

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
CIVIL COURT DEPARTMENT

In the Matter of the Marriage of  
**MARY JEAN KIRTLAND** and  
**BENJAMIN B. KIRTLAND**

Case No. 11 CV 00712  
Division 7  
K.S.A. Chapter 60

**PROPERTY SETTLEMENT AGREEMENT**

THIS AGREEMENT made and entered into this 13<sup>th</sup> day of April, 2011, by and between MARY JEAN KIRTLAND, hereinafter referred to as "wife"; and BENJAMIN B. KIRTLAND hereinafter referred to as "husband".

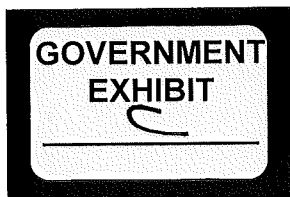
**WITNESSETH:**

WHEREAS, the parties hereto were married on the 27th day of August, 1983, in Fairfield County, Connecticut, and have been married since that date; and

WHEREAS, during the marriage, the parties have become incompatible, making it impossible for them to continue in the marriage relationship; and

WHEREAS, there were four children born of this marriage, and all four children have reached the age of majority and are not subject to this action; and

WHEREAS, it is the desire of the parties, by execution of this Agreement, to fully and for all time settle and determine all property rights of the parties, all rights of Wife and Husband concerning their support and maintenance, all rights and claims arising out of the marriage relationship together with any and all rights existing between the parties or claims one against the other, arising out of the marriage relationship or its termination, or otherwise, independent, of the marriage relationship and all matter of child custody and support; and

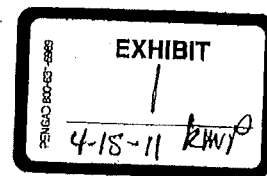


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CLERK OF DISTRICT COURT  
JOHNSON COUNTY, KS

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WHEREAS, the parties have been advised of the litigation alternative to settlement, have decided to resolve all matters by settlement instead of by a judicial determination. They acknowledge that the settlement terms negotiated and set forth in this Agreement represent a compromise of differences, and that a different result might have been reached if a judicial determination had resolved the issues; and

WHEREAS, the parties have had the opportunity to consult with counsel regarding the content of this Agreement and acknowledge that Wife is represented by Ernest C. Ballweg of the firm of Johnston, Ballweg & Modrein L.C., and Husband is represented by Ellen S. Goldman of Law Offices of Ellen S. Goldman.

NOW, THEREFORE, each of the parties hereto for and in consideration of the mutual promises, covenants and agreements herein made and contained, and further in consideration of the acts to be performed hereunder, consent and agree with one another as follows:

#### **I. MAINTENANCE**

The parties agree that neither party shall be responsible for the payment of maintenance to the other party and further acknowledge that this waiver of maintenance is contractual and not modifiable by the court. Husband acknowledges that at the time of his termination of employment with the University of Kansas Athletic Department, that husband's annual income exceeded wife's by more than \$120,000.00. Pursuant the 2010 Family Law Guidelines, wife could have asserted a claim for maintenance in the approximate amount of \$24,000.00 annually, for a period of nine (9) years. Husband further acknowledges that the termination of his employment was a consequence of his own actions for which wife bears no responsibility. These facts are taken into consideration in the overall division of assets and debts herein.

## **II. DIVISION OF NET WORTH**

1. Full Disclosure of Property Interest. Husband and wife represent and warrant that he or she has made a full disclosure of all jointly and individually owned property and that neither has knowledge of any other property of any kind in which the party so representing has any beneficial interest.

2.. Real Property.

A. Marital Residence: The parties own a residence located at 19001 West 98th Terrace, Lenexa, Kansas, legally described as:

FALCON VALLEY, 5th plat, Lot 101, Lenexa, Johnson County, Kansas, more commonly known as 19001 West 98th Terrace, Lenexa, Kansas.

The parties acknowledge that the property presently is appraised by the Johnson County Assessor's office for \$406,000.00, but is subject to a first mortgage of \$301,000.00 through Chase Bank and a second mortgage through Citi Mortgage of approximately \$54,000.00. This property has not been formally appraised but has been listed for sale in an amount in excess of the County appraisal.

