

MOMMA TOLD ME I COULD HAVE THAT!

Settlement Agreements in Probate, Trust & Guardianship Cases

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I. Introduction/Scope of Article

In the Book of Proverbs, the Lord specifically regards six things the Lord hates, and the seventh the Lord detests:

1. A proud look.
 2. A lying tongue.
 3. Hands that shed innocent blood.
 4. A heart that devises wicked plots.
 5. Feet that are swift to run into mischief.
 6. A deceitful witness that utters lies.
 7. He that sows discord among his brethren.
- Proverbs 6: 16-19*

Notice how many of these seem to apply to disputes in probate and guardianship cases! Because litigation involving estates and incapacitated persons is fraught with emotion and discord among blood relatives, and usually results in messy trials, settling these cases prior to trial should be a priority. Although most settlements will not involve the parties “kissing and making up” at the end (in fact the opposite is more likely), they will bring to an end the issue of the division of power and assets or, at a minimum, provide a framework for the conclusion of the estate. Further, settlement agreements allow the parties to reach an agreement on a variety of matters which they would otherwise not be able to do if the case were tried.

This is not intended to be a scholarly article. There are the following excellent articles on the subject of settlement agreements, among others, which summarize the law in detail, and from which some material in this article has been borrowed:

- Sarah Patel Pacheco and Mickey R. Davis, *Settlement Agreements: Considerations When Negotiating, Drafting and Enforcing Settlement Agreements Involving Probate, Trust and Guardianship Disputes*, 33rd Annual

Advanced Estate Planning and Probate Course, Chapter 31, June 10-12, 2009, Houston, Texas (“Pacheco & Davis”);

- Mickey R. Davis, Julie K. Kwon, *The Morning After: Avoiding Tax Surprises in Trust & Estate Litigation*, Joint Fall CLE Meeting of Section of Taxation & Section of Real Property, Trust & Elder Law, September 27, 2007. Vancouver, British Columbia (“Davis & Kwon”); and
- Cheryl L. McMullan, *Settlement Agreements in Guardianships*, State Bar of Texas Advanced Guardianship Course, Chapter 9, March 6, 2009, Houston, Texas (“McMullan”);

Rather, this article is intended to serve as a practical tool for crafting settlement agreements to resolve those disputes and to highlight certain areas worth special consideration.

II. Summary of Law on Settlement Agreements

Despite the disclaimer regarding the non-scholarly nature of this article, it is nonetheless helpful to have a general overview of the law regarding settlement agreements before we talk about the typical disputes and specific provisions of a settlement agreement.

A. The Law Favors Family Settlement Agreements

Section 154.002 of the Texas Civil Practice & Remedies Code defines the public policy of the State:

It is the policy of this state to encourage the peaceable resolution of disputes, with special consideration given to disputes involving the parent/child relationship, including mediation of issues involving conservatorship,

possession and support of children, and the early settlement of pending litigation through voluntary settlement procedures.

Tex. Civ. Prac. & Rem. Code §154.002 (West 2012).

A family settlement agreement is an alternative method of administration in Texas that is a favorite of the law. *Salmon v. Salmon*, 395 S.W.2d 29, 32 (Tex.1965); *Estate of Morris*, 577 S.W.2d 748, 755–56 (Tex. Civ. App.—Amarillo 1979, writ ref'd n.r.e.). The theory underlying the validity of family settlement is stated in *Pitner v. United States*, 388 F.2d 651 (5th Cir.1967):

This approach is made possible by section 37 of the [Texas] Probate Code which provides that when a person dies leaving a will, [...] “all of his estate devised or bequeathed by such will shall vest immediately in the devisees or legatees;” [...] subject to the payment of the decedent's debts. This provision leaves the beneficiaries of an estate free to arrange among themselves for the distribution of the estate and for the payment of expenses from that estate.

Id. at 656.

The family settlement doctrine involves three basic principles: the decedent's right to make a testamentary disposition, the beneficiaries' right to convey their rights, and balancing those competing rights by requiring an agreement to an alternative distribution plan. *In re Estate of Halbert*, 172 S.W.3d 194, 199-200 (Tex. App.-Texarkana 2005, pet. denied). However, such an agreement generally requires all heirs' or beneficiaries' agreement on the distribution. *Pickelner v. Adler*, 229 S.W.3d 516, 524 (Tex. App.-Houston [1st Dist.] 2007, pet. denied).

B. Agreements To Be In Writing

Rule 11 of the Texas Rules of Civil Procedure provides:

Unless otherwise provided in these rules, no agreement between attorneys or parties touching any suit pending will be enforced unless it be in writing, signed and filed with the papers as part of the record, or unless it be made in open court and entered of record. Tex. R. Civ. P. 11 (West 2012).

Under Rule 11, no agreement between the attorneys or parties to a suit is enforceable unless it is in writing, signed, and filed with the papers as part of the record, or unless it is made in open court and entered of record. *Id.*; *Green v. Midland Mortg. Co.*, 342 S.W.3d 686, 690 (Tex. App.-Houston [14th Dist.] 2011). A settlement agreement must comply with Rule 11 to be enforceable. *Id.*; *See Padilla v. LaFrance*, 907 S.W.2d 454, 460 (Tex.1995). To satisfy the “in writing” component of Rule 11, the contract principles that are used in determining whether a “writing” satisfies the statute of frauds apply equally to Rule 11 agreements. *Green v. Midland Mortg. Co.*, 342 S.W.3d at 690-691. Thus, “there must be a written memorandum which is complete within itself in every material detail, and which contains all of the essential elements of the agreement, so that the contract can be ascertained from the writings without resorting to oral testimony.” *Id.* at 691. The written memorandum, however, need not be contained in one document. *Id.*

C. Enforceability of Settlement Agreements

If parties reach a settlement agreement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract. Tex. Civ. Prac. & Rem. Code Ann. § 154.071(a) (West 2012). Section 154.071 of the Texas Civil Practice and Remedies Code provides:

(a) If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract.

(b) The court in its discretion may incorporate

the terms of the agreement in the court's final decree disposing of the case.

(c) A settlement agreement does not affect an outstanding court order unless the terms of the agreement are incorporated into a subsequent decree.

Tex. Civ. Prac. & Rem. Code Ann. § 154.071 (West 2012)

That a party withdraws his consent to an agreement prior to the entry of judgment does not make the settlement agreement unenforceable. *Stevens v. Snyder*, 874 S.W. 2d 241, 244 (Tex. App.-Dallas 1994, writ denied). Contract law governs the agreement. *Id.* Therefore, a party can enforce the settlement through a suit for breach of contract. *Id.* A court cannot render a valid consent judgment unless, at the time of rendition, all parties consent to the agreement underlying the judgment. *Burnaman v. Heaton*, 240 S.W.2d, 288, 291 (Tex. 1951). Once the court renders judgment, the party cannot withdraw consent to the agreement. *Giles v. Giles*, 830 S.W.2d 232, 234 (Tex. App.-Fort Worth 1992, no writ). When is a judgment rendered? The Texas Supreme Court addressed the issue in *Reese v. Piperi*, 534 S.W. 2d 329 (Tex. 1976), wherein the Court stated:

The rendition of judgment is a present act, either by spoken word or signed memorandum, which decides the issues upon which the ruling is made. The opportunities for error and confusion may be minimized if judgment will rendered only in writing and signed by the trial judge after careful examination. Oral rendition is proper under the present rules, but orderly administration requires that form of rendition be in and by spoken words, not in mere cognition, and to have effect only insofar as those words state the pronouncement to be a present rendition of the judgment.

Id. at 330.

D. Interpretation of Settlement Agreements

A settlement agreement is a contract, and its construction is governed by legal principles applicable to contracts generally. *Donzis v. McLaughlin*, 981 S.W.2d 58, 61 (Tex.App.-San Antonio 1998, no pet.); *Garza v. Villarreal*, 345 S.W.3d 473, 479 (Tex. App. - San Antonio 2011, rev. denied). The court's primary concern in interpreting a contract is to ascertain the true intent of the parties as expressed in the contract. *Seagull Energy E & P, Inc. v. Eland Energy, Inc.*, 207 S.W.3d 342, 345 (Tex. 2006). Courts interpret Rule 11 settlement agreements based on the intention of the parties from the language of the entire agreement in light of the surrounding circumstances, including the state of the pleadings, the allegations therein, and the attitude of the parties with respect to the issues. *Lesikar v. EOG Resources, Inc.*, 236 S.W.3d 457, 458–59 (Tex.App.-Amarillo 2007, no pet.); *In re Acevedo*, 956 S.W.2d 770, 775 (Tex.App.-San Antonio 1997, orig. proceeding). Although courts may consider the facts and circumstances surrounding the execution of the settlement agreement, such consideration “is simply an aid in the construction of the contract's language.” *Sun Oil Co. v. Madeley*, 626 S.W.2d 726, 731 (Tex.1981). “If, in the light of surrounding circumstances, the language of the contract appears to be capable of only one meaning, the court can then confine itself to the writing.” *Id.* 678 In construing a contract, courts examine the instrument as a whole in an effort to harmonize and give effect to all the provisions of the contract so that none will be rendered meaningless. *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 229 (Tex. 2003). Courts give terms their plain, ordinary, and generally accepted meaning unless the contract shows the parties used them in a technical or different sense. *Am. Mfrs. Mut. Ins. Co. v. Schaefer*, 124 S.W.3d 154, 158–59 (Tex.2003). In construing a settlement agreement, a court may not rewrite the contract or add to its language. *Id.* at 162. Ambiguity is a question of law, which a court may determine regardless of whether the parties have raised the issue. *See Coker v. Coker*, 650 S.W.2d 391, 392–95 (Tex.1983)

III. Typical Disputes in Probate, Guardianship, and Trust cases

Suits relating to estates, trusts, and guardianships obviously vary from case to case. However, the following is an overview of the more common types of disputes in each area:

A. Probate/Wills/Heirships

1. Will contest – testamentary capacity or undue influence;
2. Will contest – revocation by later will or codicil;
3. Will contest - defect in formalities;
4. Will contest - fraudulent actions;
5. Holographic wills- is it a valid will?
6. Will interpretation/Poorly drafted will;;
7. Dispute as to distribution of personal effects/presence of testator’s memorandum ;
8. Disputes arising out of ownership of undivided interests/partition;
9. Dispute between children from prior marriage and surviving spouse relating to homestead dispute, family allowance, and exempt property;
10. Objections to Inventory/property characterization issues;
11. Disputes relating to non-probate assets:
 - a. Variation between beneficiary designations and will;
 - b. Failure to designate beneficiary;
 - c. Failure to designate contingent beneficiary;
- d. Unintended JTROS;
12. Failure to fund by-pass trust after first death;
13. Breach of fiduciary duty by executor;
14. Breach of fiduciary duty by agent under durable power of attorney during Decedent’s lifetime;
15. Challenge to executor qualifications or suitability;
16. Removal of executor or administrator;
17. Disagreement between co-executors;
18. Accounting and tax issues;
19. Distributions- amount, timing, in kind, and partition;
20. Attorney’s fees-disputes as to who gets them, who does not, and amount/reasonableness;
21. Dispute as to executor and administrator’s compensation;
22. Creditor claims-
 - a. Suits by creditors against executor or heirs;
 - b. Secured creditor issues/notice, creditor acts too fast or wrongly/foreclosure issues;
23. Suits by executor against third parties ;
24. Heirship issues
 - a. The alleged child/DNA testing;
 - b. Child adopted by estoppel;
 - b. Common law spouse;

25. Tax issues- dispute as to who pays, dispute as to necessity of Form706.

B. Trust Disputes

1. Removal of Trustee;
2. Resignation of Trustee;
3. Modification of trust;
4. Termination of trust;
5. Breach of fiduciary duty by Trustee;
6. Accounting and notice issues;
7. Disputes as to amount and timing of distributions;
8. Conflicts between current and future beneficiaries;
9. Disputes between Co-Trustees;

C. Contested Guardianships

1. Ward's contest as to incapacity;
2. Family member/interested party's contest as to capacity of ward;
3. Ward's contest as to suitability of applicant/applicant's ability to be bonded;
4. Dispute between two co-applicants;
5. Validity of ward's powers of attorney and pre-designation of guardian;
6. "Dueling" powers of attorney; actions of agent under power of attorney;
7. Section 867 Trusts- dispute as to whether trust is in ward's best interest, what should be placed in trust, who should be trustee;

8. Attorney's fees/issue of good faith of applicant/counter-applicant;

9. Visitation issues;

11. Conflict over ward's residence;

12. Dispute between non-incapacitated spouse and ward's family;

13. Modification or termination of Guardianship.

IV. Key Terms in Settlement Agreements

The following is a summary of some of the key terms to include in settlement agreement. The list was borrowed from Pacheco & Davis, with some revisions, with the permission of the author. The lists are non-exclusive and are meant to be for illustration purposes only. The actual facts and circumstances of the case should dictate the actual provisions and agreements.

