

STATE OF NORTH CAROLINA

COUNTY OF WAKE

AGREEMENT

THIS AGREEMENT is entered into this 1st day of Sept., 1998, by and among the State of North Carolina represented by the Department of Cultural Resources (hereinafter the "Department"), Intersal, Inc., a Florida corporation (hereinafter "Intersal"), and Maritime Research Institute, Inc., a North Carolina nonprofit corporation (hereinafter "MRI").

WITNESSETH, THAT:

WHEREAS, under the provisions of the federal Abandoned Shipwreck Act of 1987 (43 U.S.C. §§ 2101-2106) and Article 3 of Chapter 121 of the General Statutes of North Carolina (N.C.G.S. §§121-22 through 121-28), the title to non-federal abandoned shipwrecks and artifacts embedded in the submerged lands of the State of North Carolina is transferred by the United States to the State of North Carolina and all such artifacts are placed under the custody and control of the Department; and

WHEREAS, working under a permit issued by the Department, Intersal, under the direction of Michael E. Daniel, located a shipwreck site believed to be that of the ship *QUEEN ANNE'S REVENGE* (hereinafter "QAR") within the State waters of North Carolina, and are to be credited with the discovery of said vessel; and

WHEREAS, QAR was the flagship of the pirate Edward Teach or Thatch (a.k.a. "Blackbeard") and was lost while attempting to enter Beaufort Inlet in 1718 and is of inestimable historical and archaeological value; and

WHEREAS, Intersal has been searching for QAR and other 18th Century shipwrecks at Beaufort Inlet under permits issued by the Department since 1987, and has expended a considerable amount of personnel and financial assets in that effort; and

WHEREAS, paragraph L of the QAR Permit (BUI 585) issued to Intersal states that "Any material recovered during Phase Five [the salvage phase] of the project shall be divided between the Department and the Permittee, according to a system to be developed, with 25% of all coins and precious metals retained by the Department, and 75% of the material awarded to the Permittee. The Department and the Permittee agree that the most appropriate disposition of other artifacts, such as vessel structure, ship's fittings, weapons, personal effects, and non-precious cargo shall be a suitable facility, possibly in the Beaufort area [the North Carolina Maritime Museum], where the material can be curated for scientific study and public display;" and,

WHEREAS, Intersal and Michael E. Daniel are willing to forego entitlement to any coins and precious metals recovered from the QAR site in order that all QAR artifacts remain as one intact collection and in order to permit the Department to determine ultimate disposition of the artifacts; and,

WHEREAS, the Department recognizes MRI, as a partner in the project for the life of this Agreement; and,

WHEREAS, in order to facilitate this Agreement, the Department recognizes Intersal and MRI as partners, to work in partnership with the Department to research, survey, search, recover, preserve, protect, conserve, curate, and promote the collection for the life of this Agreement; and,

WHEREAS, Intersal, MRI, and the Department, in a spirit of partnership, are willing to establish a five-member project Advisory Committee with the responsibilities set out in

paragraph 12 of this Agreement; and,

WHEREAS, Intersal has shown in the past, and continues to evidence, a strong awareness of and commitment to the historical significance of QAR through the quantity and quality of Intersal's historical research, its willingness to employ state of the art equipment in its underwater search and recovery efforts, and the prompt reporting of its activities to the Department; and,

WHEREAS, all of the Parties to this Agreement are desirous that all aspects of the project be accomplished in a manner that will preserve and protect the QAR and its artifacts and will provide the highest degree of historical and archaeological knowledge both to the general public and to serious scholastic study; and

WHEREAS, the Department is responsible for the protection of the public heritage of North Carolina; and

WHEREAS, the officers of Intersal, aware of their responsibility to protect the interests of their stockholders, are also aware of the importance of the QAR site to the public heritage of North Carolina; and

WHEREAS, Intersal and MRI agree that title and ownership of the QAR and its artifacts shall be as set out in paragraph 14 of this Agreement; and

WHEREAS, the Parties believe that the terms of this document will create a relationship that will facilitate and finance the project in an appropriate manner;

NOW, THEREFORE, the Parties to this Agreement hereby agree as follows:

#### ARTICLE I- PARTIES

1. The Department is an agency of the State of North Carolina;

2. MRI is a North Carolina non-profit corporation incorporated under the provisions of Chapter 55A of the General Statutes of North Carolina. MRI shall be fully qualified under State and Federal law to engage in fund raising and to receive philanthropic tax exempt contributions as project funds.

