

FINAL COMMITTEE DRAFT
9.1.16
Inc. changes through 12/15/16 meeting

[[Language Cleanup Version]]

PREMARITAL/MARITAL AGREEMENT

GRAY BOX: *A marital agreement can be an effective estate planning tool for different types of couples, particularly couples whose marriage or civil union forms a blended family - one comprised of the spouses along with his, her, or their respective children from previous marriages.*

THIS FORM IS DRAFTED WITH THE APPROACH OF “WHAT’S MINE IS MINE, WHAT’S YOURS IS YOURS”. THE PRACTITIONER SHOULD BE AWARE THAT MANY OF THESE PROVISIONS ARE CONTRARY TO THE PROVISIONS OF THE COLORADO UNIFORM DISSOLUTION OF MARRIAGE ACT. THE OPTIONAL PROVISIONS CONTAINED IN THIS FORM ARE ONLY A HANDFUL OF MANY WHICH MAY BE DRAFTED TO ENCOMPASS A CLIENT’S INTENTIONS AND DESIRES. THERE IS NO WAY TO ADDRESS ALL OF THE POTENTIAL ISSUES AND COMBINATIONS OF PROVISIONS WHICH MAY BE INVOLVED. IF THE PRACTITIONER CHANGES ONE PROVISION OF THE FORM TO ACCOMMODATE THE WISHES OF THE CLIENTS, OTHER PARAGRAPHS MAY NEED TO BE ADJUSTED ACCORDINGLY IN ORDER TO AVOID INCONSISTENCY. CARE SHOULD BE TAKEN THAT THE PROVISIONS OF ONE SECTION DO NOT CONFLICT WITH THE PROVISIONS OF OTHER SECTIONS.

The practitioner is strongly encouraged to read the following:

- (1) *Colorado Uniform Premarital and Marital Agreements Act, C.R.S. § 14-2-301 et seq..*
- (2) *Colorado Uniform Dissolution of Marriage Act, C.R.S. § 14-10-101 et seq.*
- (3) *“Colorado’s New Uniform Premarital and Marital Agreements Act” by Susan Boothby, Esq. and Kim Willoughby, Esq., Colorado Lawyer, March 2014, Vol. 43, No. 3, page 57.*
- (4) *The Orange Book Handbook, Chapter 30, “Marital Agreements” by Constance D. Smith, Esq. and Jane Caddell Paddison, Esq.*

<NOTE ON USE: Basic requirements of the ~~new~~-Colorado Premarital and Marital Agreements Act are:

- a. *Both parties must have had meaningful access to independent legal representation.*
- b. *The agreement must be in writing and signed by both parties.*
- c. *The consent to the agreement must be voluntary and not the result of duress.*
- d. *Both parties must have provided adequate financial disclosure of not only assets, but also liabilities and income. Such disclosure cannot be waived.>*

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<DRAFTING NOTE: re: follow-up to draft short marital agreement to ratify premarital agreement re: waiving rights that can only be waived after the marriage (e.g., ERISA rights) OR Exhibit C, attached, to be signed after the marriage.>

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1. OPTION 1 FOR MARRIAGE: Marriage or Civil Union. *1* and *2* ~~(OPTION)~~ were married to each other on _____]

OPTION 2 FOR CIVIL UNION: Civil Union. *1* and *2* ~~(OPTION)~~ have entered into a civil union on _____]

OPTION 3 FOR INDIVIDUALS NOT YET MARRIED OR IN A CIVIL UNION: *1* and *2* ~~(OPTION)~~ intend to be married to each other [or enter into a civil union with each other] on _____ (date), or some time in the near future].

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2. Family. *1* has _____ child(ren) ~~from a prior marriage~~ and *2* has _____ child(ren) ~~from a prior marriage.~~

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5. Review of Financial Information. Subject to the terms of Article IV Paragraph 12 (Confidential Document), the parties acknowledge that each party has received the other party's consent to disclose financial information to any professional, such party deems to employ as appropriate to review and advise with regard to the other party's financial circumstances. (Mike Holder to bring additional language regarding professionals also agreeing to keep information confidential.)

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~~5. Review of Financial Information. The parties acknowledge that each party has received the other party's permission to employ lawyers, accountants, and tax advisors to review in detail the other party's financial circumstances. The parties each regard the financial information disclosed by the other to be a substantially adequate, full, and complete disclosure to the best of their knowledge, both in form and in substance, of the other party's assets, liabilities, and income. The parties recognize that the assets may greatly appreciate or depreciate in value, and the income and liability may change, during the marriage or civil union.~~

<DRAFTING NOTE: The committee may wish to conform the underlined language of the first sentence of this paragraph 5 with underlined portion of Orange Book Form 16, Revocable Disclaimer Trust, p. 11, Section 11.1, last sentence, which reads:

"11.1 GRANT: Trustee may perform every act reasonably necessary to administer the trust estate.....Trustee may employ attorneys, accountants, investment advisors, custodians of trust property, and other agents or assistants as deemed advisable to act with or without discretionary powers..... >

6. Full Explanation. Each party has weighed all of the facts, conditions, and circumstances relevant to this agreement. All provisions of this agreement, as well as pertinent questions, have been fully and satisfactorily explained to each party. Each party has given due consideration to such matters and clearly understands and consents to all the provisions of this agreement. And each party enters into this Agreement freely and voluntarily, without coercion or undue influence, and with full knowledge of all facts disclosed in this agreement after consultation with an attorney of each party's choice.

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~~6. Full Explanation. *1* and *2* each has ascertained and weighed all of the facts, conditions and circumstances herein likely to influence the judgment of each; that all provisions herein, as well as questions pertinent thereto, have been fully and satisfactorily explained to each of them; that each of them has given due consideration to such matters and related questions and clearly understands and consents to all the provisions hereof; and that each of them is entering into this Agreement freely and voluntarily, of their respective own free wills, without suggestion, coercion, or influence of any nature, and with full knowledge of all pertinent facts, after consultation with and advice from the attorney of his or her own choice.~~

<NOTE ON USE: It is a requirement of the new Uniform Premarital and Marital Agreements Act that the party against whom enforcement is sought had reasonable time and meaningful access to independent legal representation. If a Party has chosen not to be represented, the last part of this Paragraph should be revised accordingly.>

NOW, THEREFORE, in consideration of their affection and esteem for each other, and in consideration of the mutual promises ~~herein~~ expressed in this agreement, the sufficiency of which is hereby acknowledged, ~~*1* and *2*~~ the parties agree as follows:

