable manner.

9. Real Property. During the course of the marriage, the parties acquired a residence and land, jointly titled to both parties, located at 123 Main Street, Huntersville, North Carolina, in Mecklenburg County (hereinafter known as "the Former Marital Residence" or "FMR"). Within thirty (30) days of the execution of this Agreement, the parties agree that they shall place the FMR on the market for sale. Wife shall live in the FMR until such time as it is sold. While Wife lives in the FMR, the parties agree that they shall split equally all payments, maintenance, repairs, insurance, and taxes for the FMR. Once the FMR is sold, the parties shall equally split the equity from the sale.

10. Retirement & Pension Accounts. The parties agree that they have divided any and all retirement and pension accounts in a fair and equitable manner. Both parties agree that they hereby relinquish any right, title, claim, and/or interest to any and all pension, profit sharing, 401(k), IRA, or other such retirement accounts the other party may maintain.

11. Marital Debt Distribution. The parties have acquired certain debt throughout the duration of the marriage, which shall be distributed as follows:

a. Husband shall have as his separate property any and all debts, credit cards, or loans not inconsistent with elsewhere in this Agreement made in his name only. Husband shall indemnify Wife and hold her harmless of the same.

b. Wife shall have as her separate property any and all debts, credit cards, or loans not inconsistent with elsewhere in this Agreement made in her name only. Wife shall indemnify Husband and hold him harmless of the same.

c. Husband and Wife confirm that they shall close any and all joint credit accounts within seven (7) days of the execution of this agreement.

d. Each of the parties hereby waives, releases, and relinquishes unto the other any and all liability and/or responsibility in the respective debt distribution allotted to the other herein. Hereafter, neither party shall make any claim against the other inconsistent with this Agreement for any liability and/or responsibility on any debt, credit card, or loan in his or her name. Further, each party agrees to execute any and all documents necessary to effectuate this section.

12. Equitable Distribution. Husband and Wife expressly acknowledge and agree pursuant to N.C.G.S. § 50-20 et. seq., that the division and distribution of marital property set forth herein is just, fair and reasonable, is deemed by the parties to be equitable, and that this Agreement shall be binding on the parties, their heirs and their assigns. Each party expressly waives any and all other rights, whether now in existence or acquired hereafter, to claim an Equitable Distribution under the laws of this or any other state and agrees that this provision and this Agreement may be pled in bar of any such claim for relief in any suit filed hereafter.

13. Disclosure of Marital Property. Each party hereto represents and warrants to the other that there has been a full and voluntary disclosure of all marital property subject to equitable distribution or division under the laws of the State of North Carolina, or where, applicable, any other jurisdiction. If either the Husband or Wife has failed to disclose to the other the existence of any marital property subject to equitable distribution under the laws of the State of North Carolina, or where applicable, any other jurisdiction, the party whose rights have been prejudiced thereby shall, at his or her election, be entitled to the following remedies in addition to those provided by law and equity:

a. To make application to the court for an Equitable Distribution as provided for under the laws of the State of North Carolina or any other appropriate jurisdiction, or to sue the other party for damages under this Agreement in an amount at least equal to his or her marital interest in the undisclosed property.

b. In addition, the party whose rights have been prejudiced by incomplete disclosure of marital property shall be entitled to recover reasonable attorney fees incurred in obtaining an equitable distribution of undisclosed property.

c. Should either party fail to disclose any marital asset having a value of other \$500.00 or any marital debt exceeding the sum of \$500.00, the aggrieved party shall have the option to sue the non-disclosing party in contract under this Agreement and if successful, shall be entitled to be awarded 75% of the value of undisclosed asset or if a marital debt is at issue, 75% of the amount of the debt shall be charged to the non-disclosing party. In addition, the prevailing party shall be entitled to an award of reasonable attorney fees and court costs.

14. Tax Returns. In the event that Husband and Wife are eligible to file a joint federal and/or state income tax return for any calendar year, and in the event that the parties' mutually elect to do so, Husband and Wife shall file a joint federal and/or state income tax return(s) for such calendar year(s), and in the event that such joint return(s) is (are) filed, Husband and Wife shall equally split any refund or deficiency owed. In the event the parties do not mutually elect to do so, Husband shall be entitled to his federal and/or state income tax return(s) solely and Wife shall be entitled to his federal and/or state income tax return(s) solely.

