

IN THE SUPERIOR COURT OF CHEROKEE COUNTY
STATE OF GEORGIA

SARA KITT, §
§
PETITIONER, § CIVIL ACTION FILE NO. 22CVE0203
§
§
vs. §
§
BRYAN KITT, §
§
RESPONDENT. §

MARITAL SETTLEMENT AGREEMENT

Bryan Kitt, ("Husband"), and Sara Kitt, ("Wife" collectively with "Husband" as "the parties") enter into the following Settlement Agreement (the "Agreement").

WITNESSETH:

The parties were married on April 28, 2007 and said marriage still subsists.

There are two (2) children born of the marriage to-wit: Alexia Sung Hee Kitt, a female born in 2013, and Jaxson Sung Hee Kitt, a male born in 2015.

Due to irreconcilable differences that have arisen between the parties, they have been living separate and apart and it is their intention to dissolve the marriage between them by entering into this agreement settling all issues between them on a full and final basis, including the care and custody of their minor children, child support, alimony, equitable division of marital property, attorneys' fees and all other rights, remedies, privileges and obligations which have arisen out of their marriage (the "Agreement"). The parties agree that their future relations shall be governed by the terms of this Agreement and enter into this Agreement freely and voluntarily, under no compulsion or duress, and in consideration of the present income, earning capacity, and financial circumstances of each of the parties.

NOW, THEREFORE, in consideration of the mutual promises, covenants, agreements, and terms contained herein, the parties voluntarily enter into the following Agreement:

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Minor Children

1. **Child Custody and Visitation** - The parties acknowledge they have a joint and several obligation for the care, custody, and support of their minor children. They have set forth the details of their custodial arrangement and respective parenting times in the document entitled "Consent Permanent Parenting Plan," which is incorporated herein by reference.
2. **Child Support** - Child support is set pursuant to the Consent Child Support Addendum and Child Support Worksheet, which are incorporated herein by reference.

Alimony

3. **Alimony** - Husband and Wife agree that neither of them shall seek or receive alimony from the other, either now or in the future, and specifically waive their statutory right to modifications, up or down, of alimony based on a change in the income or financial status of either party. Both parties, in signing this Agreement, intend this waiver to be a knowing and express waiver of their statutory rights to modification of alimony, up or down, pursuant to O.C.G.A. § 19-6-19 and specifically rely upon of *Varn v. Varn*, 242 Ga. 309 (1978) to effectuate the waiver.

Insurance

4. **Health Insurance** - Commencing with the entry of the Final Judgment, the parties will be responsible for their own health insurance policies, and each shall be responsible for their own health care expenses not covered by insurance. The parties shall share in the uncovered health care costs and shall maintain the health insurance for the minor children as set forth in detail in the Consent Child Support Addendum. Each party shall pay for any of their own individual medical expenses that may be outstanding at the time of the filing of this Settlement Agreement.

Real Estate

5. **Marital Real Estate** - During the parties' marriage, they acquired a property located at 308 Bentley Creek Court, Canton, Georgia 30115 (the "Marital Residence"), which has been sold pursuant to a Consent Order for Sale of Marital Residence and Disbursement of Funds entered in this matter on July 13, 2022. The parties agreed to an initial division of the net proceeds received from the sale of the Marital Residence to be disbursed pursuant to an Amended Consent Order for Disbursement of Funds as filed with this Court on September 27, 2022. On October 6, 2022, the parties entered into a Second Amended Consent Order for Disbursement of Funds.

The parties' remaining net equity from the sale of the house is held in escrow through the law firm of Respondent's attorney and shall be disbursed as follows:

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- a. Husband shall receive Thirty-Five Percent (35%) of the remaining net proceeds of the sale of the Marital Residence and Wife shall receive Sixty-Five Percent (65%) of the remaining net proceeds of the sale of the Marital Residence.
- b. The parties shall cooperate in signing any paperwork necessary to effectuate the terms of the disbursement, to include a Third Order for Disbursement of Funds if necessary.