ARTICLE I

SEPARATE PROPERTY vs. MARITAL PROPERTY

WHITE BOX:

NOTE TO PRACTITIONER: THE UNIFORM DISSOLUTION OF MARRIAGE ACT DEFINES MARITAL PROPERTY AS ALL PROPERTY ACQUIRED BY EITHER SPOUSE SUBSEQUENT TO THE MARRIAGE EXCEPT: (a) Property acquired by gift, bequest, devise, or descent; (b) Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise, or descent; (c) Property acquired by a spouse after a decree of legal separation; and (d) Property excluded by valid agreement of the parties. CARE SHOULD BE TAKEN IF THE CLIENTS WANT TO DEVIATE FROM THE ACT. REMEMBER THAT THERE ARE MANY WAYS TO DEFINE SEPARATE PROPERTY AND MARITAL PROPERTY IN ADDITION TO THOSE LISTED IN THIS FORM. NOTE THAT ITEMS NOT SPECIFIED AS SEPARATE PROPERTY EITHER IN SECTION A OR SECTION C OF THIS AGREEMENT MAY BE CONSIDERED MARITAL PROPERTY.

A. SEPARATE PROPERTY

1. **Definition of Separate Property.** ~~*1* and *2* agree that the~~ The separate property of each party shall be defined as specified in this Section A and Section C. As a means of designating such separate property, all separate property shall be held in the name of one party only, or held as tenants-in-common. Separate property of the parties shall include:

a. All assets listed on Schedules A and B at the values indicated;

b. The property, or any interest therein, whether real or personal, tangible or intangible, owned by either party on the date of their marriage or civil union;

<NOTE ON USE: Subparagraph "b" differs from subparagraph "a" above because it includes all tangible personal property, which is frequently not itemized on the schedules.>

c. All property and property interests ~~hereafter~~ acquired after the date of this agreement by either party individually by gift, devise, bequest, or inheritance, and held by either of them in their individual names, as tenants in common, or as joint owners with third persons;

d. All interests and ownership in business entities and activities currently owned, acquired, or created after the date of the parties' marriage or civil union, and held by either of them in their individual names, as tenants in common, or as joint owners with

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third persons;

e. All retirement accounts, including qualified plans of any type and self-employment plans of any kind, created or funded by either party or such party's employer or business, specifically including distributions and future contributions;

f. All assets of any irrevocable trust created for the current or future benefit, direct or indirect, of either party, and any individual revocable trust created by either party and funded with such party's separate property, regardless of the time of creation or funding; and

<DRAFTING NOTE: Is the transitional "and" at the end of this paragraph necessary?>

g. All appreciation in, proceeds from, and property exchanged for any of the above listed property (subsequent to execution of 2) after the date of this Agreement. Proceeds include gains or income regardless of source, and appreciation includes all appreciation in the value of any property owned.

<NOTE ON USE: The Colorado Uniform Dissolution of Marriage Act provides that property that one party brings to the marriage or civil union is separate property. Gifts or inheritances received by one party during the marriage or civil union are also separate property of that party. However, the appreciation in value of these assets during marriage or civil union is marital property in the absence of an agreement to the contrary. This subparagraph states that all appreciation will continue to be treated as separate property.>

2. Ownership and Control of Separate Property. ~~*1* and *2* agree (that~~ At all times each shall have and retain sole ownership, control, and enjoyment of their separate property, of whatever nature and wherever located, including the absolute right to independently dispose of or encumber such separate property by any means, including gift, sale, exchange, testamentary devise, inter vivos trust, or any other manner. To retain its character as the separate property of a party ~~pursuant to~~ as provided in this Agreement, such separate property must remain in the sole name of that party or in the name of an entity wholly or partially controlled by that party. As an example and not by way of limitation, if any party's separate property is transferred into the names of both parties, such property shall be considered marital property.

3. Income, Accruals, and Appreciation of Separate Property. ~~It is expressly understood and agreed that~~ Any and all income from the separate property of each party and all accruals and appreciation to such property shall be the separate property of the party owning the property, whether such separate property is currently owned by the party or is ~~hereafter~~ after the date of this agreement.

<NOTE ON USE: (SAME NOTE AS UNDER I.g. ABOVE)>

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4. Debts and Liabilities Related to Separate Property. Neither party shall have the authority to obligate or encumber the separate property of the other in any manner. Each party shall be responsible, from that party's separate property or separate income, for separate debts that party incurs for the benefit of or in connection with that party's separate property. If the separate debts of one party are paid from the separate property of the other party or from marital property, such funds shall be considered a gift from the contributing party to the indebted party, and the contributing party shall not by such contribution acquire any separate ownership interest, lien against the separate property of the indebted party, or right to reimbursement, unless otherwise expressly stated in a writing signed by both parties.

5. Income Taxes. The parties may, but shall not be obligated to, file joint income tax returns. However, if they do file joint income tax returns, each party shall be liable for his or her pro rata share of the taxes owed, computed as if each had filed separately to determine the separate [OPTION: taxable] [OPTION: total] [OPTION: adjusted gross] income of each party with such amounts used to compute the fraction of the total separate taxes owed and then applying such fractions to the joint tax liability. Upon an adjustment to any jointly filed income tax return, the party whose separate income or deduction adjustment resulted in the amount owed or the refund to be received shall be responsible for the respective amount owed or shall be entitled to the respective amount refunded.

<NOTE ON USE: Note that there are other ways to handle income taxes, depending on the exact circumstances and wishes of the parties, for example, there may be potentially significant difference in the calculation using adjusted gross income v. total v. taxable income. Below are examples of optional language regarding income taxes. These provisions should be closely tailored to the client's needs and situation.>

[OPTION #1] [Joint Income Taxes. The parties intend to file federal and state income taxes as a married couple filing jointly. The parties intend that each pay a portion of any income tax due each year based upon the ratio of their respective incomes, beginning with the 20____ tax year.]