The property shall be set aside to the wife as her sole and separate property, free and clear of any claim of husband, but subject to the first mortgage and second mortgage which wife assumes and is to hold husband harmless therefrom. Husband agrees to execute a Quit Claim Deed for his interest in said property.

The parties further agree that in the event said real estate is sold within 24 months from the date of this Decree of Divorce, and in the further event the proceeds of said sale, after discounting the costs of sale, and the payoff of the first and second mortgage shall exceed the sum of \$50,000.00,

then in said event, wife is obligated to pay to husband 50% of the net sale proceeds which exceed the \$50,000.00 threshold. Wife agrees to make available to husband copies of any contract for sale entered into as well as copies of the Closing and Settlement Statement to verify sale proceeds.

B. The parties have accumulated a 2/7 partnership interest in real estate located at 126 Pinney Street, Ellington, Connecticut, with said interest presently titled in the name of wife. For purposes of this Agreement, the parties, without the benefit of appraisal, stipulate to a value of \$90,000.00. The partnership interest in the real estate shall be set aside to the husband as his sole and separate property free and clear of any interest of the wife and subject to any indebtedness thereon which husband agrees to assume and hold wife harmless therefrom. Wife shall execute a Quit Claim Deed or other appropriate legal document conveying her interest in the real estate to the husband within sixty (60) days from the date of this divorce. It shall be the responsibility of husband to cause to be prepared and thereafter submitted to wife appropriate documentation for her signature which will satisfy the law of the State of Connecticut. The legal description for the property is as follows:

A certain piece or parcel of land with the buildings and improvements thereon situated in the Town of Ellington County of Tolland and State of Connecticut, bounded and described as follows:

Commencing at a point on the westerly line of Pinney Street, which point is the southern most point of the property herein described: thence S 82° 47'00" W, 148.41 feet along land now or formerly of Grace Palshaw to a steel stake; thence S 79° 51'38" W, 100.00 feet along land now or formerly of Louis Gasek to a pin; thence N 9° 51'16" W, 277.40 feet along land now or formerly of Max Cantor to a pin; thence 83° 00'00" E, 306.30 feet along land now or formerly of Max Cantor to a pin; thence along an arc of a curve with a radius of 25.00 feet, 40.91 feet to a pin; thence S 10° 46'08" W, 173.30 feet along Pinney Street to the point and place of beginning.

ENCLOSURE

3. Household Goods and Furnishings. The parties shall equitably divide their household goods and furnishings in accordance with this Agreement and within thirty (30) days from the date of this decree..

4. Wife's Property. Upon the Court entering a Decree of Divorce of Husband and Wife and ordering the performance of this Agreement, Wife shall have as her sole and separate property, free and clear of any right, title or interest in Husband, the following property:

- a. Wife's jewelry, personal property and clothing;
- b. All furniture, appliances and home goods in wife's possession less the items of husband and referred to in Exhibit A, attached;
- c. The following motor vehicles: 2002 Chevrolet Impala LS, VIN 2G1WH55K329181526; 2002 Chevrolet Trailblazer, VIN 1GNET16S526108472; 2006 GMC Envoy SLE, VIN 1GKDT13S062107918;
- d. Any and all bank accounts in her name;
- e. All other household items currently in Wife's possession except those items contained in Exhibit A attached.
- f. Fidelity rollover IRA including amount transferred from wife's Aetna 401(K) plan;
- g. Fairfield County Bank IRA;
- h. The remaining funds in Northwestern Mutual brokerage account #162, less the amounts previously withdrawn by husband.
- i. An amount equal to 70% of the account balance pursuant a Qualified Domestic Relations Order from husband's retirement account maintained with TIAA CREF Financial Services, with all losses and gains incurred upon said sum from and after April 15, 2011;

- j. Life insurance, policy # N01246330 maintained through Aviva Life Insurance Company
- k. Savings account with Bank of America, account # -8058;
- l. Account maintained with United Bank of Kansas; and
- m. Reynolds American stock.