A. Will Contests

The following is a basic checklist for settlement of a will contest:

1. Parties

- a. State all names
- b. Identify all relevant capacities (i.e. executor, trustee, heir, beneficiary, etc.)
- c. Make sure each party is signing in all relevant capacities
- d. Address whether signature of any ad litem is necessary.

2. Recitals

- a. Identify decedent and date of death
- b. State facts giving rise to contest or dispute

- c. State facts evidencing each settling party's standing and validity of his or her claim
 - d. Identify pending legal action, including court, style of case, etc.
 - e. State that settlement is to avoid continued litigation and buy peace (and reduce continued attorney's fees and costs of suit!) Consider language describing the nature of the bona fide dispute so as to deal with potential gift tax issues. (See Section VII infra for a more thorough discussion of the gift tax issue.)
- 3. Definitions and scope**
- a. Define claims being settled
 - b. Define relevant entities and persons included in settlement, i.e. trusts, businesses, etc.
 - c. State what claims or matters, if any, are excluded from agreement
 - d. Define relevant terms – including successors, affiliates, predecessors, litigation, transactions, etc.
- 4. Recite consideration**
- a. Good and valuable
 - b. Other payments provided under terms have been negotiated
- 5. Terms of settlement**
- a. Division of estate assets
 - (1) Describe property each person or party to receive
 - (2) Time to deliver
 - (3) Manner to divide (see more
 - b. Thorough discussion on suggested ways to divide personal property in Section V, infra
 - (4) Whether appraiser must be obtained and, if so, who is responsible
 - (5) Who pays shipping and delivery costs
 - (6) Who pays/responsible for storage and insurance pending distribution
 - (7) Should a bill of sale be prepared and, if so, who prepares
 - (8) Who prepares deeds for real property
 - (9) How disputes should be settled
 - (10) Disclaimers or assignments
 - (11) Method to divide unknown, undisclosed or lost assets
 - b. Continued administration of estate
 - (1) Who will be appointed or continue to serve as the personal representative of the estate
 - (2) Limitation on personal representative's powers, if any
 - (3) Reporting requirements to parties or third parties
 - (4) Time period to close estate
 - (5) Payment of fees and expenses
 - (6) Right to compensation
 - (7) Responsibility to execute conveyance documents
 - c. Waiver of statutory rights

- (1) Homestead
- (2) Family allowance
- (3) Exempt property

6. Taxes and Debts

- a. Who is responsible for preparing and filing last income tax return, any gift tax returns and death tax returns
- b. Surviving spouse's responsibility to pay income taxes for period prior to spouse's death
- c. Who is responsible for payment of taxes, penalties and interest
- d. How and when debts and administration expenses will be paid
- e. Who is responsible for payment of debts and administration expenses
- f. Disclosures as to known debts and taxes due
- g. Tax apportionment – residuary, Section 322A, otherwise
- h. Will parties be entitled to request copy of death and income tax return
- i. Right to access tax records and, if so, periods to be provided
- j. Indemnity for income, death, and gift taxes and related penalties and interest
- k. Payments do not constitute distributable net income to recipient
- l. How will court costs and appointee fees be paid

7. Representations

- a. Capacity of parties
- b. Disclosure of assets
- c. Authority to act in stated capacity
- d. Party has not assigned, pledged or disclaimed interest
- e. Discharge any reliance on statement by any other party's attorney or advisor
- f. Include disclaimer of reliance other than expressly stated in written settlement agreement

8. Release and indemnities

- a. Release claims
- b. Limitations in release of parties and/or attorney or other advisors if desired
- c. Exclude obligations under settlement agreement from release
- d. Verify all required parties are releasing and being released in all desired capacities
- e. Verify successor, affiliates and predecessor are released, if desired
- f. Verify all agents, heirs, etc. are bound
- g. Indemnities for taxes, third party claims, tenant claims, environmental claims, alleged spouses, etc.

9. Disposition of litigation

- a. Dismissal with prejudice
- b. Consent judgment
- c. Time to dispose

- d. Who is responsible for preparation of paperwork
- e. Rights of counsel to review
- f. Whether parties must attend hearing

mediator/arbitrator)(see more thorough discussion of this issue in Section VI infra.)

- l. Statement that parties and counsel in good faith and with just cause
- m. Effective date
- n. Court approval

10. Remedies in default

- a. Settlement agreement enforced as contract
- b. Settlement agreement to be incorporated in judgment and enforced accordingly
- c. Specific performance
- d. Right to attorneys fees and expenses

B. Trust Suits

The following is a basic checklist relating to a lawsuit involving the administration, modification, or termination of a trust:

1. Parties

- a. State all names
- b. State all relevant capacities
- c. Define appropriately
- d. State how minors and unknown beneficiaries are bound
- e. Address whether signature of any additional items are necessary.

11. Miscellaneous

- a. Agreement supersedes any oral or prior agreements (exclude any agreements to remain in effect)
- b. Agreement must be modified in writing
- c. Choice of law
- d. Incorporate exhibits
- e. Advice of own counsel
- f. Whether agreement can be executed in multiple counterparts
- g. Whether facsimile signature same as original
- h. Where future notices should be sent
- i. Confidentiality agreement
- j. Heading and titles are for descriptive purposes only
- k. Agreement to mediate/arbitrate future disputes (and identification of

2. Recitals

- a. Identify trust or trusts at issue
- b. Identify trustees
- c. State facts giving rise to contest or dispute
- d. State facts evidencing each settling party's standing and validity of his or her claim
- e. Identify pending legal action, including court, style of case, etc.
- f. State settlement to avoid continued

litigation, buy peace, etc.

3. Definitions and scope

- a. Define claims
- b. Define relevant entities and persons included in settlement, i.e. other trusts, partnerships, businesses, etc.
- c. State what claims or matters, if any, are excluded from agreement
- d. Define relevant terms – including successor, affiliates, predecessors, litigation, transactions, etc.

4. Recite consideration

- a. Good and valuable
- b. Other payments provided under terms negotiated

5. Terms of settlement

- a. Resignation of Trustee
 - (1) Basis for resignation
 - (2) Time for resignation
 - (3) Any contingent events or actions
 - (4) Appoint successor trustee
 - (5) Means to qualify
 - (6) Who must bring suit to seek appointment, if necessary
- b. Distribution standard issues
 - (1) How future distributions will be determined
 - (2) Documentation beneficiaries must submit to support future

distributions

- (3) Property to be distributed in settlement of claims for failure to distribute sufficient amounts in past
- (4) Whether payments are from income or principal
- (5) How past, current and future payments will be accounted for
- c. Disclosure, discharge and redress
 - (1) Disclosures of Books, Records and Accounts
 - (2) Successor trustee has no duty to redress
 - (3) Judicial accounting
 - (4) Indemnify successor trustee from claims of unknown or minor beneficiary or third parties
 - (5) Time and place books and records will be made available
- d. Breach of fiduciary duty
 - (1) Payment from fiduciary to trust and/or beneficiary
 - (2) Return of trustee fees and expenses paid by trust
 - (3) Return of compensation by trustee
 - (4) Whether payment to trustee and property taken by trustee will constitute income to trustee
 - (5) Note or other means to secure payments
- f. Continued administration of trust

- (1) Who will be appointed or continue to serve as the trustee of the trust
- (2) Future reporting requirements to parties or third parties
- (3) Payment of trustee's fees and expenses
- (4) Right to compensation

6. Termination or modification of trust

a. Termination

- (1) Basis for termination
- (2) Means to terminate – agreement or by court
- (3) Who prepares paperwork and pleadings
- (4) Payment of any debt, obligations and taxes
- (5) How pending debts, notes, leases, contracts or other obligations will be handled
- (6) Tax effects of termination – income and GST

b. Modification

- (1) Provision(s) to be modified
- (2) Basis for modification
- (3) Means to modification – agreement or by court
- (4) Who prepares paperwork and pleadings
- (5) Tax implications
- (6) GST considerations

7. Tax matters

- a. Consider tax implications
- b. Obtain tax opinions
- c. Request private letter rulings
- d. Who is responsible for filing tax returns
- e. Whether distributions will take into account the amount of taxes the beneficiary must pay
- f. Will settlement result in loss of GST “grandfathered” status

8. Representations

- a. Capacity of parties
- b. Disclosure of assets
- c. Authority to act in stated capacity
- d. Party has not assigned, pledged or disclaimed interest
- e. Discharge any reliance on statement by any other party's attorney or advisor Include disclaimer of reliance other than expressly stated in written settlement agreement

9. Release and indemnities

- a. Release claims
- b. Limitations in release of parties and/or attorney or other advisors
- c. Exclude from release obligations under settlement agreement
- d. Verify all required parties release and are released in all desired capacities
- e. Verify successor, affiliates and

predecessor are released, if desired

- f. Verify all agents, heirs, etc. are bound
- g. Indemnities for taxes, third party claims, tenant claims, environmental claims, alleged spouses, etc.

10. Disposition of litigation

- a.. Dismissal with prejudice
- b. Consent judgment
- c. Time to dispose
- e. Who is responsible for preparation of paperwork
- f. Rights of counsel to review
- g. Whether parties must attend hearing

11. Remedies in default

- a. Settlement agreement enforced as contract
- b. Settlement agreement to be incorporated in judgment and enforced accordingly
- c. Specific performance
- d. Right to attorneys fees and expenses

12. Miscellaneous

- a. Agreement supersedes any oral or prior agreements (exclude any agreements to remain in effect)
- b. Agreement must be modified in writing
- c. Choice of law
- d. Incorporate exhibits
- e. Advise of own counsel

- f. Whether agreement can be executed in multiple counterparts
- g. Whether facsimile signature same as original
- h. Where future notices should be sent
- i. Confidentiality agreement
- j. Heading and titles are for descriptive purposes only
- k. Agreement to mediate/arbitrate future disputes (see more thorough discussion of this issue in Section VI infra.)
- l. Effective date
- m. Court approvals, if any

C. Guardianship Suits

The following is a basic checklist for settlement of a guardianship contest:

1. Parties

- a. State all names
- b. State all relevant capacities
- c. State any ad litem joining as parties

2. Recitals

- a. Identify guardianship matters at issue
- b. State facts giving rise to contest or dispute
- c. State facts evidencing each settling party's standing
- d. Identify pending legal action, including court, style of case, etc.

- e. State settlement to avoid continued litigation and buy peace, etc.

3. Definitions and scope

- a. Define claims
- b. Define any released entities and persons included in settlement, i.e. other trusts, partnerships, businesses, etc.
- c. State what claims or matters, if any, are excluded from agreement
- d. Define relevant terms – including successor, affiliates, predecessors, litigation, transactions, etc.