3. Intersal is a corporation incorporated under the laws of the State of Florida.

4. By entering into this Agreement, the Parties named above certify that they are legally constituted entities with full authority to perform the terms of the agreement. The laws of North Carolina will be applied to interpreting and enforcing the terms of this document.

#### ARTICLE II - DEFINITIONS

5. The term "Parties" means the parties to this Agreement, i.e. the Department, MRI and Intersal.

6. The term "Recovery" means the location, identification, and retrieval of any portion of the shipwreck of the QAR, or artifact from the site area.

7. The term "Artifact" means those materials showing human workmanship or modification or having been used or intended to be used or consumed by humans, including relics, monuments, tools and fittings, utensils, instruments, weapons, ammunition, and treasure trove and precious materials including gold, silver, bullion, jewelry, pottery, ceramics, and similar or related materials from QAR.

8. The term "Preservation" means the protection of the shipwreck of QAR and artifacts while on the site area.

9. The term "Conservation" means the protection, treatment and long term curation of any portion of the shipwreck, of QAR or any artifacts after recovery from the site area.

10. The term "Site Area" means the area located within 300 yards of a point at coordinates 76 degrees 40.972 minutes West Longitude and 34 degrees 40.513 minutes North Latitude, the area surrounding the shipwreck, and this may be further defined by the Parties in the event artifacts or debris from the shipwreck are discovered outside of this area.

11. The term "Project" means all survey, documentation, recovery, preservation, conservation, interpretation and exhibition activities related to any portion of the shipwreck of QAR or its artifacts.

#### ARTICLE III - GENERAL PROVISIONS

12. The primary responsibility for the planning and accomplishment of the preservation, recovery and conservation of the shipwreck of the QAR and the artifacts and all operations, including security operations, and any determinations as to priority of operations, is that of the Secretary of the Department. The State Archaeologist, the Supervisor of the Underwater Archaeology Unit, a representative of MRI, a representative of Intersal, and a representative selected by the Secretary of the Department from outside the Division of Archives and History shall form the Advisory Committee on Archaeological Operations ("Advisory Committee") having planning and oversight responsibility for the recovery and preservation of the shipwreck of the QAR and its artifacts, however, the final decisions with regard to such matters rest with the Secretary of the Department.

13. Any and all funds raised by MRI shall be used as directed by MRI to cover costs associated with the project, which shall include the payment of MRI's employees and operating expenses. Any MRI funds remaining after the payment of such costs may be used by MRI in the furtherance of its non-profit purpose of maritime research consistent with its charter and bylaws.



14. Subject to their rights under this Agreement, Intersal and MRI hereby assign to the Department, and the Department hereby accepts, on behalf of the People of North Carolina, the interests of Intersal and MRI in the title and ownership of QAR and its artifacts.

15. The Parties agree that MRI shall conduct research, documentation, search, survey, recovery, preservation, conservation and curation, in conjunction with the Department. In addition, MRI may on its own conduct fund raising activities related to the project regarding the QAR site (except as noted in paragraphs 16 and 17).

16. Except as provided in paragraph 20 and this paragraph, Intersal shall have the exclusive right to make and market all commercial narrative (written, film, CD Rom, and/or video) accounts of project related activities undertaken by the Parties. Intersal (or its designee) will be responsible for its own costs related to the making and marketing of such narrative accounts, and may participate in operations in the course of making such accounts. All Parties agree to cooperate to a reasonable degree in the making of a film and/or video documentary, or group of documentaries, that Intersal will produce (or contract to be produced) with regard to project activities.

17. All Parties agree to cooperate in the making of a non commercial educational video and/or film documentary, or series of such documentaries, as long as there is no broadcast originating outside of North Carolina, and there is no distribution or dissemination for sale of the said educational documentary without Intersal's written permission. Intersal shall have the rights to reasonable access and usage, subject to actual costs of duplication, of all video and/or film footage generated in the making of said educational documentary.

