

TRADEMARK LICENSE AGREEMENT

This Agreement is effective on this day, _____ by and between _____ ("Licensor"), of _____ [address of licensor], and _____ ("Licensee"), of _____ [address of licensee].

RECITALS:

A. Licensor is a manufacturer and distributor of _____ and owns Trademarks (as defined below) and Trademarks Registrations (as defined below) (such Trademarks and Trademarks Registrations are collectively referred to herein as the "Licensed Trademarks"). The logo forms of the Licensed Trademarks are set forth in Exhibit A.

B. Licensor uses the Licensed Trademarks in connection with the manufacturer and distribution of _____ [description of product] ("Product") in _____ [description of territory].

C. Licensee is a manufacturer and distributor of goods with expertise and ability in distributing and having sold its goods at retail.

D. Licensee wishes to produce and distribute the Product in certain geographic areas outside of the territory described in Recital B above, and the Licensor is willing to grant the Licensee a license to use the Licensed Trademarks on the terms and conditions set forth in this Agreement.

AGREEMENTS:

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth below, the parties hereto covenant and agree as follows:

1. DEFINITIONS

For the purpose of this Agreement, the following terms shall have the meanings set forth:

1.1 "Final Product" means a Product in the last stage of development by Licensee to which Licensee shall make only minor changes and such changes will in no event result in a reduction in the quality of the Product.

1.2 "License" shall have the meaning for such term described in Section 2 below.

1.3 "Licensed Territory" shall have the meaning for such term described in Section 2 below.

1.4 "Licensed Trademarks" shall have the meaning for such term described in Recital A above.

1.5 "Material Requiring Approval" means the Product and any and all packaging, advertising, promotional, and display material upon which or in connection with which the Licensed Trademarks are used.

1.6 "Net Selling Price" is the gross selling price (i.e., the total consideration) actually paid and collected by Licensee in a bona fide arm's-length transaction consummated or intended to be consummated by transfer of title in any Product, less:

- (a) Returns actually credited;
- (b) Actual credit losses; and
- (c) Shipping charges actually charged to customers.

No deductions shall be made for any other costs incurred, such as, but not limited to, costs of manufacture, sales, distribution, or exploitation of the Product.

With respect to any Product used, sold, or otherwise disposed of by Licensee in other

than an arm's-length transaction, "Net Selling Price" is the average Net Selling Price at which the most nearly similar Product is sold in sales qualifying under paragraph 1.6(a) above, over a period beginning with a date three months before such Product is first used, sold, or otherwise disposed of and ending with a date three months after such Product is first used, sold, or otherwise disposed of, or if there is no available reference means, as described above, then the "Net Selling Price" is the fair market value of such Product which shall be determined in accordance with the regularly established cost and pricing practices of Licensee for the most nearly related good to the Product not embodying the Licensed Trademarks and sold in accordance with the provisions of paragraph 1.6(a) above.

1.7 "Product" shall have the meaning for such term described in Recital B above.

1.8 "Trademarks" means [- description of trademarks, service marks or trade names -] used in any form or format, style or design, as applied to the Licensed Goods, as well as any goodwill and rights, at common law or otherwise, pertinent thereto, and refers to trademarks, service marks, and trade names.

1.9 "Trademark Registrations" shall mean any United States Trademark Registration and/or any application for registration, foreign or domestic, made by Licensor for the Trademarks including: [-description-].

2. LICENSE

2.1 Grant of License. The Seller hereby grants to the Licensee, and the Licensee hereby accepts, an exclusive, nontransferable license (the "License") to use the Licensed Trademarks in connection with the manufacture and marketing of the Product in _____ (the "Licensed Territory"). The Licensor will not produce or market the Product in the Licensed Territory during the term of this Agreement and will not grant a license to do so to any person other than the Licensee.

2.2 Limitations. No other right or license is granted by Licensor to Licensee or by Licensee to Licensor, either express or implied, with respect to any other trademark, trade name, service mark, or other intellectual property right owned, possessed, or licensed by or to Licensor. Licensee shall not use the Licensed Trademarks in any manner not specifically authorized by this Agreement.

