

THIS SEPARATION AGREEMENT, made and entered into this the 1st day of November 2009, by and between Samantha S. Sample, of Moore County, North Carolina and James R. Sample of Moore County, North Carolina.

ARTICLE I
DEFINITIONS AND RECITALS

1.1. DEFINITIONS

- A. "AGREEMENT" shall mean this entire document.
- B. WIFE shall mean Samantha S. Sample.
- C. "DATE OF SEPARATION" shall mean Oct 01, 2009.
- D. HUSBAND shall mean James R. Sample.
- E. "PARTY" shall mean SAMANTHA S. SAMPLE or JAMES R. SAMPLE.
- F. "PARTIES" shall mean SAMANTHA S. SAMPLE and JAMES R. SAMPLE.
- G. Defined terms under this AGREEMENT are shown in all capital letters.

1.2 RECITALS

- A. The PARTIES were married on Jan 20, 1996.
- B. There were two children born of the marriage, to wit:
 - 1. James Rogers Sample born 25 February 2001; and
 - 2. Allison Samantha Sample born 17 July 2004.
- C. The PARTIES have decided, for their future health and happiness, to live separate and apart. As a result, the PARTIES separated on the DATE OF SEPARATION and have lived separate and apart since that date.
- D. The PARTIES have agreed that they should continue to live separate and apart and desire to confirm their separation and settle all matters between them by executing this AGREEMENT.

- E. The PARTIES believe the terms, conditions and provisions of this AGREEMENT are fair, just and reasonable.
- F. The consideration of this AGREEMENT is ONE DOLLAR and 00/100 DOLLARS (\$1.00) paid by each PARTY to the other PARTY and the promises and agreements made by the PARTIES in this AGREEMENT.

ARTICLE II SEPARATION AGREEMENT

2.1 SEPARATION AND COVENANT OF NON-INTERFERENCE: The PARTIES separated and have lived separate and apart since the DATE of SEPARATION. Accordingly, each PARTY is free to live separate and apart, each at such place of residence as he or she may freely choose, free from all interference, authority and control, direct or indirect, by the other PARTY. Neither PARTY shall molest or interfere with the other party in any manner or at any time, nor will either compel or attempt to compel the other party to cohabit, be in the company of or dwell with him or her. Either PARTY shall be free to conduct, carry on, and engage in any employment trade or business that either PARTY may deem fit, all for the separate use and benefit of such PARTY, and all free from any control, restraint, authority, or interference, directly or indirectly, by the other PARTY in all respects. Each PARTY shall be free to see, date, and otherwise associate with other persons free from any control of the other PARTY; each PARTY releases any such third person for any such conduct occurring on or after the DATE OF SEPARATION.

2.2 AGREEMENT AS EVIDENCE OF SEPARATION: Each PARTY agrees that they separated and began living apart from each other on the DATE OF SEPARATION and that they have lived continuously apart from each other since said date. It is agreed that if either PARTY applies for a divorce, this AGREEMENT shall be evidence of the fact that the PARTIES separated on the DATE OF SEPARATION and were separated on the day this AGREEMENT was executed.

ARTICLE III
RESERVATIONS OF OTHER CLAIMS AND CERTAIN OTHER PROVISIONS

3.1 **GENERAL PROVISIONS:** The PARTIES have not yet settled and resolved their differences and disagreements with regard to post-separation support, alimony, custody, child support and their respective property rights arising under the North Carolina Equitable Distribution Act (N. C. GEN. STAT. § 50-20, *et. seq.*). This AGREEMENT shall not impair either PARTY's rights in regards to any of these issues, which rights are, by execution of this instrument, expressly preserved and reserved by and to the PARTIES.

