

STATE OF SOUTH DAKOTA)
:SS
COUNTY OF _____)

IN CIRCUIT COURT
_____ JUDICIAL CIRCUIT

<p>_____, Plaintiff,</p> <p>vs.</p> <p>_____, Defendant</p>	<p>DIV _____</p> <p>STIPULATION AND SETTLEMENT AGREEMENT (WITHOUT MINOR CHILDREN)</p>
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THIS STIPULATION AND SETTLEMENT AGREEMENT (WITHOUT MINOR CHILDREN), made and entered into this _____ day of _____, 20_____, by and between _____ (insert Plaintiff's name) and _____ (insert Defendant's name). Within this document we understand that we may be referred to individually as Plaintiff, Defendant, Spouse(s), Parent(s) or Party(ies).

WITNESSETH:

WHEREAS, the parties were married in _____, State of _____, on the day of _____, _____, and ever since that time have been and now are spouses, and

WHEREAS, irreconcilable differences and disputes have arisen between the parties and they separated with the intent to live apart, and

WHEREAS, Defendant was served with a true and correct copy of the Summons (Without Children), and the Complaint (Without Minor Children) on the _____ day of _____, 20_____, as reflected by the Proof of Service filed with the Court, and

WHEREAS, Plaintiff resided at _____, (city) _____, County, _____ (state), at the time of the commencement of this divorce action and presently resides at _____, (city) _____ County, _____ (state). Defendant resided at _____, (city) _____ County,

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_____ (state), at the time of the commencement of this divorce action and presently resides at _____, (city) _____ County, _____ (state). Both parties agree that venue and jurisdiction in this Court is appropriate and consent to such jurisdiction and venue, and

WHEREAS, the parties agree that they currently have no minor children that were born to or adopted by the parties during the course of their marriage or relationship. The spouses are / are not (circle one) pregnant at the time of this action. If pregnant, spouse is due on the _____ day of _____, 20_____, and

WHEREAS, the parties hereto now desire to enter into an Agreement settling all claims, property division and all other matters between the parties with regard to the divorce action,

NOW THEREFORE, in consideration of the promises and mutual covenants hereinafter contained, it is agreed and understood by and between the parties as follows:

1. **Release.** Except as herein specified, each of the parties is hereby released and absolved from any and all obligations and liabilities for the future acts and duties of the other, and each of the parties releases the other from any and all liabilities, debts and/or obligations of any kind or character incurred by the other from and after the date of this Agreement and from any and all claims and demands, it being expressly understood and agreed this Agreement is intended to settle the rights of the parties in all respects, except as hereinafter provided.

2. **After-Acquired Property.** Any and all property, whether real or personal, acquired by either party from and after the date hereto from and after the date hereof shall be the sole and separate property of the one so acquiring the same, and each of said parties hereby respectfully grants to the other all such other and further acquisitions of property as the sole property of the one so acquiring the same.

3. **Property Division:** The parties agree that the following marital property shall be divided as follows and such division is equitable:

A. **Clothing, Personal Effects, Personal Property:** Each of the parties shall receive his/her own clothing, personal effects, and all personal property in his/her possession, free and clear of any claim from the other, unless otherwise specified herein.

B. **Photographs, Memorabilia:** The parties agree to equally split the photographs and any special memorabilia acquired during the course of the marriage / relationship within 90 days of

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execution of this Agreement. Any expenses incurred in this process shall be mutually agreed upon and split equally between the parties.

C. Plaintiff's Vehicle(s) / Boats / Motorcycles / ATV's / Mobile Home / etc.: Plaintiff shall exclusively receive, as his/her sole and separate property, the following vehicle(s): _____

(provide year, make and model and VIN#), subject to any debts against the asset(s). Plaintiff shall be solely responsible for the debt associated with these vehicles as well as the insurance and maintenance on these asset(s) commencing with the date this Agreement is executed.

