



- 8) **Notice of Production.** The Caretakers agree to inform the Owners of all eggs laid, all fertile and infertile eggs, as well as all chicks successfully hatched. In addition, the caretakers agree to supply the owners with a verbal report of the general health and condition of the transferred birds at the Caretakers convenience, not less than monthly. Notification by email is acceptable; with the Owners response to such email verifying the notification was actually received.
- 9) **Death of Parties.** Death or incapacity of the Caretakers shall terminate this agreement immediately. The Estate of the Caretakers shall return the Property to the Owners as provided for in paragraph 5 of this agreement. For the purpose of this clause, property shall include the birds, cages which they are in, and the items necessary to the care and well-being of the birds listed above. In the event that one of the Owners die, this agreement shall remain in full force and effect through out the term, with the remaining owner assuming all rights of survivorship and control. In the event that both of the Owners die, during the term of this agreement, the Caretakers agree to pay the surviving children or Estate of the Owners for the baby birds that are sold or otherwise transferred by the Caretakers, consistent with the quantity or amounts due to the Owners as defined elsewhere in this agreement. At the end of the term, the Caretakers may offer a fair and reasonable amount to purchase all property in the Caretakers possession, which belonged to the Owners, to the Estate or legal guardian of the Children, which will not be unreasonably turned down.
- 10) **Early Termination.** If, at the sole discretion of the Caretakers, for whatever reason, the caretakers wish to terminate this Agreement prior to the actual termination date, the Caretakers shall notify the Owners of said voluntary termination. The terms and conditions regarding the return of the property shall be consistent with paragraph 5 of this agreement, and shall become effective immediately. The Caretakers agree to pay all shipping costs of the Transferred Birds back to the Owners.
- 11) **Security and Non-preventable Circumstances.** The Owners agree to hold the Caretakers harmless for any “non-preventable” injury or death, “non-preventable” escape, theft, or acts of God that may happen to the birds during the term of this Agreement, which could not have been reasonably avoided by the Caretakers. **NOTE: (Caretakers will keep the birds in securely locked cages with padlocks at all times, and there shall be reasonable security on site).** Owners shall be immediately notified of any such problem or difficulty, which would prevent the safe return of the Owner’s property. In the event of preventable situations, the Caretakers shall be liable of the then current value of the property based on the actual business value of the Property over the next two (2) years, from the time of death or loss.
- 12) **Visitation.** The Owners can visit the Transferred Birds and Caretakers with not less than 24 hours prior notification, during a period of time that the Caretakers are normally on the premises.
- 13) **Care of Baby(s) & Notification.** The Caretakers agree to hand-feed and care for any and all babies created from the Transferred Birds in a fashion consistent with the care and treatment of their own birds, at their own expense. At no longer than ten (10) days after baby bird(s) are hatched out, the Owners shall be notified.
- 14) **Price, Value, Consideration.** Price of the babies shall be established and agreed to by both the parties prior to the sale of any such babies. The “price” or value shall be based on the then current prices for those specific type of babies, based on the specific geographical location of the Caretakers, which the parties believe the babies to be worth at that time. The bird’s age, type, and status will also be taken into account. For the most part, the Caretaker may accept a price of not less than \$\_\_\_\_\_ per baby without the prior agreement of the Owners. Consideration for the value or price of the baby’s in the Owner’s share (percentage) shall be cash, unless otherwise agreed to by the Owners, prior to any acceptance by the Caretakers.
- 15) **Non-Compete & Conflict of Interest.** The Owners understand and acknowledge that the Caretakers may have other birds and have other breeder agreements in place, with other parties. This will not be considered a conflict of interest, and the Caretakers agree to make best efforts in the care and disposition of the Owner’s baby birds, consistent with this agreement. In the event this becomes a problem, the Caretakers agree to ship weaned baby birds to the Owners for disposition and continued care until sold.
- 16) **Distribution of Proceeds.** Distribution of babies produced by the Transferred Birds during the terms of this agreement shall be determined by the following formulas and examples:
- a) The Caretakers are entitled to 60% and the Owners 40% of the babies for the term of this Agreement.
- a. The total number of babies will be calculated per clutch, and not less than once per year.
- i. The Caretaker may do as they please with their percentage of the baby bird(s);
- ii. The Owners may either:
1. elect to take possession of their baby birds, once weaned, by having the Caretaker ship or transfer the bird to an authorized person, at the Owner’s sole expense, or

