

## PREMARITAL AGREEMENT

**READ BEFORE SIGNING: IMPORTANT NOTICE: EACH PARTY TO THIS AGREEMENT AGREES THAT THEY HAVE HAD AN OPPORTUNITY TO CONSULT WITH AN ATTORNEY OF THEIR CHOICE LICENSED TO PRACTICE LAW IN THEIR STATE OF RESIDENCE (NOT THE SAME ATTORNEY) AND THAT HAVE FULLY READ, UNDERSTAND AND AGREE TO THE TERMS OF THIS AGREEMENT. EACH PARTY FURTHER AGREES THAT THEY ARE NOT ACTING UNDER DURESS OR UNDUE INFLUENCE IN EXECUTING THIS AGREEMENT AND THAT EXECUTION OF SAME IS DONE FREELY AND VOLUNTARILY.**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ (Name), of \_\_\_\_\_ (Address), \_\_\_\_\_ (State) ("first party or Wife"), and \_\_\_\_\_ (Name), of \_\_\_\_\_ (Address), \_\_\_\_\_ (State) ("second party or Husband"),

W I T N E S S E T H

WHEREAS, Husband (check all that apply):

- ☐ has previously been married;
- ☐ has a child or children;
- ☐ has not been married; and

Wife (check all that apply):

- ☐ has previously been married;
- ☐ has a child or children;
- ☐ has not been married.

The parties desire to enter into this agreement prior to their contemplated marriage.

WHEREAS, the parties hereto have accumulated separate estates; and

WHEREAS, the parties are about to contract marriage and execute this agreement in contemplation of marriage to be effective upon their marriage in accordance with the laws of the State of South Dakota, including any Uniform Premarital Agreement Act, or other applicable laws, adopted by the State of South Dakota; and

WHEREAS, the parties desire to enter into an agreement regarding certain properties, responsibilities, duties and obligations including but not limited to any interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings; and

WHEREAS, the parties have furnished each other with a financial statement which each party acknowledges is a full and complete disclosure of substantially all of the real and personal property now owned by him or her and agree that the values are an estimate by him or her of the approximate present value of the property. All property listed is now and shall continue to be separate properties of the respective parties. Originals or copies of said financial statements are attached hereto as Exhibits "A" and "B"; and

WHEREAS, the parties desire to express in writing their agreement that, except as hereinafter specifically provided, their marriage shall not in any way change their rights, or the rights of their heirs (exclusive of the parties) or of their devisees or legatees, in the real and personal property owned or hereafter acquired by each of the parties and that said rights shall be governed by the terms of this agreement; and

NOW, THEREFORE, in consideration of the parties and of their mutual promises and agreements, they agree one with the other as follows:

(1) Each of the parties shall have full control of his or her own separate property, real, personal and mixed, wherever the property is located. Each of the parties shall have and hereby is given the right to lease, sell, convey, mortgage or otherwise dispose of their separate property and receive all monies, rents, issues, income and profits thereof without any restrictions whatever and without interference from the other party. Each of the parties shall pay his or her own debts whenever contracted and in no case shall either party be held liable for the debts of the other parties in any way.

(2) Except as otherwise expressly provided, each of the parties hereby waives, relinquishes, conveys, quitclaims, bars, discharges, surrenders and releases, and hereby agrees to waive, relinquish, convey, quitclaim, bar, discharge, surrender and release, to the other all of the following:

(a) Any and all of his or her right, title and interest of every kind and description, which he or she may have, acquire, enjoy or be seized by reason of, or on or after, their marriage, as the wife, husband, widow or widower of the other party, in the separate property of the other party, whether real, personal and mixed and wherever located; and

(b) Any and all rights to any property of the other party titled in that other parties sole name, whether before or after the marriage; and

(c) Any and all property acquired by the other party by inheritance or other means; and

(d) Any and all rights, if any, to all or a portion of the property of the other party whether by way of dower, courtesy, homestead, widow's allowance, statutory share or provision, descent, community property inheritance, succession or otherwise;

(e) His or her right, if any, granted to or vested in him or her, by statute or otherwise, to renounce, or to elect to take against, the provisions of the other party's will or any codicil thereto; and

(f) His or her right, if any, granted to or vested in him or her by statute or otherwise to act as executor or administrator of the other party's estate.

Except as otherwise expressly provided, it is the intent of the parties that this paragraph shall be construed so that each party may deal with his or her property and any trust in which he or she may have an interest as if their marriage had not taken place, and on the death of either party his or her estate and any trust in which he or she may have an interest will be administered, descend and be distributed in exactly the same way and to the same heirs, next of kin, devisees or legatees as if the other party had predeceased the party so dying. Nothing contained in this paragraph or in this agreement, however, is intended to preclude either party from voluntarily making provision for, or granting powers or rights to, the other party in and by the formers last will, a codicil thereto or otherwise.

(3) (check One)

☐ The parties have each executed a Last Will and Testament, copies of which are attached hereto as Exhibits \_\_\_\_\_ and \_\_\_\_\_. The parties agree that these Wills are in conformity with the provisions of this agreement and as consideration for this agreement, each party does hereby waive any and all objection to the terms of the said Last Will and Testament of the other and each party agrees not to contest or renounce the terms of thereof. Likewise, each party agrees not to contest or renounce any future Wills or Codicils, which are in conformity with the terms of this agreement. *Initials if Selected:* \_\_\_\_\_

OR

☐ The parties shall not change their existing Will, if any, or make a new Will at this time, but any new Will executed shall be in conformance with the provisions of this agreement. *Initials if Selected:* \_\_\_\_\_

(4) The fact that either party (without being obligated to do so) may give, devise or bequeath to the other party property or an interest therein, or otherwise confer rights or powers on the other party, in trust or by gift or will, shall not be construed as a waiver of any provision hereof or as evidence that there is or was an agreement or understanding between the parties other than as specifically expressed herein.

