SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the "Settlement Agreement") is made and entered into by and between:

"Plaintiffs"

"Defendants"

"Insurer"

Recitals

A. Plaintiffs filed a complaint against the Defendants in the _____ Court for the State of _____, Case No. _____ (the "Complaint"), seeking to recover monetary damages as a result of that certain occurrence. In the Complaint, Plaintiffs sought to recover monetary damages as a result of that certain occurrence on or about _____, _____, at _____, which resulted in physical injuries to _____ and personal injuries to _____. Plaintiffs allege that the resulting physical and personal injuries arose out of certain alleged negligent acts or omissions of Defendants.

B. _____ is the liability insurer of _____, and as such, would be obligated to pay any claim made or judgment obtained against _____, which is covered by its policy(s) with _____, subject to the limits set forth in the applicable insurance contract(s) between _____, and _____.

C. The parties desire to enter into this Settlement Agreement in order to provide for certain payments in full settlement and discharge of all claims which are, or might have been, the subject matter of the Complaint, upon the terms and conditions set forth below.

[insert the following if punitive damages are asked for in the Complaint]

D. Plaintiff acknowledges that no portion of the settlement proceeds represent exemplary or punitive damages nor prejudgment or postjudgment interest, but that such claims are nonetheless being released by Plaintiff.

Agreement

The parties agree as follows:

1.0 **Release and Discharge**

1.1 In consideration of the payments set forth in Section 2, Plaintiffs hereby completely release and forever discharge Defendants and Insurer from any and all past, present or future claims, demands, obligations, actions, causes of action, wrongful death claims, rights, damages, costs, loss of services, expenses and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which the Plaintiffs now have, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, or which are the subject of the Complaint (and all related pleadings) including, without limitation, any and all known or unknown claims for bodily and personal injuries to Plaintiffs, or any future wrongful death claim of Plaintiffs' representatives or heirs, which have resulted or may result from the alleged acts or omissions of the Defendants.

1.2 This release and discharge shall also apply to Defendants' and Insurer's past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, heirs and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

1.3 The Plaintiffs hereby expressly warrant that Plaintiffs have or will discharge and fully satisfy any and all claims and/or liens of any kind or character whatsoever, including but not limited to, insurance medical payments, advance payments, gratuitous benefits, and any other similar benefits, which said claim or liens apply or may be deemed to apply to the settlement proceeds hereof, and Plaintiffs agree to indemnify and save harmless the parties released hereby for any breach of this express warranty and pay all reasonable attorney fees incurred by the settling party as a result of any breach of this warranty.

1.4 This release, on the part of the Plaintiffs, shall be a fully binding and complete settlement among the Plaintiffs, the Defendants and the Insurer, and their heirs, assigns and successors.

1.5 The Plaintiffs acknowledge and agree that the release and discharge set forth above is a general release. Plaintiffs expressly waive and assume the risk of any and all claims for damages which exist as of this date, but of which the Plaintiffs do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect Plaintiffs' decision to enter into the Settlement Agreement. The Plaintiffs further agree that Plaintiffs have accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. Plaintiffs assume the risk that the facts or law may be other than Plaintiffs believe. It is understood and agreed to by the parties that this settlement is a compromise of a disputed claim, and the payments are not to be construed as an admission of liability on the part of the Defendants, by whom liability is expressly denied.

2.0 **Payments**

2.1 In consideration of the release set forth above, Insurer, on behalf of _____, agrees to pay to the individuals named below the sums outlined below:

[cash payment amounts]

2.2 In further consideration of the release set forth above, Insurer, on behalf of _____, agrees to pay future Periodic Payments to the Payees below according to the following schedule:

[insert periodic payments]

All sums set forth herein constitute damages on account of personal and physical injuries or sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

3.0 **Payee's Rights to Payments**

Plaintiffs acknowledge that none of the Periodic Payments, or the Payee's rights to such payments, may be accelerated, deferred, increased or decreased by the Plaintiffs or any Payee; nor shall the Plaintiffs or any Payee, or any person who becomes a recipient of Periodic Payments pursuant to the terms of a Qualified Assignment and Release Agreement or by operation of law, have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or the rights to such payments, or any part thereof, by

assignment or otherwise, except as pursuant to a qualified order under IRC Section 5891.

