

- ✓ We do have to decide on what would happen if you died.

### **PROPERTY DIVISION AGREEMENT**

This PROPERTY DIVISION AGREEMENT (hereinafter "Agreement") is entered into effective as of the \_\_\_\_ day of \_\_\_\_\_, 1999, by and between Wendy Heald Walker ("Wife") and Jonathan Fitzalan Walker ("Husband") of Yavapai County, Arizona.

### **RECITALS**

- A. The parties are husband and wife, having been married to each other on or about June 15, 1984, in St. Thomas, U.S. Virgin Islands.
- B. Certain irreconcilable differences have arisen between the parties, and they have found themselves unable to continue living together. Such differences have rendered the continuance of the marital relation impossible and have irretrievably broken the marriage between the parties.
- C. The parties have acquired certain separate, community and other joint property which they seek to separate and divide and to make a full, complete, and final adjustment of all rights thereto, and the parties have incurred certain community and other joint debts and obligations which they seek to separate and dispose of the liability therefore.
- D. Wife has instituted an action for dissolution of the marriage between the parties in the Superior Court of Yavapai County, Verde Valley Judicial District, State of Arizona,

entitled In re the Marriage of Wendy Heald Walker, Petitioner, and Jonathan Fitzalan Walker, Respondent, Case No.: DO9980497 (the "Domestic Relations Proceeding").

- E. It is the intention of the parties hereto that this Agreement shall define the division of property as a separately enforceable and self-sustaining contract .
- F. The parties desire to divide their property amicably by entering into this Settlement Agreement.
- G. The parties, by this Agreement, intend to effect by their judgement a fair and equitable division of any community, joint, and common property acquired by them during the existence of their marriage.

### **COVENANTS**

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

1. **Incorporation.** The Recitals herein shall be considered a part of this Agreement and these Covenants as if fully set forth herein, and the parties hereby ratify and acknowledge each of the Recitals.
2. **Division of Community Property.** The following itemization of property represents both an apportionment of community property and a confirmation of ownership of the parties separate property. Each party shall own as his or her sole and separate property, those items set forth under his or her respective name. In determining the manner in which the community property of the parties has been apportioned between them, it has been their purpose and intent to accomplish a division that is mutually satisfactory to each party.

The parties represent that the property contained in this Agreement constitutes substantially all of the parties' property and that no other property is known which would be subject to division by this agreement. Wherever it has been practical to do so, the property has been divided equally between the parties in kind. In determining the manner in which the property of the parties has been distributed and the debts apportioned, it has been their purpose to accomplish a mutually satisfactory division.

The parties specifically represent that the distribution set forth in Exhibits "A" and "B" achieves a mutually satisfactory division of their community, joint or common property.

Wife shall have as her sole and separate property that property which is listed on Exhibit "A" attached hereto.

Husband shall have as his sole and separate property that property which is listed on Exhibit "B" attached hereto.

### 3. **Community Indebtedness.**

a) **Husband's Assumption of Debts.** Husband shall assume, pay, indemnify and hold Wife harmless from the obligations listed on the attached Exhibit "C", including, but not limited to any obligations, whether in tort, contract or otherwise, which relate to, arise out of, are secured by, or were created to purchase any of the property described on the attached Exhibit "B".

b) **Wife's Assumption of Debts.** Wife shall assume, pay, indemnify and hold Husband harmless from the obligations listed on the attached Exhibit "D", including, but not limited to any obligations, whether in tort, contract or otherwise, which relate to, arise out of, are secured by, or were created to purchase any of the property described on the attached Exhibit "A".

- c) Husband and Wife each warrant to the other that except as otherwise expressly provided in subparagraphs (a) and (b), above, there is no other outstanding community or other indebtedness created by them, except for normal living expenses (which obligations have been paid in full from month to month).
- d) Except as otherwise expressly provided herein, each of the parties shall be solely responsible for, and shall pay and hold the other harmless from any and all debts, obligations and liabilities incurred or contracted by such party after the date this agreement. Any undisclosed debts, liabilities or obligations of the parties shall be the sole obligation of and shall be paid by the party who incurred the same, and that party shall indemnify and hold the other party harmless therefrom.

#### **4. Income Taxes.**

Commencing tax year 2000, the parties shall file separate federal and state income tax returns. Any refunds received shall be deemed the separate property of the party receiving that refund and each party will pay any income taxes due as shown on their respective returns for 2000 and thereafter. Because the couple's 1995 taxes have not yet been filed, both parties agree to share any tax liabilities or liens that may arise from a subsequent filing of a 1995 tax return.