3. OPERATION UNDER LICENSE

3.1 Applicable Laws and Regulations. The Licensee must obtain all governmental permits, licenses, registrations, and approvals needed to produce and market the Product in the Licensed Territory and must operate under the License in compliance with all applicable laws and regulations. Specifically, but without limitation, when using any of the Licensed Trademarks, the Licensee must comply all laws relating to trademarks in force, including marking requirements. At the request of Licensor, and without compensation to Licensee, Licensee shall promptly do such acts and execute, acknowledge, and deliver all such papers as may be necessary or desirable, in the sole discretion of Licensor, to obtain, maintain, protect, and/or vest in Licensor the entire right, title, and interest in and to any Licensed Trademarks in the Territory; including rendering such assistance as Licensor may request in any litigation, Patent and Trademark Office proceeding, or other proceeding. All use of any Licensed Trademarks by Licensee on any good shall inure to the benefit and be the property of Licensor.

3.2 Quality of Goods. The Licensee may use the Licensed Trademarks only in connection with goods manufactured, distributed, and sold by or for the Licensee in

accordance with the specifications, directions, and processes furnished to the Licensee by the Licensor or its representatives and agents from time to time, and the quality of all goods sold under the Licensed Trademarks must be satisfactory to the Licensor or as specified by the Licensor. The Licensee must furnish to the Licensor, from time to time upon the request, but no less frequently than quarterly, with samples of goods sold or distributed using one or more of the Licensed Trademarks. In addition, in order to assure that the development, manufacture, appearance, quality, and distribution of the Product are consonant with the Licensed Trademarks used to identify it or them, Licensor retains the right to participate at each stage of development of any Product or any other Material Requiring Approval and to approve or disapprove of any development, manufacture, appearance, quality, and/or distribution.

3.3 Use of Licensed Trademarks. Whenever the Licensee uses any of the Licensed Trademarks, in advertising or in connection with goods that it sells or distributes, the trademark must be displayed in accordance with specifications and directions furnished by the Licensor to the Licensee from time to time. Licensee shall use upon or in connection with the Product the symbol TM or, where a United States Federal Trademark Registration has been obtained, the symbol RT. Licensee shall not otherwise affix or use such in connection with nor use any other trademark or trade name in connection with the Product without Licensor's prior written approval. The Licensee must & also clearly indicate the Licensor's ownership of the trademark whenever one of the Licensed Trademarks is used. Licensee agrees to use such copyright notice as may be prescribed by legal counsel for Licensor from time-to-time.

3.4 Approval of Prototypes and Final Product. Licensee shall submit for Licensor's approval prototype samples of any Product and all other Material Requiring Approval prior to any use thereof by Licensee. All submissions shall be submitted in duplicate. In addition, at such stage as Licensee may determine that it has a Final Product, it shall notify Licensor, providing _____ [- number -] samples of the Final Product at Licensee's cost and such additional samples as and when requested in writing by Licensor at Licensee's cost, such samples not be resold by Licensor. No Product shall be sold without Licensee having first submitted a Final Product to Licensor for Licensee's approval. Any such submission for approval not approved of in _____ [- number -] days shall be deemed disapproved.

3.5 Periodic Submission of Specimens. During the term of this Agreement, Licensee shall submit to Licensor at least annually, and at more frequent intervals, if requested in writing by Licensor, one production specimen of any previously approved Materials Requiring Approval. (Where the submission of specimens is impractical, as, for example, with store signs or displays, Licensee may submit photographs.) Licensor may, upon written notice to Licensee withdraw any approval and provide Licensee with written notice of the reasons for such withdrawal.

3.6 Standards for Approvals. In exercising the right to grant, withhold, or withdraw any approval required or permitted by this Agreement, Licensor shall be bound by Licensee's quality as demonstrated to Licensor prior to the execution of this Agreement and such shall be the standard applied to the Materials Requiring Approval (which is exemplified by the samples attached hereto); Licensor may, however, take into consideration such esthetic and other considerations as Licensor, in its sole and exclusive discretion, shall determine to be applicable which do not lower or raise the above

described standard. Licensee shall not release or distribute any Materials Requiring Approval without the approvals described above. The withholding or withdrawing at any point of approval pursuant to this Agreement shall not result in any liability by Licensor to Licensee on account thereof.