[OPTION #2]

[Income Taxes. The parties agree that:

a. Any taxes, interest, or penalties that a party may owe for income or gains received or accrued by him or her or that is otherwise attributable to his or her separate property shall be his or her sole liability and obligation, to be paid solely from his or her separate property.

b. *1* shall forever hold harmless, indemnify, and defend *2* from any claims, liability, and any and all tax liens that might hereafter arise through the filing of separate tax returns or the failure to file proper returns or to pay the required taxes with respect to *1*'s separate property.

c. *2* shall forever hold harmless, indemnify, and defend *1* from any

claims, liability, and any and all tax liens that might hereafter arise through the filing of separate or joint tax returns or the failure to file proper returns or to pay the required taxes with respect to *2*'s separate property.

d. If any tax liability arises from income or gains attributable to marital property, each party shall pay the proportion of such liability which corresponds with his or her ownership share of such marital property.

e. Both parties will cooperate with any tax accountants designated by them in the preparation and filing of either separate or joint tax returns, with the expectation that such filing method would result in a lower total tax to be paid by the parties.

f. If they file a joint income tax return: (1) they shall share depreciation and any other deductions associated with the ownership of all separate property in accordance with that ownership, and (2) in determining the amount of tax to be paid by each party, each party will pay his or her proportionate part of the joint aggregate income tax liability of both parties based on the ratio that the net separate property taxable income of each party, computed as if he or she were a single person, bears to the aggregate net separate property income of both parties, with appropriate allowances for credits and other items (e.g. exemption allowances, investment tax credits or recapture items, etc.) that are not reflected in the net taxable income.

g. If the parties agree to file separate tax returns: (1) [*1*][*2*] shall file as Head of Household, (2) each party shall be solely liable for her or his income taxes, capital gains, and any other taxes on property assigned to her or him in this ~~Agreement~~ for the tax year, and (3) each party shall indemnify and hold the other party harmless with respect to her or his individual income taxes. If the party obtains a tax refund, that refund shall constitute separate property and be deposited in the parties' separate bank account.]

[OPTION #3]

[Income Taxes.

A. The parties ~~agree that they~~ may elect to file as married taxpayers filing separately, or as married and filing a joint tax return, whichever they shall choose.

B. In the event the parties file a joint tax return it will be presumed that the parties contributed equally to the tax payments, regardless of the actual original source of contribution to the tax payments. The parties ~~further agree to~~ will share equally in payment of any additional amounts due, and ~~that~~ they will share equally in any tax refund which may be received, regardless of the actual source of funds used to pay the tax due.

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C. In the event that the parties have one or more joint bank accounts, additional funds for payment of tax due will first come from that joint source, unless the parties agree otherwise. Likewise, any tax refund shall be deposited into an existing joint account and be considered the marital property of the parties.

D. In the event that the parties decide to file married but filing separate tax returns, each of the parties shall pay from their own separate assets any additional tax due, and shall be entitled to receive any refund due as separate property.

E. Unless otherwise agreed to by the parties, the original source of contributions to taxes paid will not be considered.

F. The parties may change their method of filing at any time.]

<DRAFTING NOTE: Should the above options be made a Note on Use, or be in the body of the Form?>

6. Gift Taxes. ~~*1* and *2*~~ The parties may, but are not obligated to, consent to have the gifts made by the other during any calendar year considered as made one-half (½) by each of them on a gift tax return for such calendar year.

<NOTE ON USE: Federal law gives spouses in a marriage the option to “split” gifts, or treat gifts made to a person or entity as having been made one-half by each spouse. Federal law does not give such rights to partners in a civil union..>

B. PROPERTY TO BE OWNED AS MARITAL PROPERTY

~~*1* and *2*~~ agree that ~~Any~~ property not defined as “separate property” under this Agreement that would be considered “marital property” under C.R.S. § 14-10-113 shall be defined as “marital property” under this Agreement. ~~[Quotation marks deleted from “separate property” and “marital property”]~~

1. Joint Account. In order to more effectively manage their marital property and their marital debts, ~~*1* and *2*~~ the parties intend to establish and maintain [OPTION: have already established and intend to maintain] a joint checking account and may establish [OPTION: have already established] one or more joint savings or investment accounts, titled in their joint names with rights of survivorship.

<NOTE ON USE: (FOR PARAGRAPH B.1 JOINT ACCOUNTS AND PARAGRAPH B.2 JOINT EXPENSES) If the parties wish to address the management of a joint account, and/or how marital and household expenses are to be treated, the exact circumstances and wishes of the parties can be specified in a paragraph included in this agreement regarding such. The new Uniform Dissolution of Marriage Act provides that property titled in joint tenancy with

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right of survivorship is marital property and property titled any other way is separate property. Care should be taken if the clients want to deviate from the act.

Because the parties' circumstances or wishes may change in the future, use of a specific amount or percentage of contribution could be problematic.

These provisions should be closely tailored to the client's needs and situation.

The following are some options of suggested language that could be used to specify how marital and household expenses are to be treated, if properly applied to the parties' situation and wishes. Other language can be drafted to meet the specific needs of the parties.

[OPTION 1 FOR PARAGRAPHS 1 AND 2.]:

1. Joint Accounts: ~~*1* and *2* agree that~~ Each of them party shall make an initial contribution of \$_____ to the joint checking account. Further contributions to such account shall be made as the parties shall agree from time to time.

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2. Joint Expenses: ~~The parties agree that~~ At the beginning of each month, they will review the expenditures of the previous month and make any adjustments to the joint checking account necessary in order to assure that each party pays no more than the following percentage of the household and living expenses for each month, unless otherwise agreed to from time to time by the parties: _____% to be contributed by *1*, and _____% to be contributed by *2*.

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[OPTION 2 FOR PARAGRAPH 2]:

2. Joint Expenses: ~~*1* and *2* each agree that~~ All living expenses shall be paid as the parties agree during their marriage or civil union. It is the parties' intent under current circumstances that the parties will pay for their living expenses in proportion to their earned incomes.>

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2. Joint Expenses: It is the parties' intention that funds held in any joint accounts be used for marital and household expenses, and to purchase joint investments. All property purchased with funds in these joint accounts will be acquired and held by ~~*1* and *2*~~ the parties as their marital property.

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<NOTE ON USE: (FOR PARAGRAPH B.1 JOINT ACCOUNTS AND PARAGRAPH B.2 JOINT EXPENSES) If the parties wish to address the management of a joint account, and/or how marital and household expenses are to be treated, the exact circumstances and wishes of the parties can be specified in a paragraph included in this agreement regarding such. The new Uniform Dissolution of Marriage Act provides that property titled in joint tenancy with right of survivorship is marital property and property titled any other way is separate property. Care should be taken if the clients want to deviate from the act.

Because the parties' circumstances or wishes may change in the future, use of a specific amount or percentage of contribution, could be problematic.

These provisions should be closely tailored to the client's needs and situation.

The following are some options of suggested language that could be used to specify how marital and household expenses are to be treated, if properly applied to the parties' situation and wishes. Other language can be drafted to meet the specific needs of the parties.