Capital Gain/Loss - Husband shall be responsible for listing 35% of any capital gain or loss resulting from the sale of the Marital Residence on his federal and state income tax return in compliance with the Internal Revenue Code. Wife shall be responsible for listing 65% of any capital gain or loss resulting from the sale of the Marital Residence on her federal and state income tax return in compliance with the Internal Revenue Code. Each party shall indemnify and hold the other party harmless from any and all tax liability associated with each party's respective tax implication.

Retirement, Investment, and Bank Accounts

6. **Retirement Accounts** - Husband warrants he has disclosed any interest, if any, he may have or that he has been offered by his employer or business, past or present, or reasonably expects to be offered by his employer, in a retirement plan of any kind, whether pension, profit-sharing, 401(k), IRA, annuity, SEP, or other type of retirement or deferred compensation plan.

Wife warrants she has disclosed any interest, if any, she may have or that she has been offered by her employer or business, past or present, or reasonably expects to be offered by her employer, in a retirement plan of any kind, whether pension, profit-sharing, 401(k), IRA, annuity, SEP or other type of retirement or deferred compensation plan.

The parties represent and acknowledge that Husband currently has a 401(k) account with Peach State Reserves with an approximate balance of \$36,150.37 as of December 31, 2021. Husband warrants and represents he has no outstanding loans against the Peach State Reserves 401K account and that he will not take any loans or otherwise withdraw any funds from this account until after Wife receives her distribution.

As part of the equitable division of the parties' marital property, One Hundred Percent (100%) of Husband's Peach State Reserves 401K account shall be transferred to Wife, plus or minus any gains or losses and any interest or dividends the amount accrues from the valuation date until the date of transfer. The parties agree that the valuation date of the funds shall be the date of the parties' Final Judgment and Decree.

- a. The transfer of funds to Wife shall be through a Qualified Domestic Relations Order ("QDRO") and shall be done as soon as administratively possible according to the rules and regulations of the Plan. The process shall be initiated by Wife within thirty (30) days of the date of the Final Judgment and Decree between the parties. Preparation of the QDRO, the process of qualifying the QDRO and completion of the transfer of funds through the QDRO shall be prepared, processed, and completed by

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Wife and she shall be responsible for the costs of the preparation and processing of the QDRO, to include any administrative fees charged by the Plan. If the Plan charges any administrative fees to Husband's portion of the Plan, then Wife shall reimburse Husband of said fees within thirty (30) days of receiving proof of said cost by Husband.

- b. Wife's entitlement to the retirement benefits described in this Agreement shall not be terminated, abated, suspended, modified, reduced, or affected in any way by her death, remarriage, or any other event.
- c. If any order submitted to the Plan Administrator is held or construed not to be a QDRO within the meaning of the 29 U.S.C. §414(p), the parties stipulate and agree that the Superior Court of Cherokee County, Georgia shall retain jurisdiction to modify the order and any such modifications made be made *nunc pro tunc*.

7. **Pensions** - Both Husband and Wife acknowledge that the Husband has a pension through the Employee's Retirement System of Georgia. Husband shall retain the full value of his pension, free from any claim by Wife.

Both Husband and Wife acknowledge that the Husband has a pension through the Employee's Retirement System of Georgia. Husband shall retain the full value of his pension, free from any claim by Wife.

8. **Investments** - Each party shall be entitled to retain any investments held in their individual names, as may be held now or in the future.

9. **Bank Accounts** - As an equitable distribution of property, each party shall retain, free from any claim by the other, all bank accounts, savings accounts and other similar accounts in their individual names.

The parties have a joint bank account through Bank of America, account ending in 6422. The parties agree to equally split any current balance in this account. Wife shall remove her name from this account within thirty (30) days of the date of this Agreement.

Marital Debts

10. **Marital Debts** - The parties shall pay their marital debts from the sale of the Marital Residence as listed in the debt chart in Paragraph 5 above.

Except as otherwise provided for in the debt chart in Paragraph 5 above or as otherwise may be set forth herein, each party shall be responsible for all other indebtedness in their respective names. The parties will make sure that any credit cards not listed in said debt chart will be changed so that they are in the individual names of the primary card holder.


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The parties agree to not obtain additional credit in the name of either party or increase the amount of any existing joint debt obligation as listed in the debt chart in Paragraph 5 above unless both parties agree otherwise.