The Parties agree to reasonably cooperate with all legitimate news media inquiries

regarding the project, using guidelines described in this paragraph and paragraph 35.

18. Subject to Intersal establishing compliance with standard museum practices relating to the preservation and conservation of artifacts, Intersal shall have the exclusive rights to make (or have made) molds or otherwise reproduce (or have reproduced) any QAR artifacts of its choosing for the purpose of marketing exact or miniature replicas. Intersal will be responsible for all costs related to its making and marketing of such replicas. All such replicas will be approved by the Advisory Committee, be made on a limited edition basis, and be individually numbered or otherwise uniquely identified to facilitate authentication. The Advisory Committee shall have the right to veto the reproduction, marketing or sale of a replica when the quality of the replica is deemed to be inappropriate. The Department shall have the right to sell such replicas at any state owned or state sponsored shop. Furthermore, the Department may make (or have made) molds or otherwise reproduce (or have reproduced) any QAR artifacts of its choosing for non-commercial educational purposes. The Department will be responsible for all costs related to its making and use of such replicas.

19. MRI shall have the right to designate other entities as official sponsors of the project, or other similar designations with the approval of the Advisory Committee.

20. The Department shall have the right to authorize access to, and publish accounts and other research documents relating to, the artifacts, site area, and project operations for non commercial educational or historical purposes. Nothing in this document shall infringe to any extent the public's right to access public records in accordance with Chapters 121 and 132 of the General Statutes of North Carolina.

21. MRI and the State of North Carolina jointly shall have the exclusive right to

nationally and internationally tour and exhibit a representative cross section of the artifacts, if MRI establishes its compliance with standard museum practices with regard to a proposed tour and exhibit. Either entity may initiate and administer such a tour, and either entity may participate in a tour initiated and administered by the other. Each entity shall be responsible for the costs incurred by their participation in such a tour and funds generated by each entity on such a tour may be used to cover that entity's costs.

Nothing in this paragraph shall affect the Department's responsibility and authority with regard to the curation of the artifacts and their display for non commercial purposes.

22. The Parties agree to cooperate with each other and with any law enforcement or other government agency to protect the site area from unauthorized visitation, diving and unauthorized collection of Artifacts.

23. The Parties will neither knowingly solicit nor accept gifts from third parties when such gifts may involve conflict of interest or an appearance of a conflict of interest.

#### ARTICLE IV - REIMBURSEMENT TO INTERSAL; EXCESS PROCEEDS

24. All net profits (as certified by Intersal to the reasonable satisfaction of the Department) from Intersal's sale of media rights and replicas shall be entirely due to Intersal, up to an amount which represents Intersal's costs to date which have been expended in connection with the search and recovery of artifacts from the QAR. Any further funds received by Intersal from these sources shall be divided 75% (seventy five percent) of the net profits (as certified by Intersal to the satisfaction of the Department) to Intersal, and 25% (twenty-five percent) to be donated by Intersal to MRI to be used by MRI as directed by the Advisory Committee for the purposes enumerated in this Agreement. The Advisory Committee shall take into account the



goal of ensuring that the heritage of the QAR is available to all of the citizens of the State of North Carolina.

#### ARTICLE V - PLANS, REPORTS AND RECORDS

25. The Department, Intersal, and MRI shall provide the Advisory Committee with copies of their plans, status reports, records of fund raising activities and expenditures relating to the project. If the Advisory Committee determines that it needs additional or different information, it may establish a system for receiving the same. The provisions of this paragraph are in addition to the requirement of paragraph 30.

#### ARTICLE VI - CHARITABLE FUND RAISING ACTIVITIES BY MRI

26. The Advisory Committee, the Department, Intersal, and MRI will all make available to each other such information and data as may reasonably be required and are generally available to inform potential donors and others about the project.

27. All Parties recognize that MRI is an independent entity with authority to solicit both funds and equipment for the purposes enumerated in this agreement.