[OPTION 1 FOR PARAGRAPHS 1 AND 2.]:

1. Joint Accounts: ~~*1* and *2* agree that~~ ~~Each of them~~ party shall make an initial contribution of \$_____ to the joint checking account. Further contributions to such account shall be made as the parties shall agree from time to time.

2. Joint Expenses: ~~The parties agree that~~ ~~At the beginning of each month, they~~ the parties will review the expenditures of the previous month and make any adjustments to the joint checking account necessary in order to assure that each party pays no more than the following percentage of the household and living expenses for each month, unless otherwise agreed to from time to time by the parties: _____% to be contributed by *1*, and _____% to be contributed by *2*.

[OPTION 2 FOR PARAGRAPH 2]:

2. Joint Expenses ~~*1* and *2* each agree that~~ ~~All~~ living expenses shall be paid as the parties agree during their marriage or civil union. It is the parties' intent under current circumstances that the parties will pay for their living expenses in proportion to their earned incomes.>

3. Joint Credit Card Account. Prior to the marriage or civil union, ~~*1* and *2*~~ the parties opened a joint credit card account. It is their desire that this credit card account be converted to marital property upon their marriage or civil union. All property acquired with this joint credit card account shall be marital property subject to the provisions of Article II, Paragraph 6 (Joint Property Right Retained) of this ~~Agreement~~. All obligations associated with this joint credit card account shall be joint obligations of the parties.

<DRAFTING NOTE: should the following be in a Note on Use or in the Form?>

<DRAFTING NOTE: the following NOTE ON USE is patterned after the NOTE ON USE for Paragraphs 1 and 2 of this Section>

<NOTE ON USE: (FOR PARAGRAPH B.3, JOINT CREDIT CARD ACCOUNTS) If the parties wish to address the management of a joint credit card account, and/or how items charged to that account are to be treated, the exact circumstances and wishes of the parties can be specified in a paragraph included in this agreement regarding such. The new Uniform Dissolution of

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Marriage Act provides that property titled in joint tenancy with right of survivorship is marital property and property titled any other way is separate property. Care should be taken if the clients want to deviate from the act.

These provisions should be closely tailored to the client's needs and situation.

The following is one option for suggested language that could be used to specify how a joint credit card account is to be treated, if properly applied to the parties' situation and wishes. Other language can be drafted to meet the specific needs of the parties.

OPTIONAL LANGUAGE FOR PARAGRAPH B.3: 3. *Joint Credit Card Account.* Prior to the marriage or civil union, *1* (or *2*) opened a separate credit card account with _____ (name of institution)____, and ~~hereby agrees by this agreement~~ to add the other party to such account as a joint owner of such account. After the other party is added to the account, (i) all assets purchased with this credit card shall become marital property, and (ii) all obligations associated with this joint credit card account shall be the joint obligations of the parties.]>

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4. **Payments of Debts:**

(a) **Using Separate Property.** If either party contributes his or her separate property or credit to the separate property of the other, such contribution or credit shall be considered a gift, and the contributing party shall not by such contribution acquire any separate ownership interest in or lien against the separate property of the other, or right to reimbursement, unless otherwise expressly stated in a writing signed by both parties. If either party contributes his or her separate property or credit to the marital property, such contribution or credit shall be considered a gift to the marital property, unless otherwise expressly stated in a writing signed by both parties.

(b) **Using Marital Property:** If marital property is used to pay the separate debt of one party, such payment will be considered a gift from the marital estate and such contribution shall not result in an ownership interest, lien against the separate property of either party, or right to reimbursement, unless otherwise expressly stated in a writing signed by both parties.

C. SPECIFIC PROPERTY PROVISIONS

1. **Primary Residence as Separate Property.** Prior to the marriage or civil union, *1* (or *2*) purchased a residence located at _____ (address)_____. It is the parties' desire that this residence ~~NOT~~ not be converted to marital property upon their marriage or civil union. There is no mortgage on the residence at this time. Real estate taxes, insurance, maintenance, and repairs associated with the residence shall be paid by/from marital assets in lieu of rent. [*2*] ~~specifically~~ waives the right to claim an interest in the residence or a lien based on the payment of these amounts or on the contribution of services or otherwise.

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<NOTE ON USE: *The parties should decide whether they want their primary residence to be treated as separate property or marital property. In addition, the*

exact circumstances and wishes of the parties should be specified in any paragraph included in this agreement regarding their residence. The Colorado Uniform Dissolution of Marriage Act provides that property titled in joint tenancy with right of survivorship is marital property and that property titled any other way is separate property. Care should be taken if the clients want to deviate from the Act.

ALTERNATIVELY:

The following is one option of suggested language that could be used to treat the residence as marital property, if properly applied to the parties' situation and wishes. Other language can be drafted to meet the specific needs of the parties.

Primary Residence as Marital Property. *Prior to the marriage or civil union, *1* (or *2*) purchased a residence located at _____ (address) _____ titled solely in his or her name. It is the parties' desire that this residence be treated as marital property upon their marriage or civil union.>*

2. **Salaries and Compensation as Separate Property.** Except as otherwise provided ~~herein in this agreement, each party agrees that~~ all salaries, wages, earnings, profits, and other compensation resulting from each party's personal services, skill, efforts, and work shall be the earning party's separate property. The terms "salary" and "compensation" shall include pension and profit sharing plans and all stock options arising from the employment of the parties after the date of their marriage or civil union, including dividends, interest, rents, profits, gains, or other earnings on the separate property of the parties. Each of the parties understands that except for this ~~a~~ Agreement, the earnings and accumulations from the personal services, skill, effort, and work of the other party throughout the marriage or civil union would be marital property under Colorado law, and each party further understands that by this ~~a~~ Agreement such earnings and income during the marriage or civil union are made the separate property of the party to whom the earnings and accumulations are attributable.

<NOTE ON USE: *This paragraph treats income earned during the marriage or civil union as separate property, and specifies that any appreciation in value of these assets remains separate property. The exact circumstances and wishes of the parties should be specified in any paragraph included in this agreement regarding such income. For example, clients may want income earned during the marriage or civil union from separate property and inheritance to continue to be separate property, but salary and compensation earned from employment during the marriage or civil union to be marital property.*

The Colorado Uniform Dissolution of Marriage Act provides that all income earned during the marriage or civil union, and property brought into the marriage or civil union, are marital property. Care should be taken if the clients want to deviate from the act as doing so may create the need to adjust the language of many other provisions in the document.