Neither Husband nor Wife shall have any obligation for any debt incurred by the other that may be in existence at the time of execution of this Agreement except as is specifically provided for in this Agreement. Any such unspecified debt shall be paid by the party who incurred the debt.

With regard to all debts and obligations under this Agreement, each party represents and warrants he or she shall make timely payments on his or her obligations so as not to negatively affect the credit of the other. Both parties agree they shall indemnify and hold the other harmless for the financial responsibilities he or she has accepted under this Agreement. Said indemnification and hold harmless provisions shall include the defaulting party's paying the other party's reasonable and necessary attorney's fees and court costs for any contempt action or collection action necessary to enforce the terms of this Agreement.

Joint Cell Phone: The parties have a family cell phone plan. Within 30 days of the execution of the parties' Final Judgment and Decree, Wife shall obtain her own account and shall execute all documents necessary to remove her name from the joint cell phone plan. Wife shall be responsible for any and all fees incurred in effectuating this provision, to include equipment and early termination fees. Husband shall sign any documents necessary to release Wife's phone number to her.

Marital Business

11. **Wife's Business** - Wife shall retain the business Sage Hair Salon, free from any claim by Husband, including but not limited to any and all funds currently in the business accounts, vehicles, equipment, inventory, accounts receivables, furniture, goodwill, and all other assets of the business. Wife shall be solely responsible for all debts and expenses associated with said business and shall indemnify and hold Husband harmless for same.

Personal Property

12. **Automobiles** - Each party shall retain the automobiles currently in their possession and be solely responsible for all debts, maintenance, repairs, insurance, registration, title, tags, ad valorem taxes, and other expenses associated with their respective automobiles. Husband is currently driving the Kia Optima and Wife is currently driving the Kia Sorento. Each party shall have the other party's name removed from the title and registration as required within 30 days of signing this Agreement. The parties will contact the insurance company to establish separate insurance policies on their respective vehicles within 30 days of the signing of this Agreement.

13. **Furniture, Furnishings And Other Personal Property** - The parties shall work together to mutually divide their personal property. Upon division of the personal property, each of the parties shall hereinafter own, have and enjoy, independently of any claim or right of the other party all items of personal property (tangible and intangible) now or hereafter belonging to him

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or her and now or hereafter in his or her name, with full power to dispose of the same as fully and effectually as though he or she were unmarried.

The Wife shall be entitled to 75% of Husband's memorabilia of her choosing. The parties shall cooperate to divide said memorabilia within thirty (30) days of the date of the filing of this Settlement Agreement. Husband shall be entitled to retain the remaining memorabilia.

In the event that there are any personal property items in dispute, then the parties shall submit their dispute to an arbitrator. The parties shall use Jenni Brown (Brown, Dutton & Crider) to arbitrate their dispute. The parties agree to be bound to the arbitrator's award and shall be equally responsible for all fees and expenses associated with said arbitration. The parties shall act to set up arbitration no later than thirty (30) days from the date of the Final Judgment and Decree if any items remain in dispute.

Taxes

14. Taxes -

a. Tax Filings:

The parties represent and confirm to each other that there are no outstanding income taxes due nor any deficiency assessments, late fees, penalties, or interest charges that are due to any state revenue agencies or to the Internal Revenue Service for any tax year prior to 2022. The parties acknowledge that they have already filed their return for the tax year 2021 and have split said tax return to their mutual satisfaction. The parties will file separate tax returns for all future tax years. Each party shall be allowed to retain any funds received as a result of their individual future filings and shall be solely responsible for any taxes owed as a result of their individual filings.

b. Mortgage Interest and Property Tax Deduction:

The parties shall equally split any mortgage interest and property tax deductions associated with the Marital Residence.

c. Dependency Exemption:

Wife shall be entitled to claim the parties' daughter Alexia for all federal and state income tax purposes, child tax credit, and dependency exemptions for so long as the child remains eligible as a dependent.

Husband shall be entitled to claim the parties' son Jaxson for all federal and state income tax purposes, child tax credit, and dependency exemptions for so long as the child remains eligible as a dependent.