D. Defendant's Vehicle(s) / Boats / Motorcycles / ATV's / Mobile Home / etc.: Defendant shall exclusively receive, as his/her sole and separate property, the following vehicle(s):

(provide year, make and model and VIN#), subject to any debts against the asset(s). Defendant shall be solely responsible for the debt associated with these vehicles as well as the insurance and maintenance on these asset(s) commencing with the date this Agreement is executed.

E. As set forth above, the party receiving the assets listed above in 5(C) and 5(D) shall assume the debt associated with them and remove the other party's name therefrom within _____ days from entry of the Judgment and Decree of Divorce. The other party shall cooperate in transferring the titles to the party receiving the assets once his/her name is removed from the debt.

F. Property in Possession of the Other: If either party has property to be given to the other, then Plaintiff shall, within 30 days of execution of this Agreement, give to Defendant the

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following personal property items:

and Defendant shall, within 30 days of execution of this Agreement, give to Plaintiff the following personal property items: _____

G. Checking and Savings Accounts: The parties represent that they have separated their bank accounts including checking and/or savings, and each shall keep the cash balance in any bank accounts in his/her name, free and clear of any claim by the other. The parties shall immediately close any remaining joint accounts with the proceeds to be divided equally.

H. Tax Consequences: The parties agree that the foregoing transfers of property between them are tax-free under the Internal Revenue Code § 1041, and both agree not to take any inconsistent position on his or her tax returns filed after this Agreement is signed.

4. **Debt Division**: In addition to the allocation of the debts associated with the property distributed herein, the remaining marital debt of the parties shall be divided as follows (*list all debts incurred by one or both of the parties: credit cards, bank loans, personal loans, vehicle loans, outstanding monthly bills, student loans, medical bills, etc.*):

A. Plaintiff shall be solely responsible for and take over the following debts:

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_____ ;
B. Defendant shall be solely responsible for and take over the following debts:

_____.

C. Unless otherwise provided for herein, each of the parties shall be solely responsible for any debts he/she has incurred since (*mark one*) date of separation on _____ (*fill in date you starting living apart*); or date of execution of this Agreement. Each of the parties agrees not to contract any debt, charge or liability whatsoever for which the other or his or her property or estate shall or may become liable or answerable in the future.

Except as otherwise expressly provided, it is further agreed that any and all unpaid debts not otherwise addressed in this document, incurred by the parties during the course of their marriage shall be the responsibility of the person who incurred it. Each party shall indemnify and hold harmless the other therefrom.

D. In respect to equalizing the property distribution, the parties agree (*check one*):

That Plaintiff / Defendant (*circle one*) shall pay to the other the amount of \$ _____ to equalize the property / debt distribution within _____ days of entry of the Judgment and Decree of Divorce;

OR

That the allocation of personal property and debt is equitable and no amount is necessary to equalize the distribution.

E. Unless otherwise provided herein, each of the parties promises at all times to keep the other party free, harmless and indemnified of and from any and all debts, charges or liabilities previously contracted or incurred by said party individually, and to be hereafter contracted or incurred by said party individually, and each shall immediately apply for formal transfer or assumption of the debts each assumes under this Agreement with the creditors involved so the non-responsible party is released from liability by the creditors. However, neither party can guarantee that the creditors

involved will approve a release from liability. If a creditor denies a release presently, the parties agree to renew their applications for formal transfer or assumption in the future at reasonable intervals.