2. may sell the baby bird(s) either themselves or through the Caretakers, and shall receive 100% of the funds generated from any such sale that the Caretakers accept. The Owners reserve the right to accept or reject any amount(s) offered for the purchase or trade from their percentage of the baby(s).
  - b. In the event that there is only one baby produced by all of the Transferred Birds, the sales proceeds will be split 60/40, with the 40% being sent to the Owners.
  - c. In the event that there are only two babies produced by all of the Transferred Birds, the Caretakers shall received one (1) baby, and the Owners shall receive one (1) baby. However, that one (1) baby (whether the actual bird or proceeds from the sale of such bird) shall be factored into the total 60/40 split during the term of this Agreement.
  - d. Example One: one pair of birds has 1 baby in one clutch, and 2 babies in another clutch (weeks later), and the other pair of birds doesn't have any babies. The proceeds from the first baby are split 60/40, which evens everything to do with THAT bird instantly. With the second clutch, each of the parties have a right to one each of the babies, which means that the Owners then owe the Caretakers 10% of the value of the baby the receive, to keep the math and "deal" fair and reasonable, which will be either paid for in cash value or carried forward to the next clutch. Because the Caretakers already received 50%, with the one baby, the additional 10% brings the Caretaker's proceeds to 60% for that clutch. Everything is even and consistent with this agreement.
  - e. Example Two: Next year, the above pair produces the same thing it did in the first production year, but the other pair also has 1 baby, for a total of 4 babies. The Owners have a right to 1.6 (40% of 4) birds. Because it isn't practical to "split" a bird, either the Owner agrees to pay the Caretakers 40% of the value for the second (2<sup>nd</sup>) bird (which is the actual mathematical difference), or the Caretaker agrees to pay the Owners 60% of the value for the second bird (thus the "0.6" is effectively dealt with fairly).
  - f. Any such balance, such as the "0.6" in the above example, can be carried forward to the next clutch(es) at the sole discretion of the Owners. Therefore, if the next clutch(es) has 4 babies, and the "0.6" in the above example was carried forward, the owners would have a right to 1.6+.6 which equals 2.2, or two babies out of this new clutch (only one from the last clutch) and would STILL have a "0.2" or 20% owed by the Caretaker – or carried forward to the next clutch(es). If the Caretakers choose to ship (or transfer) 3 babies to the Owner's benefit, to reduce shipping costs or reduce the number of birds the Caretakers are required to care for, the Owners shall either pay the Caretaker's "0.8" or 80% of the value of ONE of the birds OR carry the 80% of ONE bird forward to the next clutch to the benefit of the Caretakers.
- 17) **Logic of Percentage Split.** The purpose of the 60/40 split is to make it both worthwhile and profitable for the Caretakers to properly care for the Transferred Birds. The Owners understand and acknowledge that there is an expense of both money and time that the Caretakers are committing to, in order to care for the Transferred Birds and their future offspring. The Caretakers acknowledge and understand that \_\_\_\_\_ of the \_\_\_\_\_ birds Transferred are proven, and are very likely to reproduce quickly and well – once they get started.
- 18) **Extra Bird – "Outside Bird".** In the event there is a single bird included in this loan, both parties understand and acknowledge that the Caretakers will be pairing the single Transferred Birds by adding at least one bird from the "outside" (not owned by the Owners) to create another breeding pair of birds. The "outside bird" shall remain the property of whoever owns it. In the event that this "outside bird" becomes productive with one of the Owner's Transferred Birds, upon termination of this agreement for any reason, the Owners may elect to purchase the "outside bird" to keep the producing pair together... or sell the single bird mated with the "outside bird" to its owner, at the sole discretion of the Owners, which will not be unreasonably withheld. The price for either bird shall be negotiated in good faith. In the event of an early termination of this agreement, the Caretakers agree to make best efforts to allow the Owners to keep the said pair together. This means that the Caretakers shall either set a price or terms that the Owners can reasonably afford to purchase the "outside bird, based on the then current value of such bird.
- 19) **Independent Contractor Status.** Both parties are independent of the other. At no time shall one party represent themselves as an Employee of the other party. Nothing contained in this Agreement shall be construed to (i) give either party the power to direct and control the day-to-day activities of the other, (ii) constitute the parties as partners, joint venture's, co-owners or otherwise, or (iii) allow either party to create or assume any obligation on behalf of the other for any purpose whatsoever. The parties shall be responsible for paying all income taxes and other taxes charged to themselves individually on the amounts earned hereunder. Neither party is an employee of the other and is not entitled to any employee benefits or from the other. All financial, legal, and other obligations associated with that party's business are the sole responsibility of THAT PARTY.

- 20) **Indemnification.** Each party shall indemnify and hold the other party free and harmless from any and all claims, damages or lawsuits (including reasonable attorneys' fees) arising out of negligence or malfeasant acts of the other party, its employees or its agents.
- 21) **Governing Law and Jurisdiction.** This Agreement shall be governed by and construed according to the laws of the State of \_\_\_\_\_.
- 22) **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes any prior discussions or agreements between them. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by both parties.
- 23) **Notices.** Any notices required or permitted by this Agreement shall be deemed given if sent by certified mail, postage prepaid, return receipt requested or by recognized overnight delivery service:

If to Owners:

\_\_\_\_\_  
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 \_\_\_\_\_  
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 \_\_\_\_\_

If to Caretakers:

\_\_\_\_\_  
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 \_\_\_\_\_

- 24) **Non-Assignability and Binding Effect.** Caretakers agree that their rights and obligations under this Agreement may not be transferred or assigned directly or indirectly without the prior written approval of the Owners. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors and assigns.
- 25) **Severability.** If any provision of this Agreement is held to be invalid, void, or unenforceable by a court of competent jurisdiction, then the remaining provisions shall nevertheless remain in full force and effect.
- 26) **Legal Expenses.** The prevailing party in any legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses, including court costs and reasonable attorneys' fees.
- 27) **Headings.** Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Both OWNERS

_____	_____
_____	_____
_____	_____
_____	_____

ID – DL

SSN#

Both CARETAKERS

_____	_____
_____	_____
_____	_____
_____	_____

ID – DL

SSN#

Agree to the terms and conditions of this Agreement Dated \_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_