Both parties shall execute all documents required by taxing authorities to effectuate the terms of these provisions. In the event the federal or state government assesses additional income taxes, penalties or interest against either party because of failure to comply with the terms of this

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provision, the party at fault shall fully indemnify and hold the other harmless and shall pay any income taxes, penalties, and/or interest attributable thereto, together with the costs of reasonable attorney's fees, tax return preparer's fees, accountant fees, or other expert fees incurred as a result thereof by the party not at fault.

d. Indemnification:

The parties agree that, in the event either or both of them is audited by the federal or state government for a year during which they filed a joint return as a married couple, each will cooperate with the other, their respective accountants and counsel in such audit and shall timely provide records, documentation and appearances as required by the Internal Revenue Service or State Revenue Department. In the event the liability is directly attributable to the fault of one party, that party shall pay any resulting income taxes, penalties and interest assessments, together with the costs of reasonable attorney's fees, accountant's fees, or other expert fees incurred by the innocent party and the at-fault party shall indemnify and hold the other party harmless with respect to such liability.

In the event it is determined there is a tax liability that is not directly attributable to the fault of either party, the parties will cooperate and work together to minimize their tax liability and resolve the issue. Any tax liability will be split between the parties in direct proportion to the percentage of each party's income to the parties' total household income for that tax year.

Any and all refunds that may be derived from an audit will be split between the parties in direct proportion to the percentage of each party's income to the parties' total household income for that tax year.

Should Husband or Wife fail to perform any obligation hereunder, the other shall be entitled to recover any and all losses as assessments together with all expenses, including reasonable attorney's fees.

e. Tax Advice:

It is expressly understood by the parties that Meriwether and Tharp, LLC and Gina M. Grady do not hold themselves out as being experts in tax-related matters, have made no representations or recommendations based upon potential tax consequences, and have recommended the parties consult with tax specialists regarding any tax consequences regarding this Agreement. By execution of this Agreement, the parties acknowledge such recommendation and confirm that, irrespective of whether he or she sought, accepted, or disregarded such advice, he or she is fully informed of and satisfied with the tax consequences that may affect him or her. By signing this Agreement, each party states that they have neither party received nor relied on any tax advice from either Meriwether and Tharp, LLC, or Gina M. Grady.

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Attorneys' Fees and Expenses

15. *Attorneys' Fees and Expenses* - The parties understand and agree that each shall be responsible to pay their respective attorney's fees and costs incurred as a result of the instant proceeding. Each party further agrees to defend, indemnify and hold the other harmless from any and all claims by any person, be it an accountant, attorney, appraiser, investigator or otherwise, who rendered or claims to have rendered service to him or her in connection with the proceeding or negotiation of this Agreement.

Additional Clauses (Future Relationship, Waivers, etc.)

16. *Freedom from Interference* - The parties mutually agree to live separate and apart at any residence of their choosing (subject to any limitations set forth in their parenting plan, where applicable). Each party shall be free from the interference, harassment, authority and control, direct or indirect, by the other as if single and unmarried, except for any communication required by this Agreement or the Parenting Plan. Each party may engage in any legal employment, business, or profession which he or she may deem advisable, subject to other provisions in this Agreement or the Parenting Plan. Both parties agree that they shall not molest, harass, or interfere with the other whatsoever, nor shall either of them attempt to cohabit or dwell with the other.

17. *Bankruptcy* - Husband and Wife agree that in the event either party enters into a bankruptcy that this Agreement will expressly survive such event. It is the parties' intention that if either party seeks bankruptcy protection, the amounts payable under this Agreement including but not limited to alimony, child support, or periodic payments of equitable division shall not be dischargeable in bankruptcy under 11 United States Code Section 523(a)(5), as the payments are in the nature of spousal support and maintenance. Alternatively, the payments shall not be dischargeable in bankruptcy under 11 United States Code Section 523(a)(15).

18. *Renunciation of Certain Rights* - Except as provided herein, Husband and Wife each hereby waive any right at law or in equity to elect to take against any Last Will made by the other, including all rights of dower or curtesy, and hereby waives, renounces, and relinquishes unto the other, their respective heirs, executors, administrators and assigns, forever, every interest of any kind or character which either may now have or may hereafter acquire in or to any real or personal property of the other, whether now owned or hereafter acquired. By executing this Agreement, both parties waive any legal right they may have to be appointed administrator of the estate of the other. The release of marital rights by the other is founded on mutuality of consideration independent of the equitable division of property provided for in this Agreement.