4. Recite consideration

- a. Good and valuable

5. Appointment of Guardian

a. General issues

- (1) Will guardian be appointed – person and/or estate
- (2) If not, ward competent or less restrictive means
- (3) Validity of POA, trust, etc.,
- (4) If guardian appointed, who will be appointed guardian – person and/or estate (Note that this will be subject to court approval. See Section VIII for a more thorough discussion on the issue of court approval.)
- (5) Hearing and who will attend
- (6) Waiver by anyone with priority to serve permanent/limited

- (7) Who serves as representative payee for social security

- (8) Provision to appoint future guardians

- (9) Notice of future appointments

- (10) Bond requirements

- (11) Guardian’s compensation

- (12) Continued appointment of ad litem(s)

- (13) Who prepares paperwork and time frame to do so

- (14) Parties’ right to be involved in future hearings

- (15) Living arrangements

- (16) Funeral arrangements – right to plan

b. Property issues

- (1) Agreements as to ward’s community or separate property

- (2) Rights of spouse to manage community property - 883 or otherwise

- (3) Partition or exchange agreement

- (4) Guardian’s authority to manage community estate

- (5) Annual gifting – allowed and notice requirements

- (6) Notice of sales or significant transfers

- (7) Payment of fees and expenses

- (8) Coordination with any trusts or

other entities

- (9) Rights of parties to access and audit guardian's books and records
- (10) Expenses to be paid by guardian versus wife, trustee or other third party
- (11) Right to divorce ward
- (12) Homestead rights
- (13) Who pays ad litem and applicant's fees and expenses

6. Termination or modification of guardianship

a. Termination

- (1) Basis for termination
- (2) Who prepares paperwork and pleadings
- (3) Payment of any debt, obligations and taxes
- (4) Ad litem's consents
- (5) Doctor's letter or other medical opinion

b. Modification

- (1) How guardianship will be modified
- (2) Basis for modification
- (3) Doctor's letter or other medical opinion
- (4) Who prepares paperwork and pleadings
- (5) What powers will ward have

(6) What powers will guardian have

7. Representations

- a. Capacity of parties
- b. Disclosure of assets
- c. Authority to act in stated capacity
- d. Discharge any reliance on statement by any other party's attorney or advisor
- e. Include disclaimer of reliance other than expressly stated in written settlement agreement

8. Release and indemnities

- a. Release claims
- b. Limitations in release of parties and/or attorney or other advisors
- c. Exclude release for obligations under settlement agreement
- d. Verify all required parties release and are released in all desired capacities
- e. Verify successor, affiliates and predecessor are released, if desired
- f. Verify all agents, heirs, etc. are bound
- g. Indemnities for third party claims

9. Disposition of litigation

- a. Dismissal with or without prejudice
- b. Time to dispose
- c. Who is responsible for preparation of paperwork
- d. Who must execute written waivers

- e. Who must withdraw/dismiss contests
- f. Rights of counsel to review
- g. Whether parties must attend hearing

10. Remedies in default

- a. Settlement agreement enforced as contract
- b. Settlement agreement to be incorporated in judgment and enforce accordingly
- c. Right to attorneys fees and expenses

11. Miscellaneous

- a. Agreement supersedes any oral or prior agreements (exclude any agreements to remain in effect)
- b. Applicant for guardianship was in good faith and just cause
- c. Agreement must be modified in writing
- d. Choice of law
- e. Incorporate exhibits
- f. Advise of own counsel
- g. Whether agreement can be executed in multiple counterparts
- h. Whether facsimile signature same as original
- i. Where future notices should be sent
- j. Heading and titles are for descriptive purposes only
- k. Agreement to mediate/arbitrate future disputes (see more thorough discussion of this issue in Section VI infra.)

- l. Effective date
- m. Court approvals, if any (See Section VIII for a more thorough discussion on the issue of court approval)

V. Suggestions for Resolving Disputes Over Division of Personal Property

Most probate lawyers agree that estate disputes often get deadlocked over the division of items of personal property or “heirlooms” rather than over cash and real estate or other more valuable items. When the decedent has failed to make specific bequests in the will or provide a personal property memorandum, and simply just leaves everything “share and share alike,” the conflict as to who gets what begins. Inevitably, one beneficiary will contend that mother promised her a particular item or she may remind the family: “You know mother always wanted me to have that.” The problem is that such oral statements are not controlling. The statute relating to oral wills (formerly Section 86 of the Texas Probate Code) was repealed in 2007. Therefore, the family must find creative ways in which to divide the personal property. The following are some suggested methods of dividing the personal property assets:

1. Sell everything through an estate sale and divide the proceeds. Items which do not sell can be donated to charity.
2. Conduct a public auction and divide the proceeds. Items which do not sell can be donated to charity.
3. Conduct a private auction within the family.
4. Use the “lottery method” whereby the heirs draw numbers determining the order in which they'll be allowed to choose property to keep. They then take turns picking one item of property, and the process repeats itself until all the decedent's property has been distributed.

5. Divide property using the “Sports Draft method”, which is for dividing a group of similar items of varying value. Have an appraiser evaluate the collection and note each item's market value. Draw straws for first round pick order and each person selects one item. At the end of the first round, reveal the value of the picks. Then you continue to pick, but the order continually shifts as the accumulated value of any person's items changes. For example, if Billy's first pick had the lowest value, Billy continues to pick items until the value of his items is greater than someone else's. Then that person picks an item or items until their picks are no longer lowest total value. If Sally picks an item that is extremely valuable, she will have to sit out a couple of rounds to let the others catch up with her.
6. Place your possessions into groups of items having approximately equal value. Then draw numbers among children or grandchildren to determine who gets which group or lot of goods. Children having received a group of items are free to trade or sell selected items to anyone else who may want them.
7. Another idea some families use is to have the children take back any gifts they have given to the parents during their lifetime. Then all remaining possessions are divided using a method listed previously.
8. Let the executor decide.

Only immediate heirs should be involved in the division process during the settlement of the estate. All others (spouses, children, grandchildren, in-laws and friends) should not participate, especially at the start of this process.

VI. Arbitration Clause or Not?

In many mediated settlement agreements, the parties will add a mediation clause requiring them to return to mediation with the same mediator first before going to court to attempt to resolve any disputes under the agreement. Some parties choose to go further and add an arbitration clause in the event there is a future dispute arising under the settlement agreement.

If the parties choose to have an arbitration clause, one issue is the selection of the arbitrator. Many agreements provide that the mediator who mediated the case will also serve as the arbitrator. A mediator may also serve as an arbitrator if the parties consent. *In re Provine*, 312 S.W.3d 824, 829 (Tex. App.-Houston [1st Dist.] 2009, orig. proceeding); see *In re Cartwright*, 104 S.W.3d 706, 714 (Tex. App.-Houston [1st Dist.] 2003, orig. proceeding) (noting mediator should not act as arbitrator in the same or a related dispute without the express consent of the parties). Some parties, however, are reluctant to agree to the mediator serving as the arbitrator because he has already “seen their dirt” or, perhaps, they feel the mediator is biased against them.

The following is an example of an arbitration clause (borrowed from Pacheco & Davis):

Any disputes relating to the terms of this Agreement will be decided by Judge _____ by motion submitted by any Party and, if requested, oral argument; provided, in the interests of time any Party may request that [Name of Arbiter] arbitrate such disputes on a binding basis; provided, the non-prevailing Party (as determined by [Name of Arbiter]) shall pay [Name of Arbiter]’s fees and expenses. Any Party wishing to submit an issue to [Name of Arbiter] for arbitration shall provide written notice of the requested arbitration or request to all other Parties and [Name of Arbiter]. The written notice of arbitration shall provide a brief description of the nature of the dispute and the resolution sought by the requesting Party. The

non-requesting Party shall have three business days to either agree to the resolution sought by the requesting Party or state their objection to the resolution requested. If an agreement is not reached by the Parties within three (3) business days of the submission of the non-requesting Party's response, [Name of Arbitrator] shall arbitrate the dispute pursuant to the Texas Arbitration Act. The Party or Parties prevailing in an arbitration proceeding herein or in a legal proceeding brought in a court of competent jurisdiction to enforce or preserve the rights awarded pursuant to an arbitration proceeding herein, including all appeals, shall be entitled to recover from the non-prevailing Parties all costs and expenses incurred by the prevailing Parties with respect to all of the proceedings, including reasonable attorney's fees. The decision of the arbitrator shall be final as between the Parties and may be enforced or preserved upon application to any court of competent jurisdiction.

Some parties have remorse over agreeing to an arbitration clause and try to get around its enforceability. The party seeking arbitration has the initial burden to establish his right to the remedy under the contract; that is, to establish that a valid arbitration agreement exists. *Dallas Cardiology Associates, P.A. v. Mallick*, 978 S.W.2d 209, 212 (Tex. App.-Texarkana 1998, pet. denied). Texas courts have concluded that once the existence of an arbitration agreement has been established, then a presumption attaches favoring arbitration. *Id.* At this point, the burden of proof shifts to the party seeking to avoid the arbitration agreement to show that some grounds exist in law or equity for the revocation of the contract. *Id.* Such grounds could include fraud, waiver, unconscionability, or that the dispute was not within the scope of the agreement. *Id.* Texas law favors arbitration. *Kosty v. S. Shore Harbour Cmty. Ass'n, Inc.*, 226 S.W.3d 459, 463 (Tex. App.-Houston [1st Dist.] 2006, pet. denied).

In determining whether to compel arbitration, the court must decide two issues: (1) whether a valid, enforceable arbitration agreement exists, and (2)

if so, whether the claims asserted fall within the scope of the agreement. *Dallas Cardiology*, 978 S.W.2d at 212. The court has no discretion and must compel arbitration if the answer to both questions is affirmative. *Id.* Doubts regarding the scope of arbitration agreements are resolved in favor of arbitration. *Id.*

VII. Tax Considerations in Settlement Agreements

The parties must be careful to consider certain tax considerations with respect to the settlement. There may be issues relating to the estate tax, income tax, and gift tax. A thorough and detailed discussion of this issue is beyond the scope of this article. Two excellent and thorough discussions of tax implications in settlements are found in Pacheco & Davis and Davis & Kwon (from which this discussion was borrowed, in part).

However, some discussion of one of the more common tax issues in an estate settlement is warranted. Assume a testator leaves a will bequeathing her entire estate to her three children in equal shares. However, the testator had a bank account on which she put one of her daughter's names and which was set up as joint with right of survivorship. Upon the testator's death, the bank account passes to the daughter who was the joint account holder rather than to three children equally because it passed by way of contract and not by testamentary instrument. As one can imagine, the two children who were not named on the account are "disappointed," to say the least, especially if a significant portion of the estate was in the account. The other children may challenge whether the testator intended to make the account joint with right of survivorship or they may contend the testator did not have the mental capacity to change the account or was coerced or influenced into setting up the account as joint with right of survivorship. They may also contend that there was a mistake in the selection of the type of account. Therefore, one of the disputes may involve an attempt to divide the account more equally. However, since the child who was the beneficiary of the account became the owner at

the death of the decedent, is that person making a taxable gift to her siblings if she decides to share the account or give up a portion of the account? The answer is...maybe.

Section 2501(a) of the Internal Revenue Code provides that a tax is imposed for each calendar year on the transfer of property by gift during such calendar year by any individual resident or nonresident. Internal Revenue Code §2501(a). The gift tax is assessed on any transfer that is not in the ordinary course of a business enterprise and which is for less than full and adequate consideration. Donative intent is immaterial to the federal gift tax. Therefore, in any settlement when there may be no donative intent whatsoever, parties may be exposed to gift tax liability in a compromise or settlement of their rights or interests in the estate or trust property. It is also significant that the federal gift tax applies to *any* transfer of property by an individual for less than full consideration, regardless of whether the transfer is *direct or indirect*. Internal Revenue Code §§2501, 2511. Where property is transferred for less than an adequate and full consideration in money or money's worth, the amount by which the value of the property exceeds the value of the consideration constitutes a taxable gift. IRC §2512. If applied mechanically, this test would require the review of each settlement to assess whether the values of the resulting respective benefits for all parties were equal and any discrepancy could result in a taxable gift.

As a result of *Comr. v. Estate of Bosch*, 387 U.S. 456 (1967) and its progeny, the IRS has adopted the rule that a settlement agreement among family members may subject the parties to gift tax unless they establish that it is a bona fide compromise of legitimate, enforceable claims and, to the extent possible, produces an economically fair result. PLR 9716011 provides:

Thus, state law must be examined to ascertain the legitimacy of each party's claim. If it is determined that each party has a valid claim, the Service must determine that the distribution under the settlement reflects the

result that would apply under state law. If there is a difference, it is necessary to consider whether the difference may be justified because of the uncertainty of the result if the question were litigated. . . . We recognize that, because of the uncertainty of litigation over the issues presented, determining a precisely correct allocation of trust assets is difficult. We believe the settlement agreement provides an allocation of the trust assets that is within a range of reasonable settlements considering the state court decisions that address the issues. That is, the interests to be received by the parties (both as to the nature of the interests and their economic value) are consistent with the relative merit of the claims asserted by the parties. PLR 9716011.

Accordingly, any settlement should be reviewed for any departure from the range of reasonable amounts that parties could recover as legitimate claims under state law that may subject the parties to gift tax. To avoid future issue, the settlement agreement should reflect that an actual bona fide dispute exists between the parties. It is advisable to expressly set out the basis for each person's claim in the settlement agreement. In a will contest scenario, the agreement should identify the name of each party, and their interest or standing in the proceeding, i.e., spouse, common law spouse, heir, beneficiary under prior will, etc. This allows the IRS to determine from the settlement agreement the validity of each person's potential claim and possibly avoid a full tax audit.