3.7 Best Efforts. The Licensee must utilize its best efforts to procure the greatest volume of sales of the Product consistent with high quality and to make and maintain adequate arrangements for their manufacture, distribution, advertising, and promotion.

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4. CONSIDERATION

4.1 License Fee. In partial consideration of the Licensor's grant of the License, the Licensee has paid to the Licensor the sum of \$ _____ [amount], and the Licensor acknowledges receipt of this payment.

4.2 Royalty on Net Selling Price. As additional consideration of the Licensor's grant of the License, the Licensee must pay to the Licensor a running royalty equal to _____ [percentage amount] percent of the Net Selling Price of the Product by the Licensee.

4.3 Minimum Royalty. Licensee shall pay to Licensor a minimum royalty of _____ [- amount -] during each annual period of the initial term of this Agreement, and _____ [- amount -] annually during any renewal term of this Agreement. Licensee shall make such minimum royalty payments upon a quarterly basis, as more specifically set forth below. In the event that Licensee shall fail or neglect to make such a quarterly payment, then, and in that event, all other quarterly payments shall become accelerated and payment for the entire annual minimum royalty shall become due and payable at once.

4.4 Reporting and Payment Procedures. On or before the _____ [number] day of each calendar quarter, beginning with the first calendar quarter following the date of this agreement, the Licensee must furnish the Licensor with an unaudited statement of the sales of the Products by the Licensee during the preceding calendar quarter. This statement must include a listing of each type of good marketed by the Licensee under the Licensed Trademarks during the reporting quarter and a statement of the quantity of each type of good sold. The statement must also include a computation of the royalty due to the Licensor for the reporting quarter, and full payment of the royalty must accompany the statement. The Licensee will be entitled to a credit against the royalty due for any reporting quarter equal to percent of any credit or refund given by the Licensee to a customer who bought the Product from the Licensee in the previous quarter and returned it to the Licensee during the reporting quarter. The statement furnished by the Licensee to the Licensor for any quarter in which a credit is claimed must include an explanation in reasonable detail about the reason for and amount of the credit or refund given by the Licensee to its customer. Where the total royalty paid or to be paid at the end of any one calendar quarter is less than a quarter of the annual minimum royalty for that period, Licensee shall make a payment of a quarter of the annual minimum royalty within _____ [-number-] days of the end of said quarter.

4.5 Non-Sale and Sales-Based Royalties. For the purpose of this section, the amount of quarterly royalty payment made which is not the result of royalties on sales is referred

to as a "non-sale royalty" and all royalties paid on sales is referred to as a "sales-based royalty." It may occur that sales-based royalties during any one quarter of an annual period measured from the effective date of this Agreement will be less than the minimum non-sales royalty. In such event Licensee shall pay at the end of a calendar quarter the minimum royalty. If the total of all sales-based royalties paid for the annual period is equal to or exceeds the minimum royalty for that period, and then such non-sale royalty made during that annual period shall be credited against any later quarter in that annual period, provided, however: (1) the total amounts paid shall not be less than the minimum royalty due during such annual period; and (2) in no event shall any such credit be carried over to any other annual period as measured from the effective date of this Agreement. If there is a non-sale-based minimum royalty credit remaining at the expiration of this Agreement in the last annual period, Licensor shall refund such credit to Licensee. If this Agreement shall be terminated by any breach of Licensee, no credit shall be due Licensee.

5. RECORDS, AUDITS AND INSPECTIONS

5.1 Books and Records. The Licensee must maintain full, accurate, and complete books of account and records reflecting all activities and transactions subject to or covered by this agreement. These books and records must be in at least sufficient detail to permit the written statements required by this agreement to be completed and the royalties payable under this Agreement to be computed. These books and records must be maintained at the principal place of business of the Licensee and must be open to inspection, audit, and copying by the Licensor or its designated representatives during usual business hours, so long as reasonable advance notice is given to the Licensee. The Licensor's inspection rights cover any of the Licensee's records reflecting information either provided to or maintained for any regulatory agencies or authorities or industry associations pertaining to the Product. The Licensee must cause its appropriate employees and agents to cooperate with the Licensor in connection with such inspections or audits. The books and records required under this section must be maintained for at least three (3) years after the period to which they pertain.