3.2 **TEMPORARY POSSESSION OF THE MARITAL RESIDENCE:** The former marital residence located at 616 Shadow Lane, Whispering Pines, North Carolina, shall be sequestered to SAMANTHA S. SAMPLE and SAMANTHA S. SAMPLE shall have the exclusive possession of the residence pending a hearing by the Court. This paragraph is to facilitate the orderly and amicable separation of the PARTIES. The sequestration of the property to SAMANTHA S. SAMPLE is without prejudice to either PARTY in any subsequent proceedings between the PARTIES and the Court in any such proceeding may modify, vacate or confirm this provision in accordance with the law applicable to such proceeding.

3.3 **LEAVING NOT ABANDONMENT:** The PARTIES have agreed that JAMES R. SAMPLE would leave the former marital residence and that his leaving would not constitute abandonment nor would it constitute marital fault for purposes of post-separation support, alimony and child custody. The PARTIES agree that their separation was necessary to their health and was in the best interests of the PARTIES and the minor children. The PARTIES acknowledge that they separated by mutual agreement and that JAMES R. SAMPLE leaving of the residence was the least harmful and easiest method of achieving that end.

3.4 **SEPARATE LIABILITIES AND DEBTS:** JAMES R. SAMPLE shall pay all obligations incurred by him individually subsequent to the execution of this

AGREEMENT, and shall indemnify SAMANTHA S. SAMPLE against liability therefrom. SAMANTHA S. SAMPLE shall pay all obligations incurred by her individually subsequent to the execution of this AGREEMENT, and shall indemnify JAMES R. SAMPLE against any liability therefrom.

3.5 COVENANT NOT TO CHARGE DEBT AGAINST OTHER PARTY.

Neither PARTY shall charge or cause or permit to be charged to or against the other PARTY any purchase which either of them may hereafter make, nor create any obligations in the name of or against the other PARTY, nor secure or attempt to secure any credit upon or in connection with the other PARTY, or in the other PARTY's name.

3.6 GENERAL RELEASE OF REAL ESTATE INTERESTS: Except as otherwise provided in this AGREEMENT, each of the PARTIES hereto expressly waives any and all rights or interests in and to any real estate which the other PARTY may hereafter acquire, and either PARTY may acquire, hold, manage, sell and convey by deed in fee simple, or encumber real estate by mortgage or deed of trust or any other instrument, without the knowledge, consent or joinder of the other, and in all such matters, acts or things, convey or encumber real estate as if the PARTIES were unmarried, the foregoing being pursuant to the provisions of N. C. GEN. STAT. § 39-13.4.

3.7 RELEASE OF CLAIMS AND RIGHTS AGAINST THIRD-PARTY: Each PARTY does hereby renounce, release and forever waive any claim, cause of action, or right which either PARTY may have against any third-party for alienation of affections and/or criminal conversation and/or loss of consortium and/or intentional or negligent infliction of emotional distress and/or any other tort where the basis of such claim or asserted right arises out of a relationship which existed and/or conduct between said third-party and other spouse which occurred during the PARTIES' marriage. Further, each party does hereby acknowledge and agree that any third-party against whom any such legal action is brought by either HUSBAND or WIFE may plead the provisions of this paragraph as a "third-party beneficiary" in bar of any such claim or asserted right.

The foregoing release and waiver is acknowledged by each party to be a substantial part of the consideration furnished by each party to the other for this AGREEMENT.

ARTICLE IV MISCELLANEOUS PROVISIONS

4.1 **ADDITIONAL INSTRUMENTS:** Each of the PARTIES shall from time-to-time, at the request of the other, execute, acknowledge and deliver to the other PARTY all further instruments that may be reasonably required to give full force and effect to the provisions of this AGREEMENT.

4.2 **LAW GOVERNING CONSTRUCTION OF AGREEMENT:** The situs of this AGREEMENT is the State of North Carolina and its terms and provisions have been drafted in reliance on the laws of said State. The PARTIES understand and agree that the applications of the law of another State may yield a result not intended by the PARTIES and therefore this AGREEMENT shall be construed and interpreted only in accordance with the laws of the State of North Carolina.