5. Husband's Property. Upon the Court entering a Decree of Divorce of Husband and Wife and ordering performance of this Agreement, Husband shall have as his sole and separate property, free and clear of any right, title or interest in Wife the following property:

- a. Husband's jewelry, personal property and clothing;
- b. Items contained in wife's residence included in Exhibit A attached.
- c. Any and all bank accounts in his name;
- d. His retirement account maintained with TIAA CREF less the amount allocated to wife in paragraph 4 i;
- e. His retirement plan maintained through the University of Connecticut Diversified Investment Advisors, account # 0001;
- f. His ING account maintained through the University of Connecticut
- g. Met Life insurance policy # [REDACTED];
- h. Brokerage account maintained through Northwestern Mutual Investments, account # 1990;
- i. Ownership of policy # 7269 as maintained through Aviva Life & Annuity Company;
- j. Account maintained at Bank of America, account # 4716; and
- k. Hartford Life Insurance policies # [REDACTED] and [REDACTED]

2025 RELEASE UNDER E.O. 14176

### III. ASSUMPTION OF DEBTS AND LIABILITIES

1. College Expenses. The parties have four children, all adults, three of whom are still pursuing college education. The parties acknowledge the following accounts are owned by their sons as follows: Charles Schwab, account no. -9947; Charles Schwab, account no. -019; Charles Schwab, account no. -9942; and Charles Schwab, account no. -8954. The parties acknowledge that any future college expense contributions will be the wife's sole responsibility which is taken into account herein. Any existing loans incurred for college expenses shall remain the responsibility of husband.

2. Litigation Expenses. Husband shall pay the attorney fees and expenses he has incurred in this action. Wife shall pay any attorney fees or expenses she has incurred in this action.

3. Unsecured Debt. The parties' debts and liabilities are as follows:

- a. Wife shall assume as her sole and separate obligation all debt in her individual name, including, credit card debt Bank of America commencing with account # ; credit card indebtedness with Discover; credit card debt with Chase Bank; credit card debt with Southwest.com Rapid Rewards.
- b. Husband shall assume as his sole and separate obligation all debt in his individual name, including with Bank of America commencing with account # ; Chase credit card debt commencing with account # ; credit card debt with U.S. Airways World Mastercard commencing with account # ; credit card debt with Capital One commencing with account # , account with American Express; credit card debt with Chase commencing with

account # [REDACTED];

- c. Husband is solely responsible for repayment of restitution owed to the University of Kansas Athletic Department or any other entity to which restitution might be owed and deriving from allegations and husband's plea in case no. 10-10178-WEB; and
- d. In the event any additional income tax liability is due and owing for any past return, and as between the parties herein, husband agrees to indemnify wife for any tax and penalties incurred which may arise as a consequence of husband's actions which precipitated the initiation of proceedings in the United States District Court for the District of Kansas. In the event that any tax liability is accrued for separate reasons other than through husband's actions, then in said event they shall be prorated between the parties with husband to be responsible for 75% and wife for 25%. Husband further agrees that in the event of any audit, he will cooperate with wife and provide any requested documentation in support of an application pursuant the Innocent Spouse Doctrine.

Each party shall be responsible for any debt incurred in his or her individual capacity since the date of separation and shall indemnify the other from said debt.

4. Indemnification. Husband and Wife agree to indemnify and hold harmless the other and defend him or her from and against all claims and liabilities and will reimburse the other for any and all expenses made or incurred by the other, either directly or indirectly, including all reasonable attorney fees, as a result of his or her failure to pay or otherwise satisfy the specific debts and

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liabilities assumed by each.

5. No Undisclosed Debts. Each of the parties warrants to the other that, on or before execution of this Agreement, he or she has not incurred any obligation that has not been disclosed to the other, which is either an obligation on or which the other party is or may become personally liable, or an obligation that could be enforced at any time against an asset held, or to be received under this Agreement, by the other party. In the event such a debt is discovered following the entry of the Decree of Divorce in this matter, the party failing to disclose such debt shall assume responsibility for 100% of the non-disclosed obligation pursuant to the indemnification provision of this Agreement.

#### IV. MISCELLANEOUS

1. Right to Live Separate. The parties may and shall at all times hereafter live separate and apart and each party shall be free from interference, authority and control, direct or indirect, by the other, as if he and she were unmarried.

2. Free Will and Full Disclosure. Each party respectfully agrees that this Agreement, and all of its provisions, terms and conditions, have been made of his or her own free will and volition, and acknowledge that no coercion, pressure or undue influence has been used or exerted against the other party. Each party declares that each has had the opportunity to seek and obtain independent advice of his or her own choosing, and that each party has disclosed the full extent or nature of his or her respective assets, liabilities, debts, expenses and income.