(I would also like to thank Michael J. Cenatiempo for his input and assistance on this section.)

VIII. Special Considerations for Guardianship Settlements

For most settlements, court approval is not required unless the matter involves a minor. However, in guardianship cases, the court must approve any settlement. Despite the parties' agreement as to whether a guardianship or trust should be established, the extent of the guardianship, and the identity of the guardian(s) or trustee(s), the court must nonetheless find by clear and convincing evidence that the proposed ward is an incapacitated person. Tex. Prob. Code §684(a)(1) (West 2012). The court must also find by clear and convincing evidence that the establishment of the guardianship is in the best interest of the proposed ward and that the rights of the proposed ward or her property will be protected by the appointment of a guardian. Tex. Prob. Code §684(a)(2)(3) (West 2012). The Court must also find that the proposed guardian is a suitable person and entitled to be appointed. Tex. Prob. Code §684(b)(2) (West 2012). In short, the Court has the final say over whether the guardianship is established, the extent of the guardianship, and who should be guardian.

Further, in guardianship cases, there is always an attorney ad litem for the ward to advocate for the proposed ward's "wishes" and, often in contested cases, a guardian ad litem to advocate for the best interest of the ward. Often, the proposed ward's "wishes" differ from her "best interest". For example, the ward may be adamantly opposed to the guardianship but the medical evidence is overwhelming that she is incapacitated. In other instances, the proposed ward may consent to the appointment of a guardian but wish to appoint someone who may be statutorily disqualified and who is unable to cure such disqualification. Most often, however, the conflict is between competing family members as to who should be the guardian. The guardian ad litem will usually write a report giving his opinion as to which person, if any, should be appointed. Without a doubt, the guardian ad litem will become persona non-grata of at least one of the competing sides, if not both. However, the

opinion of the guardian ad litem should be taken into consideration because the Court will often rely upon the opinion of the guardian ad litem. In any event, as previously stated, the Court still makes the final decision despite what the ad litem have to say.

A guardianship settlement may also address other issues related to the proposed ward and the family in which the court would not otherwise be involved. The following are some examples:

- A. Agreement to provide medical information to all family members rather than to only the guardian;
- B. Although the guardian must have the final say on matters relating to the proposed ward, there may be agreements to allow family members to have notice of doctor appointments, hospitalizations, surgeries, transfer of the ward to another facility, or involvement of hospice;
- C. In cases of family dysfunction (i.e. most cases), a visitation schedule can be set up to avoid family conflict during visits. There may also be to bar access to certain persons. (Of course, the guardian must have the ultimate say on the matter);
- D. There may be an agreement that the guardian will hire a care-manager to oversee the ward's care;
- E. There may an agreement as to which home health care or sitting service will be hired;
- F. There may be an agreement that the guardian will choose from among certain specific nursing homes or care facilities.

Guardianship settlements can also address ancillary matters which may not otherwise be relevant to the guardianship proceeding per se. For example, the parties may choose to "pre-try" the will contest and address the disposition of

assets upon the proposed ward's death.

IX. Conclusion

Since we started this journey with a quote from Scripture, I thought it might be a good idea to end with one also:

“Come to terms with your opponent in good time while you are still on the way to the court with him, or he may hand you over to the judge and the judge to the officer, and you will be thrown into prison.” Matthew 5:25

I hope this outline will prove to be useful to you and your clients in your attempts to settle “on the way to the court.”

X. Sample Agreements

Attached to this article are four forms of settlement agreements:

1. Settlement of Will Contest (“Exhibit A”);
2. Beneficiary Distribution Agreement (“Exhibit B”);
3. Trust Settlement Agreement (“Exhibit C”); and
4. Guardianship Settlement Agreement (“Exhibit D”)

Exhibits A, B, and C were borrowed from Pacheco & Davis with the author's permission. Exhibit D was borrowed from McMullan with the author's permission. I made some revisions to Exhibit D.

EXHIBIT A

RULE 11 & SETTLEMENT AGREEMENT

THE STATE OF TEXAS §

COUNTY OF HARRIS §

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into by and among _____, _____, _____, and the respective heirs, personal representatives, executors, directors, officers, partners, affiliates, administrators, successors, agents, attorneys and assigns of each of them, as evidenced by their signatures affixed hereto. The preceding persons are sometimes collectively referred to herein as “the Parties” and individually referred to as “a Party.” The term “Decedent’s Estate” shall refer to all probate and non-probate property in which _____ had an ownership interest in or claim to as of the date of her death.

WITNESSETH:

WHEREAS, _____ (“Decedent”) died on _____, in Houston, Texas; WHEREAS, Decedent was a resident of Houston, Harris County, Texas, at the time of his death; WHEREAS, Decedent had two children: _____ and _____;

WHEREAS, on _____, _____ filed an Application for Probate and Issuance of Letters Testamentary seeking to admit the purported Will of Decedent dated _____; WHEREAS, on _____, _____ filed a Petition in Intervention for the purpose of opposing the probate of the alleged Last Will & Testament of the Decedent dated _____ and claiming to be the Decedent’s surviving spouse;

WHEREAS, on _____, _____ filed a Petition in Intervention for the purpose of opposing the probate of the alleged Last Will & Testament of the Decedent dated _____.

WHEREAS, _____, _____ and _____ survived the Decedent by the statutory period and are Parties to this agreement;

WHEREAS, Decedent executed a prior will dated _____;

WHEREAS, a dispute exists between the Parties and as to the validity of the testamentary instruments executed by Decedent;

WHEREAS, the Parties wish to resolve all differences and disputes between them in order to avoid further litigation and expense and to make peace; and

WHEREAS, by executing this Agreement no Party hereto concedes any legal or factual contentions of any other Party or makes any admissions but, rather, each Party denies any contrary contention made by any other Party and enters into this Agreement solely to terminate and settle their differences in an effort to minimize costs, expenses, and ongoing attorney's fees.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, including the mutual agreements, understandings, stipulations, representations, and releases set forth herein, the sufficiency of such consideration being hereby acknowledged and confessed by each of the Parties hereto, make the following representations and agreements:

1. Decedent's Testamentary Instruments. Each Party represents to every other Party that he or she is not aware of any testamentary instruments executed or alleged to have been executed by Decedent that remained in existence and effective at the time of her death other than the Will and the Codicil.

2. Decedent's Estate. Each Party represents to each other Party, to the best of his or her knowledge, there are no properties, real or personal, belonging to Decedent as of her date of death other than the assets disclosed on Exhibit A attached to this agreement.

3. Probate of Decedent's Will and Codicil. The Parties agree that _____ shall be admitted to probate.

4. Appointment of Personal Representative of Decedent's Estate. _____ shall be appointed as the sole Independent Executor of the Estate of the Decedent. The other Parties agree to execute and return immediately any necessary documents indicating their consent to _____'s appointment as the

Independent Executor or personal representative of Decedent's probate estate.

5. Distribution of Estate Assets. The Parties agree that all of Decedent's property, being all real and personal property the Decedent had an interest in or claim to at time of her death including, but not limited to the property listed on Exhibit A, shall pass subject to the terms of this Agreement. The Property shall be distributed as follows:

- a. _____ shall receive the total sum of _____ in cash and _____. _____ shall receive such assets in full and final settlement of their interest in the Decedent's Estate. The Parties agree that the _____ shall deliver a check payable jointly to _____ and his counsel in accordance with the terms of this Agreement.
- b. _____ shall receive the total sum of _____ in cash and _____. _____ shall receive such assets in full and final settlement of their interest in the Decedent's Estate. The Parties agree that the _____ shall deliver a check payable jointly to _____ and his counsel in accordance with the terms of this Agreement. _____ waives, renounces and disclaims any right she may have to seek a family allowance pursuant to Section 286, et seq., of the Texas Probate Code, or otherwise.
- c. _____ shall receive the rest and remainder of Decedent's estate (being all assets other than the total sums passing to _____ and _____ under the this Agreement).
- d. _____ shall pay and deliver to _____ and _____, the property and checks in payment of the amount and assets due them under this Agreement contemporaneously with the receipt of a court order authorizing this agreement (or authorizing the issuance of a check in accordance with this Agreement). The delivery of the assets shall be in full and final settlement of _____ and _____ interest in the Decedent's

estate.

- e. The Parties agree and confirm that all distributions and/or property passing to _____ and _____ and any other amounts passing to _____ and _____ under the terms of this Settlement Agreement shall be treated for income tax purposes as a settlement of a claim and/or as a gift or bequest of “a specific sum of money or of specific property” not payable in installments and are not punitive, not for services rendered, and no portion represents income or interest relating to such specific sum of money; i.e., none of the distributions will constitute distributable net income to _____ and _____.

6. Conveyance Documents. In order to effectuate the conveyance of all of Decedent’s interest in the property passing pursuant to the terms of this Agreement (described in Exhibit A or otherwise), the parties shall deliver to any other parties all such requisite executed documentation, deeds, bill of sales and stock transfers as may be necessary complete the division of the Decedent’s estate in compliance with this Agreement. All the Parties shall also cooperate with each other to facilitate the delivery of any assets to any other party under the terms of this Agreement.

7. Administration of Decedent’s Estate. _____, as the personal representative of Decedent’s estate, will have sole authority over and responsibility for the administration of the Decedent’s estate including, but not limited to, the preparation and filing of any of Decedent’s income and gift tax returns, all death tax returns and all fiduciary income tax returns, as may be due, and the distribution of estate assets to himself as the sole beneficiary of the Decedent’s estate. _____ represents that he will properly file all returns and provide for the payment of any related taxes. _____ does hereby INDEMNIFY, DEFEND and HOLD HARMLESS _____ and _____, from any and all liability, transferor, transferee or otherwise, (i) relating to ___ serving as personal representative of Decedent’s Estate, including any and all past, current or future federal or state income gift or death taxes, and any related interest and penalties which may be claimed, or assessed, relating to Decedent’s Estate, (ii)

relating to any and all past, current or future federal or state income, gift or death taxes, including any interest, and penalties, imposed by reason of the distributions provided for in this Agreement, and (iii) arising from all claims, costs, expenses, including but not limited to attorneys fees and expenses, accountant fees and expenses, experts, litigation costs and bond premiums, relating to any attempt by the Internal Revenue Service or other persons or entities to assess, collect or enforce any claims, demands, assessments or judgments against _____ or _____, for past, current or future federal or state income, gift or estate taxes, and any related penalties and interest.

8. Release. Each Party, for themselves and their lineal heirs, beneficiaries, assigns, representative, agents and descendants, hereby forever release and discharge each other Party, individually, and in all capacities, and their respective heirs, personal representatives, executors, affiliates, officers, directors, partners, administrators, successors, agents, attorneys, and assigns of and from any and all liabilities, claims, and causes of action including, but not limited to, tortious interference with inheritance rights, tortious interference with contracts, tortious interference with business relations, physical, mental, or emotional distress, any gifts made by Decedent, will contests, claims of conflict of interest, claims against attorneys, accountants, fiduciaries or agents, unjust enrichment, the administration of the estate or the guardianship of the Decedent, all claims which were or could have been made in currently pending litigation, fraudulent concealment, rights of reimbursement, exempt property, fraud, fraud on the community, theft, undue influences, misappropriation, breach of fiduciary duty, and any other statutory rights and demands and causes of action of any kind and/or character, whether known or unknown, fixed or contingent, liquidated or unliquidated, whether or not asserted, arising out of or any way connected with any act, omission or event related to any Party and/or the Decedent's Estate, the guardianship of the Decedent, and the Revocable Trust, save and except for the representations, warranties, obligations under this Agreement.

9. Party's Attorneys Fees and Expenses. Each Party hereby agrees to be responsible for his or her own respective attorney's fees, costs, and expenses through the date of this Agreement, including their

respective attorney's fees, costs, and expenses necessary and/or incurred in the effectuation of this Agreement. The Parties further agree that if it becomes necessary to assert any claim to enforce or defend the provisions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and other related litigation expenses from the non-prevailing Party.