4.3 **ENTIRE AGREEMENT:** This AGREEMENT contains the entire understanding of the PARTIES, and there are no representations, warranties, covenants or undertakings other than those expressed and set forth herein. All previous or contemporaneous negotiations, statements, warranties or other parol or extrinsic evidence are merged herein and shall not modify, alter or lessen the effect hereof.

4.4 **BINDING UPON ESTATE:** The provisions of this AGREEMENT shall be binding upon the respective heirs, executors and administrators of each of the PARTIES.

4.5 **VOLUNTARINESS OF AGREEMENT:** SAMANTHA S. SAMPLE and JAMES R. SAMPLE do hereby agree that this AGREEMENT is entered into freely and voluntarily and has been entered into with full knowledge of all the circumstances, conditions and rights of the PARTIES, and that both do hereby deem all AGREEMENTS contained herein to be reasonable, just and equitable to each PARTY and that neither PARTY executes this AGREEMENT under any undue influence or duress. In order to be

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fully advised and informed in connection with negotiations for and the preparation of this AGREEMENT, SAMANTHA S. SAMPLE has been represented by legal counsel of her choice to wit: RICE LAW, PLLC and JAMES R. SAMPLE has had opportunity to seek legal counsel of his own choosing but has voluntarily executed the attached Informed Waiver of Counsel.

4.6 **INTENT OF PARTIES:** The PARTIES agree that this AGREEMENT is **NOT INTEGRATED**. To that end, both parties do hereby agree and acknowledge that each and every agreement, provision and covenant stated herein was separately agreed upon and that each such agreement, provision and covenant is completely independent of all other provisions hereof. In the event that a provision hereof is rendered void, declared invalid or otherwise is unenforceable, the remaining provisions shall remain in full force and effect, unabated by said unenforceable provision.

IN WITNESS WHEREOF, the PARTIES have hereunto set their hands and seals and have executed this Instrument in duplicate originals, one of which is retained by each of the PARTIES, this the day and year first above written.

JAMES R. SAMPLE (SEAL)

SAMANTHA S. SAMPLE (SEAL)

**STATE OF NORTH CAROLINA
COUNTY OF MOORE**

INFORMED WAIVER OF COUNSEL

WHEREAS I am married to Samantha S. Sample and RICE LAW, PLLC has been employed at the request of my spouse to prepare a Separation Agreement;

WHEREAS I acknowledge that I have been fully informed by the said firm that it is solely employed by my spouse and cannot and will not represent my interests; and

WHEREAS I further acknowledge that I have been advised by said firm that it would be in my best interest to employ an attorney of my own choosing;

NOW, THEREFORE, I do affirm that I do not desire representation in this matter and have voluntarily chosen to enter into this Separation Agreement without the advice and assistance of counsel.

This the _____ day of November, 2009.

JAMES R. SAMPLE

(SEAL)

**STATE OF NORTH CAROLINA
COUNTY OF MOORE**

I, _____, a Notary Public in and for said County and State, certify that SAMANTHA S. SAMPLE appeared before me this day and acknowledged the execution of the foregoing SEPARATION AGREEMENT.

- I have personal knowledge of the identity of the principal; or
- I have seen satisfactory evidence of the principal's identity by a current state or federal identification bearing the photographic image of the individual's face and either the signature or a physical description of the individual.

Witness my hand and official stamp or seal, this _____ day of November, 2009.

Notary Public
My commission expires: _____

Print Notary's Name

**STATE OF NORTH CAROLINA
COUNTY OF MOORE**

I, _____, a Notary Public in and for said County and State, certify that JAMES R. SAMPLE appeared before me this day and acknowledged the execution of the foregoing SEPARATION AGREEMENT and INFORMED WAIVER OF COUNSEL.

- I have personal knowledge of the identity of the principal; or
- I have seen satisfactory evidence of the principal's identity by a current state or federal identification bearing the photographic image of the individual's face and either the signature or a physical description of the individual.

Witness my hand and official stamp or seal, this _____ day of November, 2009.

Notary Public
My commission expires: _____

Print Notary's Name

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