(5) Each party agrees, on behalf of himself or herself and of his or her heirs, executors, administrators and assigns, that he, she or they, at the request of the other party or the latter's heirs, executors, administrators and assigns (but at the cost of the other party or his or her heirs, executors, administrators, and assigns), will make, do, execute, acknowledge and deliver any and all such further or other acts, deeds and instruments as shall be appropriate, necessary or desirable to carry in effect the intent, purpose and provisions of this agreement without question or delay, except that neither party shall be obliged to sign any mortgage, note, bond or other instrument which may subject him or her, or his or her estate and property, to personal liability.

(6) In selling, assigning, granting, releasing, conveying or otherwise dealing with the property of either party, the party whose property is being so dealt with shall be and hereby is constituted the other party's attorney-in-fact and as such shall have full power in the name of such

other party or in the joint names of both parties to join in the contemplated transaction and execute documents to effect it on behalf of such other party, independently and without the consent or privity of such other party, to the same extent and as fully as if their marriage had not taken place.

(7) During the course of the marriage, all property acquired by each party in their own name shall be deemed to be part of their separate estate and by the terms hereof, each party hereby waives and relinquishes all claim to the separate estate of the other. Likewise, all property acquired during the marriage in the joint name of both parties shall be deemed to be part of their joint estates and thereby evidence their intent to grant the powers and rights to the parties as to said jointly owned property as is provided to spouses by operation of law.

(8) The parties agree that each party shall provide for the payment of their individual health care, convalescence and funeral expenses out of their separate estate so as not to be a financial burden on each other.

(9) Despite any other provisions of this instrument, this agreement shall not affect in any way the parties' rights, titles, powers, duties, discretions, immunities and interest in any property owned in joint tenancy or entirety with rights of survivorship, which they may hereafter acquire.

(10) To the extent permitted by law, this agreement shall govern the rights and obligations of the parties in the event of death of either or both parties, separation or divorce. In the event of divorce, the parties agree this agreement shall be binding on both parties and shall be incorporated into any divorce decree.

(11) ☐ Not applicable or ☐ The parties further agree that in the event of divorce, the following additional provisions shall apply notwithstanding the other provisions of this agreement:

(a) The Wife shall be entitled to receive property of Husband described as follows: [none or list property]

(b) The Husband shall be entitled to receive property of Wife described as follows: [none or list property]

(c) The following property shall be sold and the proceeds, less expenses divided equally between the parties: [none or list property]

(d) The Husband shall pay a lump sum settlement to Wife described as follows: [none or list property]

(e) The Wife shall be pay a lump sum settlement to Husband described as follows: [none or list property]

(f) The marital domicile shall be [occupied by Wife until her death or occupied by Husband until his death or sold and the proceeds divided equally between Husband and Wife.

(g) Both parties waive the right to alimony and property settlement, except as

otherwise provided herein.

(12) This agreement shall be controlled, construed and given effect by and under the laws of the State of South Dakota. It is the intent of the parties that the Agreement be enforced to the fullest extent permissible under applicable laws and public policies. The invalidity, illegality, or unenforceability of any particular provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if such invalid, illegal, or unenforceable provision had been omitted.

(13) This Agreement constitutes the entire agreement between the parties pertaining to its subject matter and it supersedes all prior contemporaneous agreements, representations and understandings of the parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all parties.

(14) No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

(15) This Agreement may be executed in any number of copies, each of which shall be deemed an original and no other copy need be produced. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.

(16) This Agreement shall be binding upon the parties hereto and upon their respective executors, administrators, legal representatives, successors, and assigns.

(17) This agreement may only be amended or revoked by written amendment signed by both parties.

(18) Each party further agrees and affirms as follows:

(a) That the party did execute the agreement voluntarily; and

(b) That this agreement is not unconscionable when it was executed; and

(c) Both parties were provided prior to execution of this agreement a fair and reasonable disclosure of the property or financial obligations of the other party;

(d) That he and she did have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

The parties hereby execute this agreement in several counterparts, any executed copy of

which shall be considered for all purposes as an original, on the day and year above written.

\_\_\_\_\_  
FIRST PARTY ("WIFE")

\_\_\_\_\_  
SECOND PARTY ("HUSBAND")

Approved:

Attorney for First Party: \_\_\_\_\_

Attorney for Second Party: \_\_\_\_\_

Note: This agreement must be executed before a notary public.

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_, in the year \_\_\_\_, before me personally appeared \_\_\_\_\_, known to me (or proved to me on the oath of \_\_\_\_\_) to be the person who is described in, and who executed the within instrument and acknowledged to me that \_\_\_\_ (he/she) executed the same.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

Printed Name: \_\_\_\_\_

Commission Expires:

\_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_, in the year \_\_\_\_, before me personally appeared \_\_\_\_\_, known to me (or proved to me on the oath of \_\_\_\_\_) to be the person who is described in, and who executed the within instrument and acknowledged to me that \_\_\_\_ (he/she) executed the same.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

Printed Name: \_\_\_\_\_

Commission Expires:

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