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ALTERNATIVELY:

The following is one option of suggested language that could be used to treat income / salaries and compensation as marital property, if properly applied to the parties' situation and wishes.

Salaries and Compensation as Marital Property. After the marriage or civil union between the parties, and notwithstanding their place of residence or domicile, the salaries, wages, earnings, profits, and other compensation received by ~~*1* and *2*~~ either party for services rendered shall be acquired and held as marital property, as defined by and subject to the restrictions of the laws of the State of Colorado. The terms "salary" and "compensation" shall include pension and profit-sharing plans and all stock options arising from the employment of the parties after the date of their marriage or civil union [**OPTION:** , but shall not include dividends, interest, rents, profits, gains, or other earnings on the separate property of the parties].>

<**NOTE ON USE:** If either party owns a business interest, a separate provision with special language regarding such business interest should be included in this agreement. Due to the complexities of business interests, this is beyond the scope of this form.>

ARTICLE II
WAIVER AND RETENTION OF RIGHTS UPON
DISSOLUTION OF MARRIAGE OR CIVIL UNION

1. **Definition.** For all purposes of this ~~A~~ Agreement, a dissolution of marriage or civil union of ~~*1* and *2*~~ the parties shall include:

(i) the filing of a petition for legal separation, divorce, annulment, dissolution of marriage, or dissolution of civil union by either party, that remains pending at the time of a particular event that occurs before the proceeding has been concluded by the entry of a final order. For example, the death of ~~*1* or *2*~~ either party after either of them has filed a petition to dissolve their marriage or civil union, but before any final order is entered in that proceeding;

(ii) the entry of a court's order of dissolution or legal separation; or

(iii) the parties execution of a separation agreement ~~by *1* and *2*~~.

<**NOTE ON USE:** Normally in a dissolution of marriage or a dissolution of a civil union, the division of property between parties occurs when the court enters a decree of dissolution that divides their property or a decree approving a separation agreement signed by the parties. This provision accelerates the time when a dissolution of marriage or civil union is deemed to occur between *1 and *2.

If the parties do not want to effectively change the provisions in the Colorado Uniform Dissolution of Marriage Act by agreeing to this Article II the

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practitioner may consider determining the wishes of the clients and drafting accordingly.>

2. Description of Right to Maintenance Upon Dissolution. ~~*1* and *2*~~ Each party understands that currently pursuant to as provided in C.R.S. § 14-10-114 there are guidelines for calculating the amount of maintenance under Colorado law. Those guidelines can be summarized as follows:

(a) Guideline for amount of maintenance equals: 40% of the higher-earning party's monthly adjusted gross income ("AGI"), minus 50% of the lower-earning party's monthly AGI, but not more than 40% of the combined monthly AGIs.

(b) Guideline for years of payment of maintenance: (i) if less than three years of marriage or civil union, no maintenance; (ii) if marriage or civil union greater than three years and less than 20 years: 31% plus approximately 0.2% for each full month of marriage or civil union up to a total of 50% of the full years of marriage or civil union between 12½ years and 20 years; or (iii) for a marriage or civil union over 20 years, the court will consider all factors, but the term will not be less than 10 years.

(c) C.R.S. 14-2-307 of the Colorado Marital Agreement Act (effective before July 1, 2014) and C.R.S. 14-2-309 of the Colorado Uniform Premarital and Marital Agreements Act (effective July 1, 2014), each provides, in part, that portions of a premarital/marital agreement relating to the determination, modification or waiver of maintenance or a waiver of attorney fees incurred in connection with the dissolution of a marriage or civil union are enforceable only insofar as such provisions are not unconscionable at the time of enforcement of such provisions and that the issue of unconscionability is to be decided by the Court as a matter of law.

<DRAFTING NOTE: the language of sub-paragraph 2(c) and that of Paragraph 3 are the same. We need to decide where to put this language. Putting it in a separate paragraph could highlight the issue of unconscionability.>

3. Impact of a Determination of Unconscionability. Notwithstanding the provisions of Paragraph 4 of this Article (Waiver of Maintenance), ~~*1* and *2*~~ each party understands and agrees that C.R.S. 14-2-307 of the Colorado Marital Agreement Act (effective before July 1, 2014) and C.R.S. 14-2-309 of the Colorado Uniform Premarital and Marital Agreements Act (effective July 1, 2014), provide, in part, that portions of a premarital/marital agreement relating to the determination, modification or waiver of maintenance or a waiver of attorney's fees incurred in connection with the dissolution of a marriage or civil union are enforceable only insofar as such provisions are not unconscionable at the time of enforcement and that the issue of unconscionability is to be decided by the Court as a matter of law.

4. Waiver of Maintenance. ~~*1* and *2*~~ Each party waives, discharges, and releases the other from any and all statutory and equitable claims for support. Support shall include "alimony" or "maintenance" or anything similar, regardless of the words used to describe

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the same, whether temporary or permanent. The parties agree that, at the time of execution of this aAgreement, this waiver is not unconscionable. The parties intend this paragraph to determine any and all issues of support.

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<NOTE ON USE: This language can be adjusted to conform with the wishes of the parties. The parties may want partial support either in certain situations and/or for limited periods of time.>

5. **Rights Waived in Separate Property.** In the event of a dissolution of the parties' marriage, or civil union, ~~*1* and *2*~~ each party waives: (i) any right under the Colorado Dissolution of Marriage Act to have the other's "separate property" as defined in Article I of this aAgreement considered in connection with the equitable division of their "marital property;" and (ii) any right to receive any of the "separate property" of the other as defined in Article I of this aAgreement as part of the equitable division of the "marital property" as defined in Article I of this aAgreement. [Quotation marks deleted from "separate property" and "marital property"]

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*<NOTE ON USE: This paragraph addresses the difference between (i) separate property being considered as a relevant factor in connection with any equitable division of the marital estate of *1* and *2* versus (ii) such property being awarded to the other party. The Form modifies the definitions of "separate property" and "marital property" from the definitions found in the Colorado Uniform Dissolution of Marriage Act. See Article I of this Agreement.> [Quotation marks deleted from "separate property" and "marital property"]*

6. **Joint Property Rights Retained.** In the event of a dissolution of the parties' marriage, or their civil union, ~~*1* and *2*~~ each agree that any property held by ~~them~~ *1* and *2* as joint tenants with rights of survivorship and all of their "marital property," community property, and quasi-community property shall be divided equally between them. Notwithstanding the foregoing, in the event of a dissolution of marriage or civil union, property titled jointly in the parties' names of ~~*1* and *2*~~ with rights of survivorship, but in which the parties have unequal interests at law or in equity, shall be divided between the parties in accordance with their documented ownership interests. [Quotation marks deleted from "separate property"]