4.0 **Consent to Qualified Assignment**

4.1 Plaintiffs acknowledge and agree that Insurer will make a "qualified assignment" within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of the Insurer's liability to make the Periodic Payments set forth in Section 2.2, to _____ ("Assignee"). The Assignee's obligation for payment of the Periodic Payments shall be no greater than that of Insurer (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payment obligations.

4.2 Such assignment shall be accepted by the Plaintiffs without right of rejection and shall completely release and discharge Insurer from the Periodic Payment obligations assigned to the Assignee. The Plaintiffs recognize that the Assignee shall be the sole obligor with respect to the Periodic Payment obligations, and that all other releases with respect to the Periodic Payment obligations that pertain to the liability of the Insurer shall thereupon become final, irrevocable and absolute.

5.0 **Right to Purchase Annuity**

5.1 The Assignee reserves the right to fund the liability to make its Periodic Payments through the purchase of an annuity policy from _____ ("Annuity Issuer"). The Assignee shall be the sole owner of the annuity policy and shall have all rights of ownership. The Assignee may have the Annuity Issuer mail payments directly to the Payee. The Payee shall be responsible for maintaining a current mailing address with the Annuity Issuer.

6.0 **Beneficiary Designation**

Any payments to be made after the death of Payee pursuant to the terms of this Settlement Agreement shall be made to such person or entity as shall be designated in writing by Payee to the Assignee. If no person or entity is so designated by Payee, or if the person designated is not living at the time of Payee's death, such payments shall be made to the Estate of Payee. No such designation, nor any revocation thereof, shall be effective unless it is in writing and delivered to the Assignee. The designation must be in a form acceptable to the Assignee before such payments are made.

7.0 **Discharge of Obligation**

The obligation of the Assignee to make the Periodic Payments shall be discharged upon the mailing of a valid check in the amount of such payment to the designated address of the Payee named in Section 2 of this Settlement Agreement, or by direct deposit or electronic funds transfer if so requested. However, if a check is lost or otherwise not received, the Annuity Issuer, upon notification of said check being lost, or not received, shall promptly reissue said check, subject to verification by "Stop Payment" that the Payee has not negotiated said check.

8.0 **Attorney's Fees**

Each party hereto shall bear all attorney's fees and costs arising from the actions of its own counsel in connection with the Complaint, this Settlement Agreement and the matters and documents referred to herein, the filing of a Dismissal of the Complaint, and all related matters.

9.0 **Delivery of Dismissal with Prejudice**

Concurrently with the execution of this Settlement Agreement, counsel for the Plaintiffs shall deliver to counsel for the Insurer, an executed Dismissal with Prejudice of the Complaint. Plaintiffs hereby authorize counsel for the Insurer to file said Dismissal with the Court and enter it as a matter of record.

10.0 **Representation of Comprehension of Document**

In entering into this Settlement Agreement, Plaintiffs represent that they haves relied upon the advice of their attorneys, who are the attorneys of their own choice, concerning the legal and income tax consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read and explained to Plaintiffs by their attorneys; and that the terms of this Settlement Agreement are fully understood and voluntarily accepted them.

11.0 **Warranty of Capacity to Execute Agreement**

Plaintiffs represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; that Plaintiffs have the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified in it; and that Plaintiffs have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

12.0 **Governing Law**

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of _____.

13.0 **Additional Documents**

All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

14.0 **Entire Agreement and Successors in Interest**

This Settlement Agreement contains the entire agreement between the Plaintiffs, Defendants, and the Insurer, with regard to the matters set forth in it and shall be binding upon and enure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

15.0 **Effectiveness**

This Settlement Agreement shall become effective immediately following execution by each of the parties.

_____
_____, Plaintiff

Date: _____

_____
_____, Plaintiff

Date: _____

Approved As To Form:

_____
_____, of Attorneys for Plaintiffs

Date: _____

[NAME OF APPROPRIATE DEFENDANT or INSURER]

By: _____

Title: _____

Date: _____