Husband and Wife shall each have the right to dispose of his or her property by will, or otherwise, in such manner as each may in his or her uncontrolled discretion deem proper, and neither one will claim any interest in the estate of the other, except to enforce any obligation imposed by this Agreement.

19. *Duty to Cooperate & Provide Further Assurances* - Each of the parties, from time to time, at the request of the other, shall execute, acknowledge and deliver to the other all further

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instruments/documents (and take such steps which may be reasonably required) necessary to give full force and effect to the provisions of this Agreement. If no time frame is provided, then such actions shall be taken within thirty (30) days from the effective date of this Agreement. If either party shall fail to comply with the provisions of this paragraph, this Agreement shall constitute an actual grant, assignment, and conveyance of property and rights in such manner, and with force and effect, as shall be necessary to effectuate the terms of this Agreement.

20. *Effective Date of Agreement* - Except as may otherwise be contained herein to the contrary, the effective date of this Agreement shall be the date it is fully executed by all parties to be charged hereunder.

21. *Time is of the Essence* - Time is of the essence for the obligations of the parties in this Agreement.

22. *Binding Agreement* - The parties hereby agree to be bound by the terms and conditions of this Agreement. Nothing in this Agreement shall be construed as a relinquishment by either party of the right to prosecute or defend any suit for divorce in any court of proper jurisdiction. Should either of the parties obtain a decree, judgment or order of separation or divorce in any other state, county or jurisdiction, each of the parties to this Agreement hereby consents and agrees that this Agreement and all of its covenants shall not be affected in any way. Unless otherwise stated in this Agreement or disallowed by law, the provisions of this Agreement shall be binding on each party's heirs and assigns.

23. *Incorporation of Agreement into Judgment* - A suit for divorce has been filed in the Superior Court of Cherokee County. This Agreement shall be presented to the Court and incorporated by reference into a Final Judgment or decree of Divorce from such Court. Notwithstanding such incorporation, this Agreement shall survive and shall be enforceable independently of the Judgment or Decree.

24. *Voluntary Execution* - The parties acknowledge and represent that this Agreement is fair and reasonable under the circumstances and that it is not the result of any fraud, duress or undue influence exercised by either party or any third party upon either of them, and that each executes it voluntarily and of their own free will.

It is further specifically understood and agreed that the provisions of this Agreement relating to the equitable distribution of the parties' property are accepted by each party as a final settlement for all purposes whatsoever.

The parties further acknowledge and represent each has read this Agreement in its entirety and fully and completely understand each and every term and obligation in the Agreement.

25. *Independent Legal Representation* - Husband acknowledges he was represented by Gina M. Grady of Meriwether & Tharp LLC and that he is fully satisfied with the services and performance of his attorneys and that all questions he has have been answered fully and satisfactorily. Wife hereby acknowledges that she was afforded ample and sufficient opportunity

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to hire an attorney and have this Marital Settlement Agreement reviewed by an attorney of her independent selection and has voluntarily elected to enter into and execute this Marital Settlement Agreement. Wife further represents that she has not received any legal and/or tax advice from Husband's attorney.

26. **Waiver of Further Discovery** - The parties understand that they each have the right to obtain and take advantage of discovery tools available to litigants in a court proceeding including, but not necessarily limited to, interrogatories, depositions, requests to produce, an examination of the books and records of the other party, and the procurement of independent valuations of the assets possessed and/or controlled by the other, etc., prior to the execution of this Agreement. Each party expressly represents and agrees that he or she is sufficiently familiar with the income and assets of the other, related financial documents, and documents filed with the Court in this matter. The parties acknowledge that their respective attorneys have explained the advantages and disadvantages of waiving or utilizing the compulsory discovery process. The parties knowingly waive his or her right to further utilize the foregoing discovery tools for the purpose of settling their differences concerning the issues arising out of the marriage. EACH PARTY EXPRESSLY ACKNOWLEDGES THAT DISCOVERY IN THIS MATTER HAS NOT BEEN COMPLETED. The parties have disclosed to the other the full and complete nature and value of all of their presently constituted assets, liabilities and incomes for purposes of entering into this Agreement, which disclosures each covenants to be complete, accurate and true. The parties acknowledge and agree that each party has relied upon the full and accurate disclosure by the other with regard to the entire assets and estate of the parties and that such reliance constitutes consideration for entering into this Agreement.