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*<NOTE ON USE: If ~~*1* and *2*~~ the parties claim to have unequal interests in any property held by them as joint tenants with right of survivorship, or they claim that even though they each own a 1/2 interest in the property as tenants in common, they actually have unequal claims to the equity in that property, the practitioner may consider documenting their respective claims to unequal interests in such property, both at the time of signing this agreement and thereafter.*

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*For example, if ~~*1* and *2*~~ the parties did not contribute equally to the purchase of a home that is titled in both of their names as joint tenants with right of survivorship and they want to have this aAgreement reflect that one owns more than an equal amount of the equity in the home and the other owns less than an equal amount of the equity in the home, getting the details down on paper and incorporating them in the appropriate Schedule to the Agreement may be beneficial.*

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Also for example, regardless of how much money ~~*1* and *2*~~ each party contributed to the purchase of the home now titled in their names as joint tenants with right of survivorship, if they want to have any past or future unequal contributions to the maintenance, repair or remodeling of the home, the debt on the property, or any other expenses, the practitioner may want to consider adding an appropriate provision to the Agreement that addresses how ~~*1* and *2*~~ the parties have, or in the future will, keep track of their respective unequal contributions to the equity in the home. This may also include non-cash contributions to equity – often referred to as “sweat equity.”>

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7. **Community Property.** As more specifically provided in Article I, ~~*1* and *2*~~ each agree that the income, appreciation or property arising from all “separate property” now owned or that may be hereafter acquired after the date of this agreement or held as “separate property” of one party, shall be and remain such party’s “separate property,” and that all compensation for the services of either of them shall be such party’s “separate property,” and such “separate property” shall not be or become community property or quasi-community property regardless of where earned, invested or sold and regardless of the residence or domicile of either party at any time before or after this Agreement is signed. ~~Quotation marks deleted from “separate property”~~

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<NOTE ON USE: This is important for clients who have moved to Colorado from a community property state.>

<DRAFTING NOTE: Paragraph 7 is the same as, or similar to, Article III (regarding waivers upon death), Section B, Paragraph 6.>

8. **Legal Fees Regarding Dissolution of Marriage or Civil Union.** ~~*1* and *2*~~ agree that in the event of a dissolution of their marriage or civil union, each of them party shall pay for all their own respective legal fees and costs. If a court would otherwise find that this provision regarding legal fees and costs is unconscionable, a court may order such portion of one party’s legal fees and costs paid by the other party as the court deems necessary to avoid a finding of unconscionability, but the remaining terms of this Agreement shall remain valid and binding on the parties. Any legal fees and costs ordered to be paid, and which are paid by one party for the other, may be treated by the parties as income for tax purposes, allowing the payor to take a deduction for such payments and the payee to report such payments as income.

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<NOTE ON USE: The practitioner may wish to add the following language to this paragraph: “In case at the time of dissolution one party cannot afford attorney’s fees, either party may file a petition in a court of competent jurisdiction for an award of temporary attorney’s fees prior to the resolution of the conflict, and any such temporary attorney’s fees will be subject to reimbursement to the paying party.”>

<NOTE ON USE: The new Uniform Premarital and Marital Agreements Act provides that provisions relating to attorney’s fees will be unenforceable if

considered unconscionable at the time of enforcement. See the Act for provisions deemed unconscionable.>

9. Liabilities.

~~(e)~~ Separate Property. In connection with the dissolution of ~~the~~ their marriage or civil union ~~of *1* and *2,*~~ each party of them, respectively, shall: (i) be solely responsible for all of the debts and liabilities attaching to or arising out of the ~~“separate property”~~ each owned at any time prior to the dissolution; and, (ii) indemnify and hold harmless the other and the other’s successors and assigns from and against the debts and liabilities attaching to, arising from, or associated with the ~~“separate property”~~ each owned at any time prior to the dissolution. [Quotation marks deleted from “separate property”]

Marital Property. In connection with the dissolution of ~~the~~ their marriage or civil union ~~of *1* and *2,*~~ each party of them, respectively, shall: (i) be responsible for all marital debts and liabilities attaching to or arising from the ~~“marital property”~~ that is set aside to that party; and, (ii) shall indemnify and hold harmless the other and the other’s successors and assigns from and against the marital debts and liabilities attaching to, arising from, or associated with the ~~“marital property”~~ set aside to that party. [Quotation marks deleted from “marital property”]

~~(b)~~

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ARTICLE III
WAIVER AND RETENTION OF RIGHTS UPON DEATH

A. GENERAL PROVISIONS

1. Joint Property. In the event of the death of one of the parties, the surviving party shall be entitled to the entire interest of any property held by the parties as joint tenants with right of survivorship.

2. Marital Property. Upon the death of one of the parties, all marital property and community or quasi community property shall pass directly to the surviving party.

B. DESCRIPTION OF SURVIVING SPOUSE’S STATUTORY RIGHTS

1. Right to Elective Share. In the absence of an enforceable premarital/marital agreement under Colorado law, a surviving spouse or a surviving partner in a civil union has the right to elect to receive a percentage of the augmented estate of the first spouse or partner to die. The augmented estate of a surviving spouse or a surviving partner in a civil union could include separate property owned by the decedent immediately before death.

The percentage of the augmented estate the electing spouse or partner is entitled to receive increases from five percent (5%) after the first year of marriage or civil union by five percent

(5%) after the second and each succeeding year of marriage, or of civil union, up to a maximum of (50%) after the tenth year of the marriage or civil union. If the applicable percentage would result in a lesser amount, or if the parties were married or in a civil union for less than one year, regardless of provisions in the will of the deceased spouse or partner, the surviving spouse or partner is entitled to a minimum of \$50,000 in the absence of an enforceable premarital/marital agreement.

<NOTE ON USE: See C.R.S. 15-11-201. It is suggested that the practitioner explain this to the client.>

2. Right to Exempt Property. In the absence of an enforceable premarital/marital agreement under Colorado law, a surviving spouse or surviving partner in a civil union has the right to request an eExempt pProperty amount from the deceased spouse's or partner's estate, up to a current value of thirty-two thousand dollars (\$32,000.00), as indexed for cost of living. This right has priority over all claims against the estate other than claims for costs and expenses of administration, and reasonable funeral and burial, interment, or cremation expenses.