10. Representations. Each Party makes the following representations to each other Party:

- a. The representing Party is legally competent to execute this Agreement and that this Agreement is valid, binding and enforceable.
- b. The representing Party believes that Decedent did not properly execute any right of survivorship or pay on death agreements or other agreements relating to the creation of non-probate assets and that any such agreements or contracts are void and of no effect and that any non-probate assets are an assets of Decedent's probate estate and pass pursuant to the terms of this Agreement.
- c. The representing Party owns the claims released herein and has not assigned, released, waived, relinquished, pledged or in any manner whatsoever, sold or transferred, his or her interest, right, and/or claims to or against the Decedent, Decedent's estate, except to his or her attorneys.
- d. Each party confirms and agrees that such party (i) has relied on his or her own judgment and has not been induced to sign or execute this Agreement by promises, agreements or representations not expressly stated herein, (ii) has freely and willingly executed this Agreement and hereby expressly disclaims reliance on any fact, promise, undertaking or representation made by the other party, save and except for the express agreements and representations contained in this Agreement, (iii) waives any right to additional information regarding the matters governed and effected by this Agreement, (iv) was not in a significantly disparate bargaining position with the other party. and (v) has been

represented by legal counsel in this matter.

11. Entire Agreement. The provisions of this Agreement constitute the entire Agreement between the Parties, and supersede all previous negotiations and documents. No oral modification shall be binding upon either Party. The terms hereof are contractual in nature and are not mere recitals, and shall be binding upon the heirs, spouses, descendants, executors, administrators, successors, representatives, and assigns of the Parties hereto, upon complete execution by the Parties.

12. Construction. All Parties acknowledge and agree that all the Parties have participated in the drafting of this Agreement and no one Party shall be considered the drafter of this Agreement and, therefore, no presumptions shall be made for or against any other Party on the basis that any one Party was the drafter of this Agreement.

13. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original for all purposes.

14. Effective Date. This Agreement shall be effective as of the last to occur of the following the date that the last Party executes this Agreement.

15. Choice of Laws. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas.

EXECUTED on _____, 20 ____.

Individually, and in all capacities

Individually, and in all capacities

[add jurat/acknowledgement]

EXHIBIT B

BENEFICIARY DISTRIBUTION AGREEMENT

THE STATE OF TEXAS §

COUNTY OF HARRIS §

THIS AGREEMENT (“Agreement”) is entered into by and among _____ (“_____”),
_____ (“_____”), _____ (“_____”), _____ (“_____”) and
_____ (“_____”), and the respective heirs, personal representatives, executors, administrators,
successors, agents, attorneys and assigns of each of them, as evidenced by their signatures affixed hereto.
The preceding persons are sometimes collectively referred to herein as “the Parties” and individually referred
to as “a Party.”

The term “Decedent” shall refer to _____ and the term “Decedent’s Estate” shall refer
to all probate and non-probate property in which _____ had an ownership interest in or claim
to as of the date of his/her death.

WITNESSETH:

WHEREAS, the Decedent died on _____, in _____ County, Texas;

WHEREAS, Decedent’s wife/husband, _____ (“_____”), died on
_____;

WHEREAS, prior to his/her death, Decedent arranged for _____’s Will to be admitted
to probate;

WHEREAS, Decedent left a valid Last Will and Testament (“Will”) that has been admitted to probate
in the above-referenced proceeding. A copy of the Will is attached as Exhibit A to this Agreement;

WHEREAS, Decedent’s Will provides that each of the Parties is entitled to _____ of Decedent’s
estate subject to probate administration;

WHEREAS, it has been determined that _____ is or was in possession of assets of the Decedent's Estate that have not been delivered to the Administrator to date, and he/she acknowledges that such assets should be treated as an advance toward his/her interest in the Decedent's Estate;

WHEREAS, it has been determined that _____ has received _____ without Administrator's permission, and he/she acknowledges that such amounts should be treated as an advance toward his/her interest in the Decedent's Estate;

WHEREAS, the Parties agree that all assets of the Decedent's Estate that were in the possession of any Party and that have not been delivered to the Administrator to date shall be treated as an advance toward his or her interest in the Decedent's Estate;

WHEREAS, the Parties survived the Decedent by the statutory period and are Parties to this agreement;

WHEREAS, issues exist between the Parties regarding the amounts and/or assets due the Decedent's Estate from some of the Parties and, thus, the remaining interest of each Party in the Decedent's Estate after taking into account advancements and assets retained by such Party;

WHEREAS, the Parties wish to resolve all differences and disputes between them in order to avoid further litigation and expense and to make peace; and

WHEREAS, by executing this Agreement no Party hereto concedes any legal or factual contentions of any other Party or makes any admissions but, rather, each Party denies any contrary contention made by any other Party and enters into this Agreement solely to terminate and settle their differences in an effort to minimize costs, expenses, and ongoing attorney's fees.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, including the mutual agreements, understandings, stipulations, and representations set forth herein, the sufficiency of such consideration being hereby acknowledged and confessed by each of the Parties hereto, make the following representations and agreements:

1. Decedent's Testamentary Instruments. Each Party represents to every other Party that he or she is not aware of any testamentary instruments executed or alleged to have been executed by Decedent that remained in existence and effective at the time of her death other than the Will attached as Exhibit A to this Agreement.

2. Decedent's Estate. Each Party represents to each other Party that to the best of his or her knowledge, there are no properties, real or personal, belonging to Decedent as of her date of death other than the assets disclosed on Exhibit B attached to this agreement.

3. Agreed Advancements. The Parties acknowledge that the Decedent's Estate shall be distributed to each of the Parties as set forth in the Will but enter into this agreement to settle all disputes regarding assets of the Decedent's Estate that have been advanced to or retained by one or more of the Parties to this Agreement. Therefore, the Parties agree that certain assets have been distributed to some of the Parties to date and that such distribution and/or receipt shall be treated as an advancement of such stated Party's _____ interest in the Decedent's Estate as follows:

(a) *: The Parties acknowledge and agree that * has received the following assets as an advancement of his/her interest in the Decedent's Estate and such assets/amounts shall reduce his _____ share of the Decedent's Estate:

- i) * has received cash in the total amount of \$ _____. A reconciliation of the cash received by * and the debts and other offsets is attached as Exhibit C to this Agreement;
- ii) * has received the Decedent's _____ with an agreed value of \$ _____;
- iii) * has received the Decedent's ◇ with an agreed value of \$ _____;
- iv) * has received the Decedent's ◇◇ with an agreed value of \$ _____;
- v) * has received the Decedent's ◇◇◇ with an agreed value of \$ _____;
- vi) * has received a court-approved advancement of \$ _____ in cash from the

Administrator;

(b) **: The Parties acknowledge and agree that ** has received the following assets of the Decedent's Estate and such assets/amounts shall reduce his/her one-_____ share of the Decedent's Estate:

i) ** has received the Decedent's _____ with an agreed value of \$ _____;

ii) ** has received a court-approved advancement of \$ _____ in cash from the

Administrator;

(c) ***: The Parties acknowledge and agree that *** has received the following assets of the Decedent's Estate and such assets/amounts shall reduce his/her _____ share of the Decedent's Estate:

i) *** has received a court-approved advancement of \$ _____ in cash from the

Administrator;

(d) ****: The Parties acknowledge and agree that **** has received the following assets of the Decedent's Estate and such assets/amounts shall reduce his/her _____ share of the Decedent's Estate:

i) **** has received cash in the total amount of \$ _____ via the pay-off of a loan due by **** and paid off after the Decedent's death with cash on deposit at _____ in the Decedent's accounts; ii) **** has received a court-

approved advancement of \$ _____ in cash from the Administrator;

(e) *****: The Parties acknowledge and agree that ***** has received the following assets as an advancement of his/her interest in the Decedent's Estate and such assets/amounts shall reduce his/her _____ share of the Decedent's Estate:

i) ***** has received a court-approved advancement of \$ _____ in cash from the

Administrator;

4. Agreements as to Distribution of the Real Properties. The Parties acknowledge that the Decedent's Estate includes real estate and that they would prefer for such real property to be distributed as they may agree among themselves. The Parties agree that (i) the real properties have been appraised by a

court appointed real estate appraiser, (ii) he or she has received a copy of the appraisal from Administrator, and (iii) such appraised values shall be used for purposes of determining each property's distribution value.

The Parties further agree that the real property shall be distributed as between the Parties as follows:

(a) All of the Decedent's interest in the real property, including improvements, commonly known as _____, _____, Texas, having an appraised value of \$ _____, shall be distributed to ** as a part of his/her one-_____ interest in the Decedent's Estate;

(b) All of the Decedent's interest in the real property, including improvements, commonly known as _____, _____, Texas, having an appraised value of \$ _____, shall be distributed to ** as a part of his/her one-_____ interest in the Decedent's Estate;

(c) All of the Decedent's interest in the real property, including improvements, commonly known as _____, _____, Texas, having an appraised value of \$ _____, shall be distributed to ** as a part of his/her one-_____ interest in the Decedent's Estate;

(d) All of the Decedent's interest in the real property, including improvements, commonly known as _____, _____, Texas, having an appraised value of \$ _____, shall be distributed to **** as a part of his/her one-_____ interest in the Decedent's Estate;

5. Distribution of Remaining Assets. The Parties acknowledge that the Administrator will distribute the remaining assets of the Decedent's Estate, after payment of all remaining debts, administration expenses, legal and accounting fees, in a manner that equalizes each Party's _____ interest in the Decedent's Estate, taking into account the agreed advancements and distributions set forth in Paragraphs 3 and 4 of this Agreement. The value of such remaining assets shall be as of date of distribution. The Parties further agree that they will agree as among themselves the division of any remaining household furnishings and personal effects. The Parties agree that Administrator shall have no further obligation to pursue assets in any of the Parties possession and control and that this Agreement is intended to settle all claims of each Party relating to assets of the Decedent's Estate in any other Party's possession and/or control, including

claims of property due the Decedent's Estate and for return of assets.

6. Conveyance Documents. In order to effectuate the conveyance of all of Decedent's interest in the property passing pursuant to the terms of this Agreement (described in Exhibit B or otherwise), the Parties shall deliver to any other Parties all such requisite executed documentation, deeds, bill of sales and stock transfers as may be necessary to complete the division of the Decedent's estate in compliance with this Agreement. All the Parties shall also cooperate with each other and Administrator to facilitate the delivery of any assets to any other Party under the terms of this Agreement.

7. Release of Administrator. The Parties acknowledge that they have entered into this Agreement to resolve all pending issues regarding each of the Parties interest in the Decedent's Estate and the assets taken, stolen, and/or received by certain Parties but not others. The Parties request that Administrator rely on this Agreement in settling Decedent's Estate and distributing Decedent's assets as provided herein. The Parties further release and discharge Administrator from any claims relating to her compliance with this Agreement, including but not limited to ceasing collection efforts regarding property that may be due the Decedent's Estate, the determination of the assets in any Party's possession or control, and the distribution values determined for Estate assets.

8. Party's Attorneys Fees and Expenses. With regard to each Parties' legal fees and expenses:

(a) _____ agrees to be responsible for any and all of his/her attorney's fees, costs, and expenses through the date of this Agreement, including his/her attorney's fees, costs, and expenses necessary and/or incurred in the effectuation of this Agreement and hereby waives any right to seek further reimbursement from Decedent's Estate, Administrator or any other Party.

(b) Administrator shall be entitled to reimbursement of his/her legal fees from Decedent's Estate but waives any right to seek reimbursement from any other Party.

(c) The Parties further agree that if it becomes necessary to assert any claim to enforce or defend the provisions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees

and other related litigation expenses from the non- prevailing Party.