In the event that Husband and/or Wife sells or conveys any of the assets which have been assigned, conveyed, recognized, transferred, or which have become their respective separate property by the terms of this Agreement, the tax, if any, on the income realized from such sale shall be paid by the party to whom the asset has been assigned, conveyed, transferred, or recognized as the separate property of the party.



5. **Personal Property.** The parties have divided the personal property in the marital residence to their mutual satisfaction.
6. **Attorneys' Fees.** Each party shall be responsible for his or her own attorney's fees and expenses incurred in connection with this agreement, including the negotiation and preparation of this Agreement and the additional necessary documents to conclude the matter.
7. **Irrevocable Division and Nontaxable Event.** The division and transfer of personal property between the parties as herein provided is **effective immediately and is irrevocable**. The parties have agreed upon a mutually satisfactory division of their community, joint and common personal property, the division of which is set forth herein. The parties intend the distribution of property herein to be considered a property settlement and a transfer incident to divorce and, therefore, a nontaxable event under the current federal and state tax codes, including Section 1041 of the Internal Revenue Code. Should either party violate the provisions of this paragraph thereby causing liability to the other, that party shall hold the other harmless therefrom and shall pay any and all damages of the other party.
8. **Future Acquisitions.** The parties agree that all property, real and personal, acquired by either party under this Agreement, or that may be acquired by either of them in the future, by gift, devise, bequest, distribution, purchase or exchange, or in any other manner, and all earnings and income of any kind which hereafter may be acquired by either of the parties, shall be the sole and separate property of the party so acquiring it, free from all claims, rights, and interest to the other; and this Agreement shall operate as, and is intended to be a release, relinquishment, quitclaim and surrender by each of the parties of any rights that he or she may have or assert or claim to have

in or to any such property, earnings and income, except as otherwise provided in this Agreement.

9. Except as may otherwise be provided herein, all earnings, income, accumulations and other property in any manner acquired by either party from and after the date hereof shall be and remain the sole and separate property of the party so acquiring the same, and each of the parties hereto respectively relinquishes, waives and quitclaims to the other party any right or claim of any kind or character whatsoever to all such future acquisitions.

10. **Right to Dispose of Property.** Subject to restrictions placed upon the parties as is herein set forth, the parties agree that each of the parties hereto shall have the sole right to dispose of all property which he or she acquired under this Agreement as fully and effectually as if the parties hereto were sole or single and not married and had never been married, except as otherwise provided in this Agreement.

11. **Waiver of Estate Claim.** Each party hereto waives and relinquishes, except as otherwise provided in this Agreement, any and all rights which he or she may now or hereafter have to succeed to the estate of the other; and each hereby expressly waives and relinquishes any and all rights to act as personal representative or to nominate a personal representative of the estate of the other or to have set aside to him or to her any of the property of the other as community property, or to have set aside to him or to her by any Court having jurisdiction of any portion of the estate of the other any homestead or other property which might be set aside to a surviving spouse or widow as exempt property, or to demand any family allowance, or any other right, benefit or emolument from the estate of the other, and both parties hereto agree

that each will never exercise any right to select a homestead from the property of the other during his or her lifetime.

12. **Wife Dies** – In the event that the wife dies, the husband will have the option to reside at the family residence in order to bring up the children, until both children reach the age of 21. At which time, the residence will be disposed in accordance with the wife's will.
13. **Execution of Documents.** Each of the parties shall execute any and all documents and other instruments necessary to effectuate the intent and purpose of this Agreement including, but not limited to, all instruments, conveyances, powers of attorney, authorizations, indemnities, and other similar documents reasonably required to give effect to this Agreement.
14. **Modifications in Writing.** Both parties agree that any changes in the terms and conditions of this Agreement, to be effective, shall be in writing executed by both parties or their designated counsel, and shall become a part of this original Agreement.
15. **Successors.** Each and every covenant and condition herein contained shall inure to the benefit of, and shall be binding upon, the heirs, legatees, devisees, assigns, administrators, executors, trustees, and successors in interest of the parties hereto.
16. **Entire Agreement.** This Agreement is intended to be a full, complete, and final agreement between the parties mentioned herein and supersedes all prior understandings or agreements, whether oral or in writing, pertaining to the subject matter contained herein.
17. **Full Disclosure.** This Agreement is entered into based upon each party having made a full disclosure to the other party of all property owned by each of them as community

property (or) jointly, and having made full disclosure of all assets. Except as specifically identified herein, the parties represent that they have no knowledge of any funds held in any joint account of the parties at any bank, savings and loan institution, or other financial institution. Both parties do, by execution of this Agreement, represent, warrant, and guarantee that there is no other property (jointly) owned by the parties other than the property mentioned in this Agreement, or any property in anyone else's name in which any other party has a beneficial interest. This Agreement further is entered into based upon each party having made a full disclosure to the other party of all debts, obligations, judgments and liens which have been incurred by them, as community debts or obligations, jointly or in any other nature, having made a full disclosure of all property on which such debts, obligations, liens or encumbrances exist as an encumbrance, and having guaranteed that the property assigned and transferred herein is not subject to any debts, obligations, liens or encumbrances except as otherwise specifically set forth herein or previously disclosed. Both of the parties have relied upon this full disclosure and have entered into this Agreement in full reliance thereon.