5. Real Property (house, land or buildings):

- The parties have no real property (*check if applicable and then proceed to #8*).
- The parties have an interest in the following real property:

Physical Address:

Legal description (*obtained from a document such as a Warranty Deed, Mortgage or Title Insurance*):

In regards to the property, the parties agree:

Plaintiff / Defendant (*circle one*) will receive the house / land and all the fixtures therein and/or the improvements thereon. The parties agree that the amount of equity in the real estate is \$ _____ (*Value – Debt(s)*). The party receiving the real estate shall pay \$ _____ to the other to equalize this division within _____ days of entry of the Judgment and Decree of Divorce. If there is a mortgage(s) or other joint debt encumbering the real estate, the person receiving the property shall remove the other party's name from the mortgage(s) within _____ days of entry of the Judgment and Decree of Divorce. The person receiving the property has consulted a lender and received pre-approval to refinance. The party not receiving the real property shall cooperate in the release or refinancing and sign a quit claim deed releasing all

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interest in the property to the other party.

OR

The parties agree that the house / land and all the fixtures therein and/or the improvements thereon shall be listed for sale by _____, 20____ with a realtor, on an active multiple listing service, for fair market value. The parties shall mutually agree upon a realtor and both shall cooperate with signing the appropriate documents. Unless the parties otherwise agree, the parties shall accept a minimum offer for fair market value. During the pendency of sale of the home, Plaintiff / Defendant / Not Applicable (*Circle One*) shall have exclusive possession of the marital home as long as he/she does not commit waste thereto. Commencing _____, 20____, the parties agree that Plaintiff / Defendant / Not Applicable (*Circle One*) shall be responsible for the mortgage payments, which payments include taxes and insurance, normal maintenance, as well as payment of utility bills associated with the marital home. The parties further agree that the net proceeds of the sale of the home shall be divided with Plaintiff receiving _____% and Defendant receiving _____%. Additionally, any monies refunded to the parties from any escrow account shall be divided between the parties with Plaintiff receiving _____% and Defendant receiving _____%. The parties agree, if they are not able to file a joint return, Plaintiff / Defendant (*circle one*) shall claim the real estate taxes on his/her 20____ income tax return and Plaintiff / Defendant (*circle one*) shall claim the mortgage interest on his/her 20____ income tax return.

6. Investments and Retirement Funds and Pension Plans: Retirement and investments may be considered marital property and must be considered when dividing the marital assets between the parties. There are additional legal documents necessary to accomplish a transfer of certain retirements and investments and you are strongly advised to consult an attorney if you are dividing this type of property.

The parties agree (*check the appropriate box*):

Each party specifically waives any and all claims, if any, to the other's 401 K, IRA, stock options, retirement, pension, and profit sharing accounts and benefits, whether such claim is known or unknown, contingent or vested, or now owing or to become owing to the other party in the future. It is the intent and purpose of the parties hereto by this provision to waive any entitlement to the 401K, IRA, stock options, pension, retirement, and/or annuity benefits of the other party, including

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both present and future benefits.

Effective the date this Stipulation is signed by both parties, the Plaintiff shall receive the following investments and retirement accounts (list the current value of each):

and

Effective the date this Stipulation is signed by both parties, the Defendant shall receive the following investments and retirement accounts (list the current value of each):

The parties recognize that, unless otherwise provided herein, they have been advised to change any designation of their spouse as the beneficiary of any policy governed by ERISA, to include life insurance policies or employee benefit plans.

7. **Life Insurance.** Life insurance policies, particularly the cash value of some policies, may be considered marital property and should be considered when dividing the marital assets. Thus, the parties agree (*check the appropriate box*):

- The parties do not have any life insurance policies to distribute;

OR

- The parties agree to the allocation of the life insurance policies as follows:

Plaintiff shall receive the following (term/whole life) life insurance policy(ies) and shall be responsible for any premium:

Defendant shall receive the following (term/whole life) life insurance policy(ies) and shall be

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responsible for any premium:

8. Military Benefits (If one of the parties is a military member).

Neither party was or currently is a member of the military. (*Mark if applicable and then move to section 11*).