5.2 Independent Audit. If the Licensor requests an independent audit of the Licensee's books and records, all audit expenses will be borne by the Licensor. But if an audit reveals a deficiency in the royalties paid by the Licensee of greater than 5% for any one calendar month, the Licensee must bear the entire cost of the audit for the calendar year in which the error occurred.

5.3 Confidentiality of Business Information. The Licensor and its officers, employees, and agents must maintain in confidence all confidential information concerning the business of the Licensee that is revealed by inspection of the Licensee's books and records, and may not at any time, either during or after the term of this agreement, permit or cause such confidential information to be disclosed or divulged to any other person or company, except as may be required by any court of law or any governmental regulatory body or by the rules or regulations of such a body, or to be used in any manner except in furtherance of the purposes of this Agreement.

5.4 Inspections by the Licensor. The Licensor has the right at any time during normal business hours, upon reasonable advance notice, to visit and inspect the Licensee's facilities, and all operations by the Licensee involving the production or marketing of the Product, as well as all equipment and materials utilized by the Licensee in doing so. The

Licensee must cause its appropriate employees and agents to cooperate with the Licensor and to provide reasonable facilities and assistance to the Licensor in connection with such visits or inspections.

6. ASSIGNMENT AND SUBLICENSING

6.1 No Assignment or Sublicense by Licensee. This Agreement and the License are personal to the Licensee, and the Licensee may not assign or sublicense any of the rights granted to the Licensee under this Agreement without the advance written consent of the Licensor, which consent may be withheld for any reason whatsoever. Any purported assignment or sublicense by the Licensee (or by operation of law) that is not approved in writing by the Licensor will be null and void and of no legal effect whatsoever.

6.2 Assignment by Licensor. This Agreement may be assigned by the Licensor to any person or entity whatsoever.

7. LICENSORSHIP AND PROTECTION OF TRADEMARKS

The Licensee acknowledges the Licensor's exclusive right, title, and interest in the Licensed Trademarks and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of such right, title, and interest. Specifically, but without limitation, the Licensee will at no time adopt or use any word or mark that is likely to be similar to or confusing with the Licensed Trademarks. In connection with use of the Licensed Trademarks, the Licensee will not in any manner represent that it has ownership of the Licensed Trademarks or any registration thereof, and the Licensee acknowledges that use of the Licensed Trademarks will not create in the Licensee's favor any right, title, or interest in or to the Licensed Trademarks, but all uses of the Licensed Trademarks by the Licensee, including any goodwill generated by such use, will inure to the benefit of the Licensor. The Licensor will be responsible for trademark registrations and must use commercially reasonable efforts to file, prosecute, and maintain all trademark and related registrations and registration applications for the Licensed Trademarks.

8. INFRINGEMENT

8.1 Pursuit of Infringements. Both the Licensor and the Licensee have the right, but not the obligation, to prosecute any infringement of the Licensed Trademarks. The party electing to prosecute an infringement may select counsel, must pay all the expenses of any legal action it institutes, and will be entitled to all recoveries therefrom. Upon the commencement of a legal action by the Licensor or the Licensee against an infringer, the other party must cooperate with the party commencing such action and must render all reasonable material assistance that the party commencing the action may request. The Licensee must promptly inform the Licensor of any infringement that comes to the Licensee's attention, whether or not the Licensee elects to prosecute the infringement.

8.2 Maintenance of Royalty Obligation. Notwithstanding any alleged infringement of the Licensed Trademarks, or any action therefor, or any challenge lodged by the Licensee, the royalty payable under this Agreement must continue to be paid by the Licensee during the term of this Agreement.

9. LICENSOR'S WARRANTIES AND REPRESENTATIONS

The Licensor represents and warrants that:

9.1 Ownership of Licensed Trademarks and Right to Assign. The Licensor is the sole Licensor of the Licensed Trademarks, free and clear of liens or encumbrances, and has a

good right to license the rights in the Licensed Trademarks to the Licensee in accordance with the terms of this Agreement.

9.2 No Infringements. The Licensor has no knowledge of any notice or claim asserted or threatened by any third party due to the infringement by the Licensed Trademarks of any trademark, trade name, service mark, copyright, or license of any person or organization.