9. Representations. The Parties to this Agreement make the following representations to such other Parties:

(a) Each Party represents to the other Parties that he or she is not aware of any assets of the Decedent's Estate other than those assets listed on Exhibit B to this Agreement;

(b) Each Party represents to the other Parties that he/she is not aware of any cash, dividend, rents, or other assets of the Decedent's estate than is not accounted for on Exhibit C;

(c) The representing Party is legally competent to execute this Agreement and that this Agreement is valid, binding and enforceable;

(d) The representing Party believes that Decedent did not properly execute any right of survivorship or pay on death agreements or other agreements relating to the creation of non-probate assets and that any such agreements or contracts are void and of no effect and that any non-probate assets are an assets of Decedent's probate estate and pass pursuant to the terms of this Agreement;

(e) The representing Party owns the claims released herein and has not assigned, released, waived, relinquished, pledged or in any manner whatsoever, sold or transferred, his or her interest, right, and/or claims to or against the Decedent, Decedent's estate, except to his or her attorneys;

(f) Each Party confirms and agrees that such Party (i) has relied on his or her own judgment and has not been induced to sign or execute this Agreement by promises, agreements or representations not expressly stated herein, (ii) has freely and willingly executed this Agreement and hereby expressly disclaims reliance on any fact, promise, undertaking or representation made by any other Party or Administrator, save and except for the express agreements and representations contained in this Agreement, (iii) waives any right to additional information regarding the matters governed and effected by this Agreement, (iv) was not in a significantly disparate bargaining position with the other party. and (v) has been represented by legal counsel in this matter or has voluntarily

waived such right; and

(g) Each Party confirms and agrees _____, and the law firm of _____, solely represent A and B and do not and have never represented any other Party and have not provided any other Party legal advice or services, or made any representation to any other Party;

(h) Each Party confirms and agrees _____, and the law firm of _____, solely represent C and do not and have never represented any other Party and have not provided any other Party legal advice or services, or made any representation to any other Party;

(i) Each of the Parties acknowledge and understand that the Administrator does not request his or her interest in matters relating to the Decedent's Estate, has not provided them legal advice and has not made any representations to him or her. Each Party further acknowledges that (i) Administrator has suggested that he or she retain counsel if they have any questions regarding the terms or effect of this Agreement, and (ii) each Party is relying on his or her own judgment in entering into this Agreement.

10. Entire Agreement. The provisions of this Agreement constitute the entire Agreement between the Parties, and supersede all previous negotiations and documents. No oral modification shall be binding upon either Party. The terms hereof are contractual in nature and are not mere recitals, and shall be binding upon the heirs, spouses, descendants, executors, administrators, successors, representatives, and assigns of the Parties hereto, upon complete execution by the Parties.

11. Construction. All Parties acknowledge and agree that all the Parties have participated in the drafting of this Agreement and no one Party or the Administrator shall be considered the drafter of this Agreement and, therefore, no presumptions shall be made for or against any other Party on the basis that any one Party was the drafter of this Agreement.

12. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of

which shall be deemed an original for all purposes.

13. Effective Date. This Agreement shall be effective as of the last to occur of the following the date that the last Party executes this Agreement.

14. Choice of Laws. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas.

EXECUTED on this _____ day of _____, 20_____.

EXHIBIT C

SAMPLE TRUST SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“this Agreement”) is made and entered into by and among (i) *, individually and in the fiduciary capacities described below, (ii) **, individually and in the fiduciary capacities discussed below; (iii) ***; (iv) ****; and (v) *****.

Article I: Definitions

1.1 The Parties to this Settlement Agreement are defined as follows:

a. The term “Mr./Ms. *” shall mean *, individually, as a beneficiary of and as trustee of the testamentary trusts created under the Last Will and Testament of *****, Deceased, and as the virtual representative of his issue.

b. The term “Mr./Ms. **” shall mean **, individually, as a contingent beneficiary, and as a co-trustee of the testamentary trusts created under the Last Will and Testament of *****, Deceased, and as the virtual representative of his/her issue.

c. The term “Mr./Ms. *****” shall mean *****, individually, as a beneficiary of the testamentary trusts created under the Last Will and Testament of *****, Deceased, and as the virtual representative of all persons and entities who may take under a power of appointment created under the Last Will and Testament of *****, Deceased, or who may take in default if the power of appointment is not executed.

d. The term “Mr./Ms. ****” shall mean ****, individually, as a beneficiary of the testamentary trusts created under the Last Will and Testament of *****, Deceased, and as the virtual representative of his/her issue.

e. The term “Mr./Ms. ***” shall mean ***, individually, as contingent beneficiary and successor trustee of the testamentary trusts created under the Last Will and Testament of *****, and as the virtual representative of his/her issue.

1.2 The terms “Affiliate” or “Affiliates” of the person or entity designated shall mean such person’s or entity’s spouse (including a former or future spouse), assigns, trustees, employees, attorneys (except as otherwise expressly provided herein), and accountants. It is expressly provided, however, that a reference to an Affiliate shall not include _____.

1.3 The term “this Agreement” or “the Agreement” shall refer to this Settlement Agreement, including all Exhibits attached hereto.

1.4 The term “*****” shall refer to *****, the deceased husband of Mr./Ms. ***** and the testator with regard to Last Will and Testament of *****, Deceased.

1.5 The term “Claims” shall refer to and include any and all claims, including breach of fiduciary duty, negligence, gross negligence and any other ground, causes of action, and all other obligations and liabilities, which any Party or Parties have, may have, or have had against the released Party, including the claims brought or which could have been brought by, between or among the Parties through the effective date of the Agreement relating to the testamentary trusts created under the Last Will and Testament of *****, Deceased, including the Transactions. [It is expressly provided, however, that the definition of Claims shall not include any and all claims, including breach of fiduciary duty, negligence, gross negligence, causes of action, and all other obligations and liabilities, which any Party or Parties have, may have, or have had against _____.]

1.6 The term “Corporate Trustee” shall mean _____ as the duly appointed successor corporate trustee of Trust A and Trust B pursuant to the terms of this Agreement.

1.7 The term “Effective Date” means the date the last Party signs this Agreement.

1.8 The terms “the Parties” or “the Parties hereto” shall collectively refer to Mr./Ms. *, Mr./Ms. *****, Mr./Ms. **, Mr./Ms. **** and Mr./Ms. ***.

1.9 The term a “Party” shall refer to any one of Mr./Ms. *, Mr./Ms. *****, Mr./Ms. **, Mr./Ms. **** and Mr./Ms. ***.

1.10 The terms “Predecessor” or “Predecessors” shall refer to any person or entity serving prior in time as a fiduciary to the fiduciary in question.

1.11 The terms “Successor” or “Successors” shall refer to the heirs, devisees, descendants, legatees, executors, appointees under any power of appointment, personal representatives, successor trustees, and any successors of a Successor or Successors.

1.12 The term “Transactions” shall mean the following events:

- (i) the resignation of Mr./Ms. * and Mr./Ms. **, as the co-trustees of Trust A and Trust B;
- (ii) the written waiver of right by, and declination to serve of, Mr./Ms. ***, as a successor trustee of Trust A and Trust B;
- (iii) the appointment of Corporate Trustee as successor trustee of Trust A and Trust B;
- (iv) the distribution by the Trustees of the assets of Trust A and Trust B to Corporate Trustee;
- (v) all other acts, transactions, and proceedings (including any failure to act) of any of the Trustees of Trust A and/or Trust B on or before the Effective Date; and
- (vi) the negotiation and consummation of this Agreement. It is expressly provided, however, that the definition of Transactions shall not include any and all actions or inactions, transactions or events of any nature, type, or description that has given rise to or could give rise at anytime to a claim by a Party against _____.

1.13 The term “Trust A” shall refer to the testamentary trust created under and commonly referred to as _____ in the Last Will and Testament of *****, Deceased.

1.14 The term “Trust B” shall refer to the testamentary trust created under and commonly referred to as _____ in the Last Will and Testament of *****, Deceased.

1.15 The terms “Trustee” or “Trustees,” shall mean the Mr./Ms. * and Mr./Ms. ** as the currently appointed and duly acting co-trustees of Trust A and Trust B under the Last Will and Testament of *****, Deceased, and the Modification Judgment.

1.16 The term “trust estate” shall refer include all properties, real or personal, however and whenever acquired, and any income there from, which may belong, respectively, to (i) Trust A, and (ii) Trust B.

1.17 The term “Will” shall refer to the Last Will and Testament of *****, Deceased, and the First Codicil,

attached as Exhibits A and B, respectively, to this Agreement, and incorporated by this reference.

Article II: Recitals

WHEREAS, ***** died on _____;

WHEREAS, Mr./Ms. *****, is the surviving spouse of *****;

WHEREAS, the Will directed the creation of Trust A and Trust B;

WHEREAS, Mr./Ms. *****, Mr./Ms. * and _____ were named as the original co-trustees of the Trust A and Trust B;

WHEREAS, Mr./Ms. ***** and Mr./Ms. * served as co-trustees of the Trusts until _____;

WHEREAS, Mr./Ms. * and Mr./Ms. ** currently serve as Trustees of Trust A and Trust B pursuant to the Modification Judgment;

WHEREAS, Mr./Ms. * has the power to appoint a corporate fiduciary as successor trustee of Trust A and Trust B, pursuant to the terms and conditions of the Modification Judgment;

WHEREAS, Mr./Ms. ***** has a general power of appointment over the assets remaining in Trust A at the time of his/her death;

WHEREAS, the named remainder beneficiaries of Trust B are Mr./Ms. *, _____ and Mr./Ms. *****;

WHEREAS, _____ died in _____ without any surviving issue;

WHEREAS, Mr./Ms. * and Mr./Ms. ***** are the current remainder beneficiaries of Trust B;

WHEREAS, certain differences, controversies, and Claims have arisen by and between Mr./Ms. ***** and the Trustees regarding the administration of Trust A and Trust B;

WHEREAS, this Agreement is made to completely settle and compromise all differences, controversies, and Claims between some of the Parties;

WHEREAS, the Parties have determined that it is in their respective best interests to settle and

terminate all Claims between them relating to the Trustees, Trust A, Trust B and/or the Transactions;

WHEREAS, the Parties wish to compromise any and all potential Claims they have between them relating to the Trustees, Trust A and Trust B and of the administrations of Trust A and Trust B through the Effective Date of this Agreement;

WHEREAS, Mr./Ms. *** and Mr./Ms. **** have agreed to join in this Agreement to indicate their consent to its terms and their agreement to be bound by its terms as set forth below;

WHEREAS, by executing this Agreement, no Party hereto concedes any legal or factual contentions of the other Party, but specifically denies same and enters into this Agreement solely to terminate and settle the Claims between themselves in an effort to minimize costs, expenses, attorneys' fees, and, most of all, to buy peace.

Article III: Agreements

For and in consideration of the premises, the mutual covenants and the terms hereunder, the sufficiency of which consideration is hereby mutually acknowledged, the Parties to this Agreement hereby agree as follows:

3.1 Agreements With Respect To Trusts

a. Trust A.

- i) Trust A is defined as to its present contents and trust estate as the stocks, bonds, and other securities generally listed and described on Exhibits D and E to this Agreement, the same showing an estimated fair market values as of _____, of \$ _____.
- ii) Delivery. Mr./Ms. * and Mr./Ms. ** agree to deliver to the Corporate Trustee of Trust A, within a reasonable time, not to exceed thirty (30) days following the Effective Date, the trust estate of Trust A. Mr./Ms. * and Mr./Ms. ** agree that any records of Trust A now in possession or control of either of them belong to Trust A and further agree to deliver all such records to Corporate Trustee within thirty (30) days from the Effective Date. Mr./Ms. * and Mr./Ms. ** may retain a copy of such records.
- iii) Temporary Custody. Mr./Ms. * and Mr./Ms. ** agree to continue to maintain, but as custodian only, the assets of Trust A for up to thirty (30) days after the Effective Date, during which time they agree to arrange delivery of all of the assets of Trust A to

Corporate Trustee as trustee of Trust A.

- iv) Resignation of Trustee. In consideration for the agreements of the Parties in this Agreement, Mr./Ms. * and Mr./Ms. ** hereby agree to resign as the current Trustees of Trust A, such resignations to become irrevocable and effective as of the Effective Date; and upon the appointment of Corporate Trustee of Trust A. In the event that Corporate Trustee declines to serve as Corporate Trustee of Trust A, or after having been appointed, Corporate Trustee thereafter for any reason fails or ceases to serve as such Corporate Trustee, the successor corporate trustee of Trust A shall be selected jointly by Mr./Ms. * and Mr./Ms. *****. The successor corporate trustee of Trust A shall be a corporate trustee as defined by the Modification Judgment.
- v) Waivers of Compensation. Mr./Ms. * and Mr./Ms. ** hereby waive all fees and commissions for serving as Trustees of Trust A.
- vi) Rights of Reimbursement. Except for the payment of attorneys fees and expenses provided in this Agreement, Mr./Ms. * and Mr./Ms. ** hereby waive any claims from reimbursement from the assets of Trust A.
- vii) Waiver of Right to and Declination to Serve. In consideration for the Agreement herein, Mr./Ms. *** agrees that he/she hereby irrevocably waives her right to be named or appointed as a trustee of Trust A throughout the remaining term of Trust A and any post-term of Trust A until the trust estate of Trust A, remaining at the death of Mr./Ms. *****, has been delivered to any person who takes pursuant to the exercise of the power of appointment, or, if the power is not exercised, pursuant to the terms of the Will.
- viii) Beneficiaries of Trust A. The Parties hereto agree that Mr./Ms. ***** will continue to be the sole beneficiary of Trust A pursuant to the terms of the Will.

b. Trust B.