OR

Plaintiff / Defendant (*circle one or both, if applicable*) was a member of the military (includes the National Guard and Reserves) during a time period of the marriage. Accordingly, the other party may be entitled to, as a former spouse of a service member, specific benefits depending on the length of the marriage and the amount of time the service member spouse spent in the military during the marriage. Benefits may include, if you qualify, retirement pay, military health care, commissary privileges and base facility benefits. There are state and federal laws that come into play; i.e. the Uniformed Services Former Spouses' Protection Act, the Survivor Benefit Plan. There are numerous and complicated laws and it is advised that you seek legal advice and/or assistance from the Defense Finance and Accounting Center to understand and protect all benefits you may be entitled to.

When receiving retirement pay, you need to consult legal counsel regarding the "disposable retired pay" and the importance of disability pay in lieu of retired pay. Also, an Order dividing benefits must be timely received by the Defense Finance and Accounting Center and, if necessary, an Order requiring survivors benefit protection (SBP).

If the Plaintiff or Defendant or both are members of the military service, past or present, please list branch of service, rank at the time of retirement, the specific years that he/she were in service (ex. 1992 – 2004) and the specific years of service during marriage (ex. 1994-2004):

In respect to military benefits of the service member, the parties agree as follows:

_____.

9. **Alimony (Spousal Support).** Please check the appropriate box and fill in the appropriate blanks. (*You are strongly encouraged to consult with an attorney before completing this section*):

Plaintiff / Defendant (*circle one*) shall receive alimony in the sum of \$ _____

each month for the following duration:

- a period of _____ months;
- until remarriage of the person receiving alimony or death of either party.

OR

No permanent, general, rehabilitative or restitutional alimony shall be granted to either party. Both parties waive any right they may have to alimony and accepts this Stipulation and Settlement Agreement (Without Minor Children) in full and final satisfaction of all marital claims.

10. **Income Tax Returns.** The parties agree to share historical accounting and tax information, documents and records with the other as may be necessary for each to prepare a complete an accurate income tax return for subsequent tax years. The parties further agree:

File a joint tax return if possible for the _____ tax year, if allowed by law, and share the expenses and tax liability or refund as follows: _____% to Plaintiff and _____% to Defendant;

OR

File as single persons for the _____ tax year.

Commencing with the tax year that the Judgment and Decree of Divorce is signed, the parties shall file as single persons on their IRS returns and every year thereafter.

11. **Former Name.** If one party would like his/her maiden name or former name restored to them, complete this section:

Not applicable (*check if neither party wants their maiden or former name restored*);

OR

Plaintiff / Defendant (*circle one*), presently known as

_____ DOB _____, will be restored to her / his former or maiden name of “_____”

_____” in any Judgment and Decree of Divorce issued herein and will be known hereafter as

_____.

12. **Other Agreements Not Covered Above.** _____

_____.

13. **Attorney’s Fees.** (*Check the appropriate box and fill in where necessary*):

Each party shall be solely responsible for their own attorney fees, costs and expenses incurred in this proceeding;

OR

Plaintiff / Defendant (*circle one*) will pay the sum of \$ _____ towards the attorney fees, costs and expenses of his / her spouse within _____ days of entry of the Judgment and Decree of Divorce.

14. **Address.** Until all provisions herein are satisfied, the parties agree that each will promptly notify the other of any change of address and/or telephone number.

15. **Other Documents.** The parties shall, at any and all times upon request by the other party or his or her legal representative, make, execute, and deliver any and all such other and further instruments as may be necessary or desirable for the purpose of giving full force and effect to the provisions of this Agreement, without charge therefor.

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16. **Grounds.** The parties mutually understand that a divorce shall be granted to both parties on the grounds of irreconcilable differences, per SDCL 25-4-17.3. The parties have executed an Affidavit of Plaintiff and Defendant as to Jurisdiction and Grounds for Divorce and understand the Court may grant the divorce without requiring personal appearances of the parties. If the Court decides to grant a Judgment and Decree of Divorce, the parties agree that this Agreement shall be presented to the court without further notice. In the event the Court does not accept and approve all terms and provisions of this Agreement, then the same shall be null and void and no Judgment and Decree of Divorce may be entered by default in favor of either party without prior notice to either party.