28. All funds raised by MRI shall be used as directed by MRI, according to the provisions of paragraph 12 herein.

#### ARTICLE VII - ACCESSION OF RECORDS

29. Subject to the provisions of G.S. § 70-18, for the purposes of maintaining pertinent project records, MRI, Intersal and the Department agree to make available for duplication by each other, or, when appropriate, to provide the Department with, relevant field maps, notes, drawings, photographic records and other such technical, scientific and historical documentation created or collected by MRI, Intersal or the Department pursuant to the study of

the site and the recovery of materials therefrom. These materials shall become public records curated by the Department.

#### ARTICLE VIII - MAINTENANCE OF FINANCIAL RECORDS AND AUDIT

30. The parties to the Agreement shall develop procedures for keeping records pertaining to costs and funds associated with the project. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, at 32 CFR Section 33.20.

#### ARTICLE IX - NOTICES

31. Any notice, request, demand or other communication required or permitted to be given under this document shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first class, registered, or certified mail, as follows:

If to the Department: 109 East Jones Street, Raleigh, NC 27601-2807;

If to MRI: P. O. Box 8681, Jupiter, FL 33468;

If to Intersal: 104 Stanton Road, Beaufort, NC 28516.

A Party can change the address to which such communications are to be sent by giving written notice to the other party in the manner provided in this paragraph.

#### ARTICLE X - OBLIGATIONS OF APPROPRIATIONS

32. Nothing herein shall constitute, nor be deemed to constitute, an obligation of current or future appropriations by the General Assembly of North Carolina.

#### ARTICLE XI - ADDITIONAL PROVISIONS

33. The Department recognizes that Intersal's efforts and cooperation with regard to the QAR permit have had, and will continue to have, a significant impact on its compliance with the performance standards agreed to with regard to Intersal's permit to search for the *El Salvador*. The Department believes that the cooperation and continued effort of Intersal with regard to both its QAR permit and its *El Salvador* permit are of benefit to the historical heritage of the State. The Department believes that the cooperation and effort of MRI with regard to this project and the search for the *Adventure* are of benefit to the historical heritage of the State. Subject to the provisions of Article 3 of Chapter 121 of the General Statutes of North Carolina and subchapter .04R of Title 7 of the North Carolina Administrative Code, the Department agrees to recognize Intersal's and MRI's efforts and participation in the QAR project as sufficient to satisfy any performance requirements associated with annual renewal of Intersal's permits for either *El Salvador* or *Adventure*, and for the life of this Agreement, renewal of said permits cannot be denied without just cause.

34. In the event that it is determined that the shipwreck site which is the subject of this Agreement is not the QAR, Intersal and the State shall enter into a contract along the terms of the permit issued to Intersal for the exploration and recovery of the QAR. In the event that the ship *El Salvador* is discovered as a result of project operations, the terms of Intersal's *El Salvador* permit (BUI 584) shall apply.

35. All press releases concerning the project shall contain the following information, when appropriate: "Intersal, Inc., a private research firm, discovered the site believed to be *Queen Anne's Revenge* on November 21, 1996. QAR was located near Beaufort Inlet, NC by Intersal's director of operations, Mike Daniel, who used historical research provided by Intersal's

president, Phil Masters. Daniel now heads up Maritime Research Institute, the non-profit corporation formed to work on the project in cooperation with State archaeologists and historians of the North Carolina Department of Cultural Resources, Division of Archives and History."

The Parties agree that their spokespersons and employees will be instructed, when being interviewed by legitimate news media, to endeavor to give appropriate credit where due for the discovery of QAR, and mention the continuing participation of each of the Parties in the project.

36. This document shall become effective when signed by all the Parties and shall be effective for a period of fifteen (15) years, unless sooner terminated by written consent of all Parties. The Parties shall have the option to renew this agreement for an additional period of ten years. The option must be exercised in writing to the Department or its successors on or before the expiration of this Agreement.

37. This Agreement shall be governed by the law of North Carolina.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, this the 1st day of Sept., 1998.

Maritime Research Institute, Inc.

By: Michael Daniel

Witness: Sylvia M. Cook

Intersal, Inc.

By: Richard West  
Witness: James A. White

The State of North Carolina

By: Billy Ray McCain  
Witness: Jeffrey Brown