- i) Trust B is defined as to its present contents and trust estate as the stocks, bonds, and other securities generally listed and described on Exhibits F and G to this Agreement, the same showing an estimated fair market values as of _____, of \$_____.
- ii) Delivery. Mr./Ms. * and Mr./Ms. ** agree to deliver to the Corporate Trustee of Trust B, within a reasonable time, not to exceed ten (10) days following the Effective Date, the trust estate of Trust B. Mr./Ms. * and Mr./Ms. ** agree that any records of Trust B now in possession or control of either of them belong to Trust B and further agree to deliver all such records to Corporate Trustee within ten (10) days from the Effective Date. Mr./Ms. * and Mr./Ms. ** may retain a copy of such records.
- iii) Temporary Custody. Mr./Ms. * and Mr./Ms. ** agree to continue to maintain, but as custodian only, the assets of Trust B for up to ten (10) days after the Effective Date, during which time they agree to arrange delivery of all of the assets of Trust B to Corporate Trustee as trustee of Trust B.

- iv) Resignation of Trustee. In consideration for the agreements of the Parties in this Agreement, Mr./Ms. * and Mr./Ms. ** hereby agree to resign as the current Trustees of Trust B, such resignations to become irrevocable and effective as of the Effective Date; and upon the appointment of Corporate Trustee of Trust B. In the event that Corporate Trustee declines to serve as Corporate Trustee of Trust B, or after having been appointed, Corporate Trustee thereafter for any reason fails or ceases to serve as such Corporate Trustee, the successor corporate trustee of Trust B shall be selected jointly by Mr./Ms. * and Mr./Ms. *****. The successor corporate trustee of Trust B shall be a corporate trustee as defined by the Modification Judgment.
- v) Waivers of Compensation. Mr./Ms. * and Mr./Ms. ** hereby waive all fees and commissions for serving as Trustees of Trust B.
- vi) Rights of Reimbursement. Except for the payment of attorneys fees and expenses provided in this Agreement, Mr./Ms. * and Mr./Ms. ** hereby waive any claims from reimbursement from the assets of Trust B.
- vii) Waiver of Right to and Declination to Serve. In consideration for the Agreement herein, Mr./Ms. *** agrees that he/she hereby irrevocably waives his/her right to be named or appointed as a trustee of Trust B throughout the remaining term of Trust B and any post-term of Trust B until the trust estate of Trust B, remaining at the death of Mr./Ms. *****, has been delivered to the remainder beneficiary or beneficiaries.
- viii) Beneficiaries of Trust A. The Parties hereto agree that Mr./Ms. ***** will continue to be the sole current beneficiary of Trust B during his/her lifetime pursuant to the terms of the Will.

c. Miscellaneous.

The Parties understand and agree to the terms and conditions of this Agreement;

- i) That no Party shall pursue a claim or suit against another Party, individually, or in any fiduciary capacity, for any Claims arising out of matters set forth above in this Agreement, save and except for any claims relating to any breaches of warranties, representations, or obligations set forth in this Agreement.
- ii) That each Party specifically waives any right to demand an accounting or audit of Trust A or Trust B.
- iii) That the Corporate Trustee shall have not duty to redress the actions or inactions of any Predecessor trustee of either Trust A or Trust B including but not limited to, the Claims and the Transactions.
- iv) That attorneys fees and expenses incurred through the Effective Date of this Agreement by Mr./Ms. *****, individually, and Mr./Ms. * and Mr./Ms. **, as Trustees of Trust A and Trust B, shall be reimbursement from the principal of the respective trusts as follows: (i) twenty percent (20%) shall be paid from the assets of Trust A and (ii) eighty percent (80%) shall be paid from the assets of Trust B. It is expressly agreed, however,

that Mr./Ms. *****'s total attorneys fees and expenses to be paid from the trust estates shall not exceed \$10,000. It is also expressly agreed that the total attorneys fees and expenses of Mr./Ms. * and Mr./Ms. **, as Trustees of Trust A and Trust B, to be paid from the trust estates shall not exceed \$_____.

3.3 Release Of Claims

a. Each Party, individually and on behalf of his or her Affiliates and Successors, does hereby forever release and discharge all other Parties, and each of their Successors and Affiliates of and from any and all Claims including, but not limited to any Claims relating to the Transactions.

b. Notwithstanding the foregoing, no release under this Agreement shall be held to include: i) a release of any obligation owed or representation made pursuant to the terms of this Agreement by any Party to any other Party hereto, or ii) a release of _____.

3.4 Representations And Warranties

- a. Each Party hereby stipulates, represents and warrants to each of the other Parties, as follows:
- i) That he or she is the current legal and beneficial owner of all of the Claims released hereby, as well as the Claims asserted by him or her orally or in written form with respect to any litigation he or she could have brought with respect to matters covered by this Agreement, including the Claims and Transactions;
 - ii) That he or she has not assigned, pledged or contracted to assign or pledge to any other person or entity any interest he or she may have in Trust A or Trust B or under the Will;
 - iii) That the terms and provisions of this Agreement are valid, binding and enforceable as against himself or herself, any such Party's Successors and Affiliates;
 - iv) That he or she is adequately represented by competent counsel of his or her choosing in connection with the execution and delivery of this Agreement and in any and all matters relating thereto, or has voluntarily waived such right to seek the advice of a legal advisor;
 - v) That he or she is not under any form of legal disability or incapacity at the time he or she executes this Agreement;
 - vi) That _____, and the law firm of _____, solely represent Mr./Ms. ***** and do not and have never represented any other Party and have not provided any other Party legal advice or services, or made any representation to any other Party;
 - vii) That _____, and the law firm of _____, solely represent Mr./Ms. * and Mr./Ms. ** and do not and have never represented any other Party and

have not provided any other Party legal advice or services or made any representations to any other Party;

- viii) That in executing this Agreement, each Party has relied upon his or her own judgment and the advice of his or her own attorneys, and further, that he or she has not been induced to sign or execute this Agreement by promises, agreements or representations not expressly stated herein, and he or she has freely and willingly executed this Agreement and expressly disclaims reliance upon any facts, promises, undertakings, or representations made by any other Party, or by such Party's Affiliates;
- ix) That the consent of such Party to this Agreement was not procured, obtained or induced by improper conduct, undue influence or duress;
- x) That such Party either (1) has knowledge of all relevant and material information and facts and has been fully informed, including by advice of counsel, concerning the existence of potential Claims or any other Party including other additional affirmative or defensive Claims arising from all matters known to him or her and arising during the period of negotiations leading to and culminating in the execution by him or her of this Agreement, in order for him or her to make an informed and considered decision to enter into this Agreement, and/or (2) specifically and after advice of counsel is waiving (a) any right to obtain or demand, and (b) any obligation of any other Party;
- xi) That he or she is not in a significantly disparate bargaining position with regard to any other Party.

b. Each representations and warranties in entering into this Agreement.

c. Each Party understands and agrees that each other Party has relied upon these representations and warranties in entering this Agreement.

3.5 Miscellaneous Provisions

a. Parties Bound. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective Affiliates and Successors.

b. Party's Attorney's Fees and Expenses Incurred to Date. Except as otherwise provided in this Agreement, each Party hereby agrees to be responsible for his or her own respective attorney's fees, costs, and expenses through the date of this Agreement, including their respective attorney's fees, costs, and expenses necessary and/or incurred in the effectuation of this Agreement.

c. Attorney's Fees and Expenses for Breach of Agreement. The Parties agree that if it becomes necessary to assert any claim to enforce or defend the provisions of this Agreement, the prevailing Party shall

be entitled to recover reasonable attorney's fees and other related litigation expenses from the non-prevailing Party. Notwithstanding any provision to the contrary, the Corporate Trustee of Trust A and Trust B shall have the right to seek payment of its reasonable and necessary attorney's fees and expenses from the respective trust estate in accordance with the Will.

d. No Oral Modification. No amendment, modification, waiver, or consent with respect to, any provision of any of this Agreement shall be effective unless the same shall be in writing and signed by the Party or Parties hereto against whom enforcement of the amendment, modification, waiver or consent is sought.

e. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. This Agreement shall only be binding when one or more counterparts hereof, individually or taken together, shall bear all signatures of the Parties hereto reflected hereon as signatories.

f. Choice of Law. This Agreement shall be governed pursuant to the laws of the State of Texas.

g. Choice of Venue. _____ County, Texas shall be the appropriate and exclusive venue for any suit arising out of this Agreement.

h. Assignment. This Agreement and the rights and obligations of the Parties hereto shall not be assigned or delegated by any Party hereto without the prior written consent of the other Parties hereof.

i. Incorporation. All Exhibits attached hereto are hereby incorporated by reference in this Agreement for the purposes set forth above.

j. Headings. The paragraph headings and sub-headings used herein are for descriptive purposes only. The headings have no substantive meaning and the terms of this Agreement shall not be affected by such headings.

THIS WRITTEN AGREEMENT REPRESENTS THE FINAL AGREEMENT AMONG THE PARTIES HERETO AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS,

OR SUBSEQUENT ORAL OR WRITTEN AGREEMENTS BETWEEN OR AMONG ONE OR MORE OF THE PARTIES HERETO.

PARTIES:

*, Individually and as Co-Trustee of Trust A and Trust B created under the Last Will & Testament of *****, Deceased, and Virtual Representative of his/her Issue

, Individually and as Co-Trustee of Trust A and Trust B created under the Last Will & Testament of ***, Deceased, Individually, as a contingent beneficiary of any trust created under the Last Will & Testament of *****, Deceased, and Virtual Representative of his/her Issue

, as the successor named Trustee of Trust A and Trust B created under the Last Will & Testament of **, Deceased, Individually, as contingent beneficiary of any trust created under the Last Will & Testament of *****, Deceased, and Virtual Representative of his/her Issue

****, Individually, as a beneficiary of any trust created under the Last Will & Testament of *****, Deceased, and as the virtual representative of all persons and entities who may take under a power of appointment created under the Last Will and Testament of *****, Deceased, or who may take in default if the power of appointment is not executed

****, Individually, as a beneficiary of any trust created under the Last Will & Testament of *****, Deceased, and Virtual Representative of his/her Issue

[add jurat/acknowledgement]

EXHIBIT D

GUARDIANSHIP SETTLEMENT AGREEMENT

This Compromise and Settlement Agreement ("Agreement") is executed by the parties named herein (hereinafter "Parties"). For mutual consideration, the adequacy and sufficiency of which are hereby admitted, the Parties agree to each and every term and condition of this Agreement.

I. IDENTIFICATION OF PARTIES

The Parties ("Parties") to this Agreement are as follows:

JOHN DOE ("JOHN"), son of MOM & Applicant for Guardian

SUE SMITH ("SUE"), daughter of MOM & Applicant for Guardian

(MOM ("MOM") is the mother of JOHN and SUE and Proposed Ward)

II. STIPULATIONS; JURISDICTION

This Court has jurisdiction over this cause of action and all parties interested in this matter. Venue is proper in this Court as MOM (hereinafter "MOM") is a resident of Bexar County, Texas, and her real and personal property is located in Bexar County. JOHN and SUE shall retain the standing to appear in the guardianship case and to object to applications and reports of the guardian/the guardian ad litem, and to receive notice from the guardian/guardian ad litem and the other Party to matters affecting this guardianship and any pleadings and report filed with the Court and to use said Court to enforce this Compromise and Settlement Agreement.

III. DISPUTE OF THE PARTIES

The Parties' primary dispute is whether MOM is in need of a guardian and, if so, who should be the guardian and what should be the ways of handling the financial and personal affairs of MOM. JOHN and SUE have alleged various wrongdoing by the other, both in pleadings on file and in oral and written statements. The Parties agree not to pursue these allegations further.

IV. COMPROMISE AND SETTLEMENT

The Parties seek to avoid risks, expense, delay and suffering by settling their disputes in this Guardianship proceeding through this settlement agreement.