In the event of any assessment of a deficiency on the parties' income tax for any other year for which a joint return has been filed, the parties shall be jointly responsible for any money owed to the Internal Revenue Service or the North Carolina Department of Revenue, unless one party is determined to have been fraudulent. In that case, the fraudulent party shall be responsible for the deficiency. If a refund is granted to the parties because of a joint return for any tax year, the parties will divide said refund equally.

15. Tax Treatment of Exchanged Property. The parties acknowledge that the transfer of properties between them is to accomplish an equitable distribution of marital property and is incident to a divorce and is related to the cessation of the marriage as defined in Section 1041 of the Internal Revenue Code as amended by the Tax Reform Act of 1984. To the extent that an election is required by the parties under Section 1041 of the Internal Revenue Code as amended by the Tax Reform Act of 1984, the parties hereby make such election to have no gain or loss recognized on the properties transferred between them.

16. Alimony and Post-Separation Support. Neither party shall pay the other an obligation of alimony or post-separation support. Husband hereby waives any and all right he may have in making such a claim against Wife. Wife hereby waives any and all right she may have in making such a claim against Husband. Neither party shall petition the court in this or any other jurisdiction for making a determination of alimony or post-separation support in accordance with the N.C. General Statutes and, in the event that either party does make such a claim, the party against whom alimony or post-separation support is sought shall be entitled to recover attorney's fees and costs against the other for defending the same.

17. Reconciliation and Resumption of Marital Relations. In the event that the parties hereafter reconcile and resume their marital relations within the meaning of N.C.G.S. § 50-10.2, all of the provisions of this Agreement with respect to the division of the property of the parties shall nevertheless remain in full force and effect unless the parties modify the terms of this Agreement by a writing signed with the same formality as this writing signed after the date of their reconciliation and resumption of marital relations.

18. Husband's Release of Property and Inheritance Rights. Husband does hereby waive, release, discharge, quitclaim and renounce unto the Wife and her heirs and assigns:

a. All and every right to a share in the estate of the Wife upon her death as provided in N.C.G.S. 29-14 or otherwise, now and hereafter by law provided;

b. All and every right to elect to take a life estate in real property upon the death of a Wife in lieu of the share provided in N.C.G.S. 29-14, as provided in N.C.G.S. 29-30, or otherwise, now and hereafter by law provided;

c. All and every right to dissent from the Will of the Wife upon her death as provided in N.C.G.S. 30-1 or otherwise, now and hereafter by law provided;

d. All and every right to a year's allowance upon the death of the Wife as provided by N.C.G.S. 30-15 or otherwise, now and hereafter by law provided;

e. All and every right to administer upon the estate of the Wife upon her death as provided in N.C.G.S. 28-4.1 or otherwise, now and hereafter by law provided; and

f. All other rights or interests in property, both real and personal, which the Husband now has or may hereafter acquire arising out of or accruing to the Husband by reason of the death of the Wife, testate or intestate, and the Husband covenants and agrees well and truly to perform and abide by this Agreement.

g. This paragraph shall not be construed to prevent the effective transfer by the Wife to the Husband by inter vivos gift or by devise or bequest of any of her real or personal property, nor to prevent the Husband from serving as Executor of Wife's estate, should she so appoint him by her Will after the execution of this Agreement.

19. Wife's Release of Property and Inheritance Rights. Wife does hereby waive, release, discharge, quitclaim and renounce unto the Husband and his heirs and assigns:

a. All and every right to a share in the estate of the Husband upon his death as provided in N.C.G.S. 29-14 or otherwise, now and hereafter by law provided;

b. All and every right to elect to take a life estate in real property upon the death of a Husband in lieu of the share provided in N.C.G.S. 29-14, as provided in N.C.G.S. 29-30, or otherwise, now and hereafter by law provided;

c. All and every right to dissent from the Will of the Husband upon his death as provided in N.C.G.S. 30-1 or otherwise, now and hereafter by law provided;

d. All and every right to a year's allowance upon the death of the Husband as provided by N.C.G.S. 30-15 or otherwise, now and hereafter by law provided;

e. All and every right to administer upon the estate of the Husband upon her death as provided in N.C.G.S. 28-4.1 or otherwise, now and hereafter by law provided; and

f. All other rights or interests in property, both real and personal, which the Wife now has or may hereafter acquire arising out of or accruing to the Wife by reason of the death of the Husband, testate or intestate, and the Wife covenants and agrees well and truly to perform and abide by this Agreement.

g. This paragraph shall not be construed to prevent the effective transfer by the Husband to the Wife by inter vivos gift or by devise or bequest of any of his real or personal property, nor to prevent the Wife from serving as Executor of Husband's estate, should he so appoint her by his Will after the execution of this Agreement.