9.3 No Inconsistent Grants. The Licensor has not previously granted any rights inconsistent with those of the License under this Agreement to any person other than the Licensee and will not enter into any agreement granting or purporting to grant such rights during the term of this agreement.

10. INDEMNITY

10.1 Indemnification of Licensor. Licensee represents and warrants that it has the right to enter into this Agreement and to agree to the terms and conditions of this Agreement. The Licensee agrees that it will defend, hold harmless, and indemnify the Licensor from and against any charges, suits, damages, costs, expenses (including attorneys' fees), judgments, penalties, claims, liabilities, or losses of any kind or nature whatsoever, including but not limited to any personal injury or damage to any property, facility, materials, or equipment, and including claims by either the Licensee's employees or third parties, which may be sustained or suffered by or secured against the Licensor: (a) based on or arising out of any manufacture, sale, or use of the Product produced or marketed by the Licensee; (b) based upon or arising out of any actual or alleged defect in any Product produced or marketed by the Licensee; (c) based on the Licensee's infringement or violation of any third party rights as a consequence of use of the Licensed Trademarks in accordance with the terms of this Agreement; or (d) based on or arising out of any violation of this Agreement by the Licensee. The Licensee must amend each of its liability or other insurance policies covering any of the contingencies or claims referred to in this Section 10.1 so as to name the Licensor as a co-insured under each such policy.

10.2 Indemnification of Licensee. The Licensor agrees that it will defend, hold harmless, and indemnify the Licensee from and against any charges, suits, damages, costs, expenses (including attorneys' fees), judgments, penalties, claims, liabilities, or losses of any kind or nature whatsoever which may be sustained or suffered by or secured against the Licensee: (a) based on or arising out of any third party claim that Licensee's use of the Licensed Trademarks in accordance with this Agreement constitutes trademark, service mark, or trade dress infringement; infringement of any other intellectual property or other proprietary right owned by a third party; dilution; unfair competition; misappropriation; or false or misleading advertising, except to the extent the claim relates to a matter for which the Licensee is obligated to indemnify the Licensor under Section 10.1 of this Agreement; (b) based on or arising out of any third party claim that the registration of the Licensed Trademarks or the ownership rights of the Licensor therein are invalid or unenforceable or this Agreement is invalid or unenforceable against the Licensor; or (c) breach of any of the representations and warranties made by the Licensor under this Agreement.

11. TERM

11.1 Term of License. The term of the License will commence on the date of this Agreement and will continue in effect for a period of _____ [number] years. At the expiration of the initial _____ [number]

year term of the License, or any renewal thereof, the License will be renewed for a period of one year beginning on the date of the expiration of the prior term, unless either the Licensor or the Licensee gives written notice of termination to the other not later than _____ [number] days before the expiration of the prior term. If notice of termination is given, the License will terminate on the expiration of the existing term.

11.2 Termination by Licensor for Cause The Licensor may, at its option, terminate the License prior to the end of its term by written notice to the Licensee if: (a) the Licensee defaults in any payment required under this Agreement; (b) the Licensee defaults in the making of any reports required to be made under this Agreement, or makes any false or misleading report, and the default continues for a period of _____ [number] days after the Licensor gives the Licensee written notice of the default; (c) the Licensee defaults in the performance of any other material obligation or breaches any substantial provision contained in this Agreement and the default continues for a period of _____ [number] days after the Licensor gives the Licensee written notice of the default; or (d) the Licensee files a petition in bankruptcy or is adjudged bankrupt, or if a petition in bankruptcy is filed against Licensee, or if Licensee becomes insolvent, or makes an assignment for the benefit of creditors, or if Licensee discontinues its business or if a receiver is appointed for Licensee or Licensee's business who is not discharged within _____ [number] days.

11.3 Termination by Licensee for Cause. The Licensee may, at its option, terminate the License prior to the end of its term by written notice to the Licensor if the Licensor defaults in the performance of any material obligation or breaches any substantial provision contained in this Agreement and the default continues for a period of _____ [number] days after the Licensee gives the Licensor written notice of the default.