The Parties recognize that bona fide disputes and controversies exist among them as to their respective rights; the wishes of MOM; the Party best qualified or entitled to be guardian; the mental capacity or lack thereof of MOM; and other matters raised in this case. The Parties recognize that this Agreement is not to be construed as an admission of any Party as to any disputed matter in this lawsuit and shall not constitute a waiver of future rights to appointment or otherwise under other circumstances; however, the Parties desire no longer to continue litigation of this guardianship action and to compromise and settle this guardianship action. The Parties intend that the full terms of their compromise and settlement be set forth in this Compromise and Settlement Agreement, which shall be presented to the Probate Court for approval and issuance of a guardianship order. In consideration of the mutual promises and covenants set forth herein, the Parties agree and contract as follows:

A. GUARDIAN

1. IDENTITY OF GUARDIAN

The Parties agree and shall request that the Court appoint a third-party Guardian of the Person and Estate.

2. HEARING

The Parties agree that a full guardianship of the estate and a guardian ad litem for personal issues is appropriate and they will say so to the Court. No Party may object to the medical report of the court ordered examining doctor, Dr. Goodfeeling, being admitted into evidence, and no Party may require that Dr. Goodfeeling or any other doctor testify live in Court.

3. AGREED ORDER

The Parties shall propose a guardianship order to the Judge of Probate Court No. 4 in

substantially the form agreed to by their attorneys (as set forth in Exhibit A), but, of course, the Judge determines the final form.

B. ESTATE ISSUES

1. SALE OF HOME

MOM's home at 123 Smith Dr., San Antonio, TX 78123, shall be sold by the Guardian under the steps required by the guardianship Court. All prior contracts for real estate agents and sales, if any, shall be rendered void by the Court. The net proceeds of the sale shall be put in the guardianship bank account.

2. REPRESENTATIVE PAYEE FOR SOCIAL SECURITY

- a. IDENTITY:** The Representative Payee shall be SUE.
- b. USE OF SS FUNDS:** The Representative Payee shall use MOM's Social Security money solely for MOM's benefit and report its use to the Social Security Administration annually as required by federal law. The Payee shall not have MOM pay more than her pro-rata share (determined by the number of persons living in the household) of household expenses like utilities, taxes, insurance, maintenance, repairs, food, etc. Persons providing care to MOM may be paid as compensation per month no more than 30% of the monthly Social Security payment.
- c. INFORMATION TO OTHERS:** The Representative Payee shall each month provide the Guardian/Guardian Ad Litem (upon his request) with copies of the monthly statements for the Social Security checking account and explanations for each expenditure (within 10 days of the statement being received by the Payee).

3. GUARDIAN OF ESTATE ACCOUNT(S)

a. ASSETS TO BE HELD BY GUARDIAN

The Guardian shall deposit the proceeds of the sale of the home, royalty checks, and the \$200

held by JOHN for MOM shall be deposited in the guardianship account.

b. PAYMENTS BY GUARDIAN

Guardian shall pay items from the guardianship account pursuant to Court Order. It is understood that no funds are available to pay for the guardianship account until MOM's home is sold and the proceeds deposited in the account.

c. INFORMATION TO OTHERS

The Guardian shall send JOHN and SUE a copy of the monthly and/or quarterly statements for the guardianship bank account as well as a copy of the annual accounting prepared for the Court (upon their request). Should a problem arise regarding the statement, the investments or the spending pattern, the Party who recognizes or believes there is a problem shall first contact the Guardian, and if the matter is unresolved, the Court.

4. CLAIMS AGAINST PARTIES

Neither JOHN nor SUE shall complain if the Court-appointed Guardian of the Estate does not raise claims against either based on his/her prior handling of MOM's assets.

C. PERSONAL ISSUES

1. MEDICAL CARE

a. CHOICE OF HEALTH CARE PROVIDERS

The Parties will request that the Guardian of the Person retain MOM's current health care providers. However, the Parties acknowledge that the Guardian will have the final say on the matter.

b. INFORMATION TO PARTIES

The Guardian shall notify the Parties in advance of date, time, place and provider for scheduled medical appointments and testing. Reports of the results of all medical appointments, tests, and medication shall be made to JOHN and SUE. A Party learning

about a medical emergency or any illness or adverse health condition of MOM shall immediately notify Guardian and the other Party. The Parties shall have the right to have access to medical, dental, psychiatric, psychological and other health care provider records or test reports of MOM and the right to speak with any physician, dentist, psychiatrist, psychologist, or any other health care provider of MOM regarding her care and treatment. The Parties shall be deemed personal representatives who are authorized to receive disclosures under the Health Insurance Portability and Accountability Act ("HIPAA") 45 CFR Sec. 164.500 et seq.

2. RESIDENCE

The Parties will request that the Guardian choose for MOM to reside at one of the following facilities: _____, _____, or _____.

However, the Parties acknowledge that the Guardian will have the final say on the matter.

3. ACCESS/VISITATION

MOM shall have access and the right to visit and communicate with whomever she wishes in privacy and without interference. The following is the initial schedule, until changed by written agreement of the Parties and the Guardian Ad Litem (if one is still serving) or until changed by the Court:

a. SCHEDULE OF VISITS

- (1). JOHN shall be permitted to have MOM every Wednesday, picking MOM up at her place of residence at 12 noon and returning her to her place of residence by 7pm.
- (2). JOHN shall be permitted to have MOM on the first and third Sundays of each month, picking MOM up at her place of residence at 8 a.m. and returning her to her place of residence by 6pm.

- (3) Holiday Schedule for 2012: MOM will spend Thanksgiving 2012 with SUE exclusively, and Christmas Day with JOHN, with JOHN picking MOM up at her place of residence at 10 a.m. and returning her to her place of residence by 6 pm.
- (4) Holiday Schedule After 2012: The permanent holiday visitation schedule (including MOM's birthday on March 13, Mother's Day, Easter, Thanksgiving, Christmas, New Year's Day, and other family holidays) shall be negotiated between the Parties.
- (5) If JOHN is unable to pick up or return MOM because of personal circumstances (e.g., illness, incapacity, etc.), JOHN or his daughters will place a telephone call to SUE as to which of JOHN's daughters will transport MOM to and from SUE's home for JOHN's visitation days.

b. PRIVACY/ NON-INTERFERENCE

- (1) Visitors of MOM shall have privacy and no person whom visitors do not wish to be present may be in the same room, area, or within hearing distance. No tape recording or other monitoring of a visit or telephone conversation with MOM may take place.
- (2) Non-Interference with Visitation: No one shall block or monitor telephone calls to MOM from a child or grandchild of MOM, MOM's other family members, her friends, and her old neighbors so long as these are made during the period from 10 a.m. and 6 p.m., so long as these calls are not excessive. No one may block access to a visitation, especially a visitation with a child of MOM, without justification based on MOM's actual condition and needs.
- (3) Protection of MOM's Peace of Mind: No one (during a visit, a telephone call, or otherwise) may bring up to MOM issues which might upset her or make disparaging remarks about one another.

4. PICTURES/MEMENTOS

SUE shall return all pictures of JOHN and his family to JOHN, although copies may be made for MOM..

D. PLANNING DOCUMENTS & POST-DEATH ISSUES

1. DOCUMENTS

Any documents executed by MOM this year shall be deemed void and may not be used by any appointed agent.

2. FUNERAL

The Parties agree that MOM's burial will be handled by JOHN in the church, with the pastor and ceremony as decided by JOHN and paid for by MOM's estate. Burial will be in the family cemetery plot.

3. NO WILL CONTEST

The Parties hereby agree not to probate any Will of MOM, but instead to split anyestate, property,or funds left by MOM, whether in the Guardianship estate, in the remaining Social Security representative payee account, or other assets, upon MOM's death between MOM's two children in equal shares, and should a child predecease MOM, the deceased child's share shall pass instead to that deceased child's descendants per stirpes. SUE and JOHN and/or their surviving families if SUE and/or JOHN predecease MOM, shall fairly split family mementos, pictures, and tangible personal property of MOM after the death of MOM.

E. ATTORNEYS' FEES & COSTS

The attorneys' fees and costs of the Parties listed in this Agreement and approved by the Court shall be paid out of the guardianship estate once the home is sold. The fees and expenses of the Parties' attorneys and the attorney ad litem's compensation shall be as set by the Court. No Party shall challenge the other Party's assertion of good faith in filing and pursuing his/her guardianship application.

F. GUARDIAN COMPENSATION

The Guardian shall be paid as provided by the Probate Court and as approved by the Court.

V. AGREED ORDER

The Parties hereto mutually and simultaneously authorize and direct their attorneys to execute and deliver for entry the Agreed Order Appointing a Guardian of the Person and Estate.

VI. GENERAL PROVISIONS

A. AGREEMENT VOLUNTARY AND CLEARLY UNDERSTOOD

Each Party to this Agreement: (1) is completely informed of the facts relating to the subject matter of the Agreement and of the rights and liabilities of all Parties; (2) enters into the Agreement voluntarily after receiving the advice of counsel; (3) has given careful and mature thought to the making of the Agreement; (4) has carefully read each and every provision of the Agreement; and (5) understands the provisions of the Agreement as to both the subject matter and the legal effect and/or assumes the risk of any mistake of fact or law with regard to any aspect of this Agreement.

B. AGREEMENT BINDING AND ENFORCEABLE

This Agreement is binding and intended to be fully enforced as a written settlement agreement under the law, including but not limited to TEX. R. CIV. PROC. ANN. 11, TEX. CIV. PRAC. & REM. CODE ANN. §154.071, and the law of contract. Further, the provisions of the agreement shall be offered to the Court for its approval and consent to this Agreement shall not be withdrawn after all Parties have signed below. The portion of the agreement approved and incorporated by the Court in its order shall be enforceable by the Court, including by contempt of court.

C. ENTIRE AGREEMENT

This Agreement supersedes any and all other agreements, either oral or in writing, among the Parties hereto arising from their claims against or related to the guardianship of MOM and any claims by and between them. This Agreement contains the entire agreement of the Parties. This Agreement should be interpreted fairly and simply and not for or against any Party. This Agreement may not be amended or modified except by written instrument signed by all Parties and approved by the guardianship court, if

applicable.

D. PARTIAL INVALIDITY

If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in anyway.

E. SUCCESSORS AND ASSIGNS

This Agreement, unless otherwise expressly provided herein, will be binding on and will inure to the benefit of the respective legatees, devisees, heirs, executors, administrators, assigns and successors in interest of any Party.

F. LAW GOVERNING THE AGREEMENT

This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Texas. All rights, duties and obligations of this Agreement are enforceable in Probate Court No. 4 of Bexar County, Texas.

G. INCORPORATION

All exhibits attached hereto are incorporated by reference for the purposes set forth above. The Parties also incorporate the general terms of the Mediated Settlement Agreement, executed by the parties May 10, , 2005.

H. NO CONTEST OR VIOLATION

No Party hereto shall challenge the validity or violate the terms of this Agreement. Any Party doing same shall be liable to the other Party, the guardian of the estate, the guardian ad litem, and the Guardianship Estate for attorneys' fees, expenses and court costs in defending against said challenge or taking legal action to remedy the violation.

The Parties agree that since a guardianship is to be established herein, the Guardian in the Guardian's fiduciary capacity and the Court have a continuing role to insure the best interest of the Ward. This may

involve future proceedings and one or more of the Parties hereto may need to play a role or even initiate action not contemplated under the present circumstances, to achieve a legitimate goal for Ward. This "no contest or violation" provision is not intended to forestall such proper action. Instead, this provision intends to prevent and punish bad faith or willfully negligent conduct with regard to this Agreement or unjustified failure to comply with its terms. Exemplary damages are authorized against a Party for such conduct upon finding of bad faith or willful negligence or unjustified failure to comply.

I. MEDIATION

Mediation shall be used as set forth in the Mediated Settlement Agreement.

J. REPRESENTATION BY COUNSEL

All Parties to this agreement acknowledge that they have the right to representation. They acknowledge that the Attorney drafting this agreement is the Attorney for JOHN, but this Agreement shall be construed as having been drafted by all the Parties to it so that the rule of construing ambiguities against the drafter shall have no force or effect.

K. COLLATERAL DOCUMENTS

The Parties agree to execute any reasonably required documents to effect this agreement.

L. GRAMMAR AND HEADINGS

The captions and headings used in this Settlement Agreement are for convenience only and do not in any way limit, amplify, or otherwise modify the provisions of this Agreement. When the context requires, singular nouns and pronouns include the plural, and feminine and masculine references shall be read to refer to the appropriate gender

Executed in multiple originals with copies for the Parties and their attorneys.

Effective Date is _____, 2012

AGREED:

Date: _____

[usual signature blocks]