In the event that either party discovers property that is not contained in this agreement, and the source of which can be traced to be that of marital property, the party from whom the property was intentionally concealed shall receive 100% of said property.

3. Provisions for Failure to Perform Obligations with Notice Required. In the event that either party to this Agreement brings an action for failure to perform any of the obligations imposed by this Agreement on him or her, or for enforcement or clarification of the Agreement, the prevailing party in such action shall have the right to recover his or her attorney's fees and litigation costs reasonably expended in prosecuting or defending the action. However, no attorney fees shall be so recovered by a party filing an action unless that party seeking to recover said attorney fees and costs shall have mailed to the breaching party written notice of the alleged failure to perform, and said alleged failure was not cured within ten (10) days after the date of mailing said notice by certified mail to the breaching party's residence address. (A party's refusal to accept, failure to pick up or sign certified mail green card will be deemed received by said party.) No fees or costs authorized by this paragraph shall be recovered except as determined and awarded by the court in an action brought for enforcement, breach or clarification of the Agreement.

4. Separate Use of Assets. That all property and monies received or retained by the parties pursuant hereto shall be the separate property of the respective parties, free and clear of any right, title or interest in the other party not hereinbefore specifically set out, and each party shall have the right to deal with and dispose of his or her separate property as fully and effectively as if the parties had never been married.

5. Instruments of Transfer. Each of the parties hereto agrees that, at the time they may be required, they shall make, execute and deliver to the other any and all deeds of conveyance, bills of sale, or other instruments that may be necessary to carry out the terms of this Agreement. If either

party shall fail to comply with the provisions of this section, this Agreement shall constitute an actual grant, assignment and conveyance of property and rights in such manner, with such force and effect as shall be deemed necessary to effectuate the terms hereof.

6. Mutual Release of Marital Rights. In consideration of the mutual releases contained in this paragraph, each of the parties hereto releases the other and his or her respective legal representatives, successors and assigns, from any claim of any kind, and specifically relinquishes any right, title or interest in or to any of the earnings, accumulations, future investments, money or property of the other, any rights of inheritance in the estate of the other, which either may heretofore, may now or may hereafter have, except as otherwise provided in this Agreement, any rights to elect or take against the Will of the other, any rights to act as executor, administrator of the Will or estate of the other, any rights to receive any allowance from the estate of the other, any additional right which either party has or may have by reason of their marriage, including dower, curtesy, whether by statute, agreement or common law, except those exceptions and provisions hereinbefore contained; it is specifically understood and agreed however, that nothing herein contained in this paragraph shall be construed as limiting the rights of enforcement of the terms and provisions of this Agreement by either party.

7. Absolute Agreement. This Agreement is absolute and irrevocable and is not conditioned upon the parties hereto being divorced or upon approval by the Court; this Agreement shall be considered to be contractual between them and binding upon the parties, their executors, administrators, heirs and devisees, beneficiaries, assigns, or other legal representatives, where applicable, for the purpose of carrying out the terms hereof; if, at some later date, any modification hereof is agreed upon between the parties, the same shall be reduced to writing, signed and

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acknowledged by them before it shall become effective.

8. Submission to the Court. In the event of a hearing on the Petition for Divorce as herein filed by the parties, this Agreement may be submitted to the Court during the hearing for such action as the Court may determine proper, and each of the parties hereto agrees that they will request that the Court enter its Decree in accordance with the terms and provisions herein.

9. Laws of Kansas. This Agreement, together with all the provisions hereof, and including all exhibits, if any, shall be interpreted under the laws of the State of Kansas.

10. Voluntary Agreement. Each party acknowledges that this agreement has been entered into voluntarily, with full disclosure of his or her assets and liabilities. Each party believes this Agreement to be fair, just and equitable.

11. Consent to Wills. If either of the parties shall, prior to the dissolution of the marriage relationship, die without having made a Will, the property of the party who shall die shall pass under the Laws of Descent and Distribution so that the other party to this contract shall not inherit from the one who died. Each party shall have the right by Last Will and Testament to dispose of his or her property to the same extent as though single, and the signature of each of the parties to this Agreement shall express the consent of each party to the making of such a Will by the other party.

12. Disposal of Property. Each of the parties shall, from the date of this Agreement, have the right to dispose of his or her property by intervivos conveyance, gift, last will or otherwise, as though a single person, unless otherwise prohibited by this Agreement.