<NOTE ON USE: See C.R.S. 15-11-403. It is suggested that the practitioner explain this to the client.>

3. Right to Family Allowance. In the absence of an enforceable premarital/marital agreement under Colorado law, a surviving spouse or surviving partner in a civil union, along with minor children of the deceased spouse or partner who were being supported by the deceased spouse or partner, have the right to request a fFamily gAllowance from the deceased spouse's or partner's estate. There is no specific value for the Family Allowance, but the amount should be reasonable for the maintenance of such persons during the period of administration, but not for more than one year after the death of the deceased spouse or partner.

<NOTE ON USE: See C.R.S. 15-11-404. As of 2016, the amount of the Family Allowance is normally no more than thirty-two thousand dollars (\$32,000.00), as indexed for cost of living. It is suggested that the practitioner explain this to the client.>

4. Right to Homestead Exemption. In the absence of an enforceable premarital/marital agreement under Colorado law, a surviving spouse or surviving partner in a civil union, along with minor children of the deceased spouse or partner, have the right to a hHomestead exemption which protects the home of the deceased spouse or partner from being attached for his/her debts, as long as the surviving spouse or partner and/or such minor children continue to live in such property. The exemption is currently seventy-five thousand dollars (\$75,000.00), as indexed for cost of living. There is a larger exemption if the deceased spouse or partner, the surviving spouse or partner, or the minor children are elderly or disabled.

<NOTE ON USE: See C.R.S. 15-11-402, 38-41-201 and 204. It is suggested that the practitioner explain this to the client.>

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5. **Retirement Benefits.** ~~*1* and *2*~~ Each party understands that federal law gives a spouse pre-retirement and survivor benefits in pension plans, profit-sharing plans, or any other qualified deferred compensation plans established by the other spouse or the other spouse's employer.

<NOTE ON USE: Federal law gives spouses in a marriage pre-retirement and survivor benefits in pension plans, profit-sharing plans or any other qualified deferred compensation plans established by the other spouse or the other spouse's employer. Federal law does not give such rights to partners in a civil union. Under ERISA, retirement benefits cannot be waived until after the date of marriage. Exhibit C (attached) or a post marital agreement should be signed after the marriage in order to effectuate any waiver of such benefits. Additional ERISA language may be required in this or any subsequent agreement and in any waiver submitted to the plan administrator. In addition, specific ERISA forms may need to be submitted to the plan administrator. See Kennedy v. Plan Administrator for DuPont, 555 U.S. 285 (2009). Such language and forms are beyond the scope of this Form.>

6. **Community Property.** As more specifically provided in Article I, ~~*1* and *2*~~ each agree that the income, appreciation or property arising from all "separate property" now owned or that may be hereafter acquired after the date of this agreement or held as "separate property" of one party, shall be and remain such party's "separate property" and that all compensation for the services of either of them shall be such party's "separate property," and such "separate property" shall not be or become community property or quasi-community property regardless of where earned, invested, or sold, and regardless of the residence or domicile of either party at any time before or after this Agreement is signed. *[Quotation marks deleted from "separate property"]*

<NOTE ON USE: This is important for clients who have moved to Colorado from a community property state.>

<DRAFTING NOTE: This is the same language used in Article II, Paragraph 7 (for rights upon dissolution of marriage or civil union).>

C. STATUTORY RIGHTS WAIVED

1. **"Separate Property" Rights Waived.** As more specifically provided in Paragraph 3 of this Section C of this Article III, ~~*1* and *2*~~ each party waives all rights in the estate of the other that could be satisfied out of or from the "separate property" of the other as defined in Article I of this Agreement. Such waiver is made pursuant to under C.R.S. 14-2-304(2) and C.R.S. 15-11-207, and shall include, without limitation, a waiver of all rights to an elective share, exempt property allowance, homestead exemption, and family allowance, as well as any other rights granted by the laws of Colorado or by the laws of any other jurisdiction, including any jurisdiction having community property laws, that could be satisfied out of the "separate property" of the other. *[Quotation marks deleted from "separate property"]*

2. **Retirement Benefits Waived.** ~~*1* and *2*~~ Each party waives the right to receive benefits from any pension plan, profit-sharing plan, individual retirement account (IRA), or any other deferred compensation plan, qualified or nonqualified under federal ERISA law, established by the other party, or any employer of the other party at any time, or any business the other has been associated with at any time, specifically including, but not limited to, all appreciation and contributions after the date of their marriage. ~~*1* and *2*~~ Each party agrees to execute a post marital agreement and deliver such consents as are necessary to effectuate such waiver as required by the provisions of such pension plan, profit-sharing plan, retirement account or deferred compensation plan, or as required by state or federal law. ~~*1* and *2* further~~ The parties agree and hereby by this agreement appoint the other as their attorney-in-fact for the limited purpose of executing any such document necessary to waive such rights when the waiving party has failed to execute such document within seven (7) days after request and presentment. Such appointment does not relieve a party from the obligation to execute and deliver consents under this Section C.

The provisions of this Section C do not apply to any right ~~*1* or *2* have~~ either party has now or in the future to collect Social Security Survivor Benefits, Veterans Benefits, or other benefits granted by and subject to federal law.

ALTERNATIVE LANGUAGE FOR PARAGRAPH 2:

2. **Retirement Benefits Waived.** ~~The parties agree that~~ The surviving spouse shall have no rights under federal law or state law or any plan documents to be the primary beneficiary or joint annuitant of the deceased spouse's retirement plans, and each party may dispose of their retirement plans, (including all plans designated as 401k, IRA, PERA, employer, military, 403(b), or other qualified or nonqualified plan accounts) as that party has designated, with no obligation to name the surviving spouse, provide a joint survivor annuity, or otherwise provide for the surviving spouse through such plans. The parties hereby agree by this agreement to execute any waivers required to effectuate this provision after their marriage, pursuant to Article IV, Paragraph 1, below (Necessary Documents). Either party may, nonetheless, provide voluntarily for the other through such plans, but no such provision shall create any future or further obligation to so provide for the other from or to encumber any retirement plans, nor shall such provision void any waiver under this Agreement.