20. Mutual Rights to Convey Property Without Joinder of Other; Free Trader. Each of the parties hereto may henceforth purchase, acquire, own, hold, possess, and receive all rental and other income from property of every kind, nature and description, and each may sell, convey, transfer, dispose of, assign, and mortgage or otherwise encumber all property, whether real or personal, presently owned or hereafter acquired by such party, and execute deeds, bills of sale, deeds of trust and any and all other such documents without the consent or joinder of the other in as full a manner as if they were unmarried.

21. Modification of this Instrument. This instrument contains the entire agreement of the parties. Any modification of this instrument or waiver of any of its provisions shall be effective only if made in writing and executed with the same formality as this Agreement.

Any failure by either party to specifically perform or to enforce performance exactly according to the letter of this Agreement shall not constitute an alteration of the same by way of enlargement, waiver, reduction, estoppel, or otherwise, unless confirmed in writing by the parties. It is understood that the parties may, by mutual agreement, make temporary modification 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.

22. Binding Effect. Except as otherwise provided herein, all the provisions of this Agreement shall be binding upon the heirs, next of kin, executors, and administrators of each party.

23. Entire Agreement. This Agreement contains the entire understanding of the parties and there are no representations, warranties, covenants or undertaking other than those expressly set forth herein.

24. Remedies for Breach. If either party fails in the due performance of his or her obligations hereunder, the other party shall have the right, at his or her election, to seek the equitable remedy of specific performance, to sue for damages for breach of this Agreement or to rescind the Agreement and seek such other legal or equitable remedies as may be available to him or her.

Both parties acknowledge that neither party has a speedy or adequate legal remedy to compel compliance with the provisions of this Agreement, that neither party should be required to repeatedly file suit for any breach of this Agreement, that this Agreement is fair and equitable to both parties and that an order of specific performance enforceable by contempt is an appropriate remedy for breach by either party.

25. Voluntary Execution. The provisions of this Agreement and their legal effect have been fully explained to or studied by each and each party acknowledges that this Agreement is fair and

equitable, that it is being entered into voluntarily, that it is not the result of duress or undue influence and that each party believes that both parties are capable of performing each and every obligation imposed upon them by this Agreement.

26. Partial Invalidity. If any provision of this Agreement is held to be invalid or enforceable, all other provisions shall nevertheless continue in full force and effect.

27. Execution of Documents. The parties hereto agree to execute all documents reasonably necessary to effectuate the provisions of this Agreement.

28. Situs. This Agreement shall be construed under and governed by the laws of the State of North Carolina.

29. Attorney Fees. Each party shall be responsible for his or her respective attorney fees, if any, as it relates to this Agreement.

30. Suit Costs. In the event it becomes necessary to institute legal action to enforce compliance with the terms of this Agreement or by reason of the breach by either party of this agreement, then the parties agree that at the conclusion of such legal proceeding, the losing party shall be solely responsible for all legal fees and costs incurred by the other party, such fees and costs to be taxed by the court. The amount so awarded shall be in the sole discretion of the presiding judge and the award shall be made without regard to the financial ability of either party to pay, but rather shall be based upon the fees and expenses determined by the court to be reasonable and incurred by the prevailing party. It is the intent of this paragraph to induce both Husband and Wife to comply with the terms of this Agreement to the end that no litigation as between these parties is necessary in the areas dealt with in this Agreement. In the event of litigation, it is the further intent to specifically provide that the losing party pays all reasonable fees and costs that either party may incur.

IN WITNESS WHEREOF, the parties hereto have affixed their hands and seals in duplicate counterparts, effective the day and year the first above written.

_____ (SEAL) _____
JANE DOE, *Wife* Date

_____ (SEAL) _____
JOHN DOE, *Husband* Date