13. Taxability of Transfer of Property. It is intended by the parties that all transfers of property, real or personal, performed pursuant to this Agreement are to be deemed as transfers incident to divorce as defined by I.R.C. 1041 and all regulations and amendments thereunder.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names and executed  
this Agreement on the day and year first above written.

Mary Jean Kirtland  
MARY JEAN KIRTLAND

BENJAMIN B. KIRTLAND

STATE OF KANSAS       )  
                                  ) SS.  
COUNTY OF JOHNSON   )

BE IT REMEMBERED, that on this 13 day of April, 2011, before me, a  
Notary Public in and for said county and state, personally appeared Mary Jean Kirtland, who is to  
me personally known to be the same person who executed the above and foregoing instrument in  
writing, and acknowledged execution of the same as her free act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal  
the day and year last above written.



Julie McCowen  
Notary Public

My appointment expires:  
11/8/11

2011 APR 13 PM 3:03

IN WITNESS WHEREOF, the parties have hereunto subscribed their names and executed this Agreement on the day and year first above written.

MARY JEAN KIRTLAND

  
BENJAMIN B. KIRTLAND

STATE OF KANSAS       )  
                                  ) SS.  
COUNTY OF JOHNSON   )

BE IT REMEMBERED, that on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, a Notary Public in and for said county and state, personally appeared Mary Jean Kirtland, who is to me personally known to be the same person who executed the above and foregoing instrument in writing, and acknowledged execution of the same as her free act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal the day and year last above written.

\_\_\_\_\_  
Notary Public

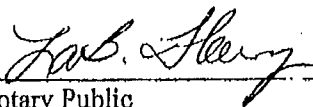
My appointment expires:  
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Connecticut  
STATE OF KANSAS )  
Hartford ) SS. Glastonbury  
COUNTY OF JOHNSON )

BE IT REMEMBERED, that on this 13<sup>th</sup> day of April, 2011, before me, a Notary Public in and for said county and state, personally appeared Benjamin B. Kirtland, who is to me personally known to be the same person who executed the above and foregoing instrument in writing, and acknowledged execution of the same as his free act and deed.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal the day and year last above written.

  
Notary Public

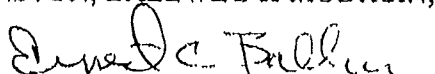
My appointment expires:  
\_\_\_\_\_

**LAURA B. FLANAGAN**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES MAY 31, 2012

SUBMITTED AND APPROVED BY:

JOHNSTON, BALLWEG & MODRCIN, L.C.

By:



Ernest C. Ballweg, # 6898  
9393 West 110th Street, Suite 450  
Post Office Box 25866  
Overland Park, Kansas 66225  
(913) 491-6900  
FAX (913) 491-4930  
[ernie@jbtlawkc.com](mailto:ernie@jbtlawkc.com)

ATTORNEYS FOR PETITIONER

APPROVED BY:

LAW OFFICES OF ELLEN S. GOLDMAN

By:

Ellen S. Goldman, #17040  
7944 Santa Fe Drive  
Overland Park, Kansas 66204  
(913) 381-9520  
FAX (913) 381-9055  
[esgoldman@egoldmanlaw.com](mailto:esgoldman@egoldmanlaw.com)

ATTORNEYS FOR RESPONDENT

2025



SUBMITTED AND APPROVED BY:

JOHNSTON, BALLWEG & MODRCIN, L.C.

By: \_\_\_\_\_

Ernest C. Ballweg, # 6898  
9393 West 110th Street, Suite 450  
Post Office Box 25866  
Overland Park, Kansas 66225  
(913) 491-6900  
FAX (913) 491-4930  
[ernie@jbtlawkc.com](mailto:ernie@jbtlawkc.com)

ATTORNEYS FOR PETITIONER

APPROVED BY:

LAW OFFICES OF ELLEN S. GOLDMAN

By: \_\_\_\_\_

Ellen S. Goldman, #17040  
7944 Santa Fe Drive  
Overland Park, Kansas 66204  
(913) 381-9520  
FAX (913) 381-9055  
[esgoldman@egoldmanlaw.com](mailto:esgoldman@egoldmanlaw.com)

ATTORNEYS FOR RESPONDENT

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