<NOTE ON USE: Federal law gives spouses in a marriage pre-retirement and survivor benefits in pension plans, profit-sharing plans or any other qualified deferred compensation plans established by the other spouse or the other spouse's employer. Federal law does not give such rights to partners in a civil union. Under ERISA, retirement benefits cannot be waived until after the date of marriage. Exhibit C (attached) or a post marital agreement should be signed after the marriage in order to effectuate any waiver of such benefits. Additional ERISA language may be required in this or any subsequent agreement and in any waiver submitted to the plan administrator. In addition, specific ERISA forms may need to be submitted to the plan administrator. See Kennedy v. Plan Administrator for

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DuPont, 555 U.S. 285 (2009). Such language and forms are beyond the scope of this Form.>

3. Statutory Property Rights Waived in “Separate Property”. Subject to the provisions of this Section C of this Article III, ~~*1* and *2*~~ each party ~~specifically~~ waives the claims and rights presently granted under the following statutory provisions of the State of Colorado, as they may be revised in the future, but only in the parties’ “separate property,” as defined in Article I of this ~~a~~ Agreement: *[Quotation marks deleted from “separate property”]*

- (a) Section 15-11-102, Colo. Rev. Stat. (Intestate share of surviving spouse);
- (b) Section 15-11-201, Colo. Rev. Stat. (Elective share of surviving spouse);
- (c) Section 15-11-301, Colo. Rev. Stat. (Provision for surviving spouse when deceased spouse’s will is executed before marriage);
- (d) Section 15-11-403, Colo. Rev. Stat. (Exempt property allowance);
- (e) Section 15-11-404, Colo. Rev. Stat. (Family allowance);
- (f) Section 15-11-405, Colo. Rev. Stat. (Right to select property as exempt property);
- (g) Section 38-41-201 and 204, Colo. Rev. Stat. (Surviving Spouse’s right to homestead); and
- (h) Section 15-12-901, Colo. Rev. Stat. (Right to property if no administration of deceased spouse’s estate).

<NOTE ON USE: *The Colorado Uniform Premarital and Marital Agreements Act effective July 1, 2014 provides that waivers of rights upon death will be valid only if each right that is waived is specifically identified in the ~~a~~ Agreement. A blanket waiver of “all rights” is no longer sufficient.*

This is a list of all relevant rights. If the parties do not want to waive one or more of these rights, those rights not to be waived should be deleted from this list.

*Practitioners should be aware that this paragraph relates to rights in “separate property,” and Section D, Paragraph 1 relates to rights in “marital property.” The same rights can be listed under both paragraphs, but care should be taken to assure that those rights waived and those rights retained are what the client wants.> *[Quotation marks deleted from “separate property” and “marital property”]**

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<DRAFTING NOTE: Should we add the following to the beginning of the above Note on Use:
BECAUSE THIS FORM IS DRAFTED WITH THE APPROACH OF "WHAT'S MINE IS MINE AND WHAT'S YOURS IS YOURS, care should be taken..... >

D. RETENTION OF STATUTORY RIGHTS.

1. Retained Statutory Property Rights in ~~"Marital Property"~~. Notwithstanding ~~Article III, Section C and Paragraph 2 of this Section D~~, the parties each ~~specifically~~ retain the claims and rights presently granted under the following statutory provisions of the State of Colorado, as they may be revised in the future, but only in the parties' ~~"marital property,"~~ as defined in ~~Article I of this Agreement:~~ *[Quotation marks deleted from "marital property"]*

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- (a) Section 15-11-102, Colo. Rev. Stat. (Intestate share of surviving spouse);
- (b) Section 15-11-201, Colo. Rev. Stat. (Elective share of surviving spouse);
- (c) Section 15-11-301, Colo. Rev. Stat. (Provision for surviving spouse when deceased spouse's will is executed before marriage);
- (d) Section 15-11-403, Colo. Rev. Stat. (Exempt property allowance);
- (e) Section 15-11-404, Colo. Rev. Stat. (Family allowance);
- (f) Section 15-11-405, Colo. Rev. Stat. (Right to select property as exempt property);
- (g) Section 38-41-204, Colo. Rev. Stat. (Surviving Spouse's right to homestead); and
- (h) Section 15-12-901, Colo. Rev. Stat. (Right to property if no administration of deceased spouse's estate).

<NOTE ON USE: This is a list of all relevant rights. If the parties do not want to retain one or more of these rights, those rights not to be retained should be deleted from this list.

Practitioners should be aware that this paragraph relates to rights in ~~"marital property,"~~ and ~~Section C, Paragraph 3~~ relates to rights in ~~"separate property."~~ The same rights can be listed under both paragraphs, but care should be taken to assure that those rights waived and those rights retained are what the client wants.> *[Quotation marks deleted from "separate property" and "marital property"]*

2. Statutory Fiduciary and Other Rights Retained. If the parties are married or are partners in a civil union when the first of them dies, the other ~~specifically~~ retains the following rights presently granted under the following statutory provisions, as they may be revised in the future:

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- (a) Sections 15-12-203(1)(b) and (d), Colo. Rev. Stat. (Right to serve as personal representative);
- (b) Section 15-12-1201, Colo. Rev. Stat. (Right to be a successor under the collection of personal property by affidavit);
- (c) Section 15-12-1203, Colo. Rev. Stat. (Right to distribution of small estate);
- (d) Section 15-20-101. et seq., Colo. Rev. Stat. (Right to Community property); and
- (e) Section 15-19-106, Colo. Rev. Stat. (Right to dispose of remains).

<NOTE ON USE: If the parties do not want to retain one or more of these rights, those rights not to be retained should be deleted from this list.>

3. Priority for Appointment in Protective Proceedings. If the parties are married or are partners in a civil union when a protective proceeding is commenced concerning one of them, the other ~~specifically~~ retains the priority presently granted under the following statutory provisions, as they may be revised in the future:

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- (a) Section 15-14-310(1)(e) or Section 15-14-310(1)(e.5), Colo. Rev. Stat., as applicable (Priority for appointment as guardian for an incapacitated person); and
- (b) Section 15-14-413(1)(d)(4) or Section 15-14-413(1)(d.5), Colo. Rev. Stat., as applicable (Priority for appointment as conservator in a protective proceeding).

<NOTE ON USE: The parties may wish to relinquish one or more of these priorities, especially in a civil union or blended family situation.>

4. Right to Name Successor Fiduciary. Each party retains the rights granted under such statutory provisions to name any one or more individuals, other than the other party, or a corporate entity, or both, to act with, to be a successor, or to act instead of the party's spouse or partner.

E. OTHER RIGHTS.

1. Liabilities Regarding “Marital Property”. At the death of one party, the surviving party shall be responsible for all marital debts and liabilities attaching to or