17. **Interference.** The parties hereafter shall live separate and apart. Each party shall be free from interference, authority or control, direct or indirect, of the other party. The parties agree not to molest, annoy, harass, stalk, or interfere with each other in any aspect of their personal or professional lives.

18. **Enforcement.** The parties agree that this Agreement shall be binding upon them until otherwise mutually agreed or otherwise ordered by the Court. Upon any violation of the terms of this Agreement, or in the event that one party determines that modifications are necessary which are not consented to by the other party, each shall be free to petition the Court to have this Agreement modified or enforced in accordance with the law.

19. **Release of Inheritance Rights.** Unless otherwise specified herein, each party releases all right to share in the estate of the other or to share in the estate of the parents of the other, or to serve as personal representative or administrator of the estate of the other, except only as specified by will or codicil to will executed subsequent to the date of this Agreement.

20. **Modification and Waiver.** Any modification or waiver of any provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement, and approved by the Court. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as waiver of any subsequent default of the same or similar nature.

21. **Partial Invalidity.** If any of the provisions of this Agreement are held to be invalid or unenforceable, all other provisions of this Agreement shall nevertheless continue in full force and effect.

22. **Titles.** The paragraph captions contained herein are inserted for convenience and descriptive purposes only and do not constitute a part of this Agreement.

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Defendant's Initials

23. **Conflict of Laws.** This Agreement shall be construed in accordance with the substantive laws of the State of South Dakota.

24. **Waiver and Incorporation.** The parties waive notice of trial, notice of hearing, findings of fact and conclusions of law and consent to the entry of a Judgment and Decree of Divorce without further notice, upon the Court's determination that there is a just cause for divorce.

It is further stipulated and agreed by and between the parties that all provisions of this Agreement shall be incorporated by reference into any Judgment and Decree of Divorce which may be issued herein.

25. **Military Service.** Plaintiff confirms that he is / is not (*circle one*) currently a member of the military service of the United States of America as defined by the Soldier and Service Member's Civil Relief Act of 1940.

Defendant confirms that she is / is not (*circle one*) currently a member of the military service of the United States of America as defined by the Soldier and Service Member's Civil Relief Act.

26. **Written Memorandum.** This Agreement contains the entire understanding of the parties who hereby acknowledge there have been and are no representations, warranties, covenants or understandings other than those expressly set forth herein.

27. **Ratification.**

A. This Agreement was made and entered into with the full knowledge of both parties, and they have read the entire document and have signed the same of their own free will and accord.

B. **The parties represent to the court that each acknowledges the importance of consulting separate, independent legal counsel as well as a tax expert prior to the execution of this Agreement. The parties acknowledge that it is a legal document and binding upon them.**

C. Each party covenants and warrants to the other: (a) he or she has fully disclosed the existence of and value of all assets and debts in which he or she has any interest whatsoever; and, (b) the assets and debt set forth and identified herein constitutes all the property of the parties, whether owned jointly or by either of them individually, or in conjunction with a third party; and, (c) the full and frank disclosure of all assets and liabilities by both parties is an essential and material element of the consideration of this Agreement.

Plaintiff's Initials

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DATED this _____ day of _____, 20_____.

Plaintiff's Signature

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF _____)

On this the _____ day of _____, 20_____, before me, the undersigned officer, personally appeared _____, **Plaintiff**, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

Notary Public
My Commission Expires: _____

DATED this _____ day of _____, 20_____.

Defendant's Signature

STATE OF SOUTH DAKOTA)
)SS
COUNTY OF _____)

On this the _____ day of _____, 20_____, before me, the undersigned officer, personally appeared _____, **Defendant**, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he/she executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(SEAL)

Notary Public
My Commission Expires: _____

Plaintiff's Initials

Defendant's Initials