11.4 Preservation of Rights. Termination or expiration of the License will not in any way operate to impair or destroy any of the Licensor's or the Licensee's preexisting rights or remedies, either at law or in equity, or to relieve the Licensee of any of its obligations to make reports and to pay royalties accruing before the termination or expiration, or to comply with any other of the Licensee's covenants under this Agreement that accrued prior to the effective date of the termination.

11.5 Return of Trademarks. Immediately following the termination or expiration of the License, all rights granted to Licensee hereunder shall automatically revert to Licensor and Licensee shall execute any and all documents evidencing such automatic reversion and the Licensee must cease and desist from all use of the Licensed Trademarks in any way and deliver to the Licensor all material and papers on which the Licensed Trademarks appear that are in the Licensee's possession.

11.6 Remaining Products. Licensee shall, within _____ [number] month(s) after such expiration or termination, deliver to Licensor a complete and accurate statement indicating the number, description, and whereabouts of any Product on hand and/or in the process of manufacture, as of both the date of such expiration or termination and the date of such statement. Licensor shall have the right to enter onto Licensee's premises and/or the premises of any subcontractor of Licensee, to the extent that Licensee has the right to grant such entry, to conduct physical inventories to verify the accuracy of the above described statement. Upon termination of this Agreement Licensee may sell

existing inventories of the Product on a nonexclusive basis, for a period of _____ [number] days, subject to all of the other terms and conditions of this Agreement.

12. RELATIONSHIP

The relationship between the Licensor and the Licensee is that of licensor and licensee, and it is not the purpose or intention of this agreement or of the premises to create a partnership, joint venture, principal-agent, or other relationship for any purpose whatsoever. Neither the Licensor nor the Licensee is authorized to or has the power to obligate or bind the other party in any manner whatsoever except as may be expressly provided in this Agreement.

13. SPECIFIC PERFORMANCE

The parties to this Agreement declare that it is impossible to measure in money the damages that will accrue if any party or the successors or assigns of any party should fail to perform any of the obligations contained in this Agreement. Therefore, the terms and provisions of this Agreement may be specifically enforced in equity, and the parties each waive the claim or defense that the remedy at law is adequate for a breach of those provisions.

14. MISCELLANEOUS PROVISIONS

14.1 Binding Effect. The provisions of this Agreement will be binding on and inure to the benefit of the heirs, personal representatives, successors, and assigns of the parties.

14.2 Notice. Any notice or other communication required or permitted to be given under this Agreement must be in writing and must be mailed by certified mail, return receipt requested, postage prepaid, addressed to the parties at the following addresses:
Licensor:

_____ [name of Licensor]
_____ [address of Licensor]

Licensee:
_____ [name of Licensee]
_____ [address of Licensee]

All notices and other communications will be deemed to be given at the expiration of _____ [number] days after the date of mailing. The address of a party to which notices or other communications must be mailed may be changed from time to time by giving written notice to the other party.

14.3 Litigation Expense. In the event of a default under this Agreement, the defaulting party must reimburse the non-defaulting party for all costs and expenses reasonably incurred by the non-defaulting party in connection with the default, including without limitation attorney's fees. Additionally, in the event a suit or action is filed to enforce this Agreement or with respect to this Agreement, the prevailing party must be reimbursed by the other party for all costs and expenses incurred in connection with the suit or action, including without limitation reasonable attorney's fees at the trial level and on appeal.

14.4 Waiver. No waiver of any provision of this Agreement may be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

14.5 Applicable Law. This Agreement will be governed by and must be construed in accordance with the Laws of the State of _____ [state].

14.6 Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to its subject matter, and it supersedes all prior contemporaneous agreements, representations, and with standings of the parties. No supplement, modification, or amendment of this Agreement will be binding unless executed in writing by each of the parties.

14.7 Further Instruments. The parties to this Agreement shall at any and all times, upon request by the other party, or its legal representative, make, execute, and deliver any and all such other and further instruments as may be necessary or desirable for the purpose of giving full force and effect to the provisions of this Agreement, without charge therefor.

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IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed personally or, as appropriate, by its duly authorized officers.

Licensor

_____ [name of licensor]

By: _____ [signature]

Its: _____ [title of signatory]

Licensee

_____ [name of licensee]

By: _____ [signature]

Its: _____ [title of signatory]