Notwithstanding the foregoing, each party (a) acknowledges that they are not relying on any fiduciary duty or representation of the other concerning the value of any asset divided, awarded or assigned herein, and (b) warrants that they have made their own independent determination concerning the value of any asset and the extent of any obligation identified herein.

**18. Voluntariness and Advice of Counsel.** THIS AGREEMENT IS MADE AND ENTERED INTO VOLUNTARILY BY BOTH PARTIES, FREE AND CLEAR FROM ANY DURESS OR INFLUENCE ON EITHER PARTY BY THE OTHER. EACH

PARTY WARRANTS THAT HE/SHE HAS READ THIS AGREEMENT IN ITS ENTIRETY. EACH PARTY HAS BEEN ADVISED FULLY AND ADEQUATELY OF THEIR RIGHT TO LEGAL COUNSEL, OF THEIR OWN CHOICE, AS TO THE CHARACTER AND LEGAL EFFECT OF ALL RECITALS AND COVENANTS CONTAINED IN THIS AGREEMENT, AND EACH PARTY FURTHER WARRANTS THAT HE/SHE FULLY UNDERSTANDS THE NATURE AND EFFECT OF SAID RECITALS AND COVENANTS PRIOR TO THE EXECUTION OF THIS AGREEMENT. WIFE HAS BEEN REPRESENTED BY RUSSELL R. MOKER, A PROFESSIONAL LAW CORPORATION. HUSBAND HAS BEEN REPRESENTED BY SELF.

19. **No Waiver by Failure to Act.** Neither any failure nor any delay on the part of either party hereto in exercising any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof of the exercise of any other right.
20. **Exhibits.** Exhibits "A," "B," "C, AND "D" are attached hereto and incorporated herein by reference and expressly made a part of this Agreement as if fully set forth herein.
21. **Governing Law.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona. This Agreement and its exhibits were drafted by attorneys for Wife as a matter of convenience only and shall not be construed for or against any party on that account or for any other reason.
22. **Severability.** Each provision of this Agreement shall be construed to preserve its validity and enforceability to every extent possible. In the event that any provision of this Agreement is declared void or unenforceable, the party who would have had the provision enforced shall be entitled to elect whether:



- (a) The provision should be modified or to the extent necessary to make it valid and enforceable; or
- (b) The provision shall be deemed not to be part of the Agreement and the other provisions shall remain in full force and effect.

**23. Entire Agreement.** This Agreement shall be, and is intended to be a full, complete and final settlement of all the past, present, and future rights of the parties hereto with respect to each other's property and also attorney's fees, costs, or like claims which either party now has against the other or his heirs, successors or assigns.

**24. Self-Sustaining Contract/No Merger.** Although the parties hereto have agreed that this Property Division Agreement shall be filed with and incorporated into any decree of dissolution, it is the intent of the parties hereto that this Property Division Agreement as such shall not be deemed to have merged into any other order, decree of legal separation, decree of dissolution or judgment and shall, from and after the date hereof, survive and be independent of said decree, and shall be enforceable by either party against the other party in any necessary subsequent civil proceedings should a breach of this Agreement as to any of its terms and conditions. This Agreement, as shall be included in any order, decree or judgment of any court, shall be enforceable by any such court to the extent of its powers inherent in such jurisdiction over the parties and the respective properties of the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands below.

\_\_\_\_\_  
("Wife")

\_\_\_\_\_  
("Husband")

.....  
State of Arizona)

County of Yavapai     ) ss.  
                                  )

SUBSCRIBED and SWORN to me this \_\_\_\_ day of \_\_\_\_\_, 1999, by Wendy Heald Walker.

\_\_\_\_\_  
Notary Public in and For Said State

My Commission Expires: \_\_\_\_\_

State of Arizona)

County of Yavapai     ) ss.  
                                  )

SUBSCRIBED and SWORN to me this \_\_\_\_ day of \_\_\_\_\_, 1999, by Jonathan Fitzalan Walker.

\_\_\_\_\_  
Notary Public in and For Said State

My Commission Expires: \_\_\_\_\_