27. **Right to Trial** - The parties acknowledge that each has been informed by their respective counsel of the right to have a court of competent jurisdiction determine all issues arising from the marriage and that if this was done, perhaps, a different result would have been obtained. Each party voluntarily and knowingly waives this right to trial and accepts the terms of this Agreement as being final, complete and binding as to all said issues arising from the marriage.

28. **Strict Performance** - The failure of either party to insist upon strict performance of any provision of this Agreement shall not be construed to be a waiver or any subsequent default or breach of this Agreement.

29. **Mutual Release** - Except as may be contained herein to the contrary, each party hereby releases and discharges, and by this Agreement does for himself or herself, and his or her legal heirs, representatives, executors, administrators, and assigns, release and discharge the other of and from all causes of action, claims, rights or demands whatsoever, in law or in equity, in which either party ever had or now has against the other, except for any and all causes of action for dissolution of marriage and/or post-judgment enforcement applications to a court of competent jurisdiction.

30. **Entire Understanding** - This Agreement contains the entire understanding of the parties and supersedes any and all agreements previously made by them. There are no representations, warranties, covenants or undertakings other than those as expressly set forth herein. The parties

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represent and acknowledge that there have been no collusive agreements whatsoever made either orally or in writing, or any representations made by one party to the other with respect to the obtaining of a decree dissolving the parties' marriage, or with respect to restraining or inhibiting the other from contesting or litigating any pending or future matrimonial cause of action for divorce or compliance application incident to the enforcement of the terms of this Agreement.

31. **Modification or Waiver** - A modification or waiver of any of the provisions of this Agreement shall be effective when and only if made in writing and executed with the same formality as this Agreement. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature.

32. **Situs** - This Agreement shall be governed in accordance with the laws of the State of Georgia, exclusive of conflicts of law principles. Additionally, the drafting of this Agreement by the attorney for either party shall have no bearing on the interpretation of same.

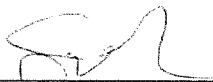
33. **Communication of Information** - As long as any provision contained herein remains unfulfilled, the parties agree to keep the other informed of his or her residence, email address, and telephone number or such other place as he or she may readily receive communications.

34. **Severability** - This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provisions of this Agreement, or the application thereof to any person, firm, company or other legal entity or circumstance shall, for any reason and to any extent, be invalid and unenforceable, the remainder of this Agreement and the application of said provision to other persons, firms, companies or other entities or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

35. **Parties' Signatures:**

IN WITNESS WHEREOF, the parties have entered into this Agreement on the day and year written next to their respective names. Signed, Sealed and Delivered in the Presence of:

AS TO WIFE



SARA KITT

DATED: 10/21/22

STATE OF GEORGIA
COUNTY OF CHEROKEE

BE IT REMEMBERED that on this 21 day of October, 2022 before me, the subscriber, a Notary Public, personally appeared Sara Kitt, who, I am satisfied, is the person named in the foregoing Agreement, to whom I first made known the content thereof, and thereupon she

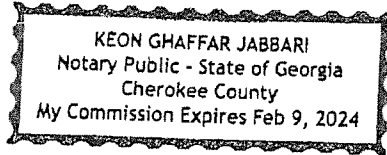
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acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, for the uses and purposes therein expressed.

[Signature]
Notary



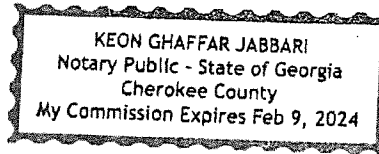
AS TO HUSBAND

Bryan Kitt DATED: 10-21-22
BRYAN KITT

STATE OF GEORGIA
COUNTY OF CHEROKEE

BE IT REMEMBERED that on this 21st day of October, 2022 before me, the subscriber, a Notary Public, personally appeared Bryan Kitt, who, I am satisfied, is the person named in the foregoing Agreement, to whom I first made known the content thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

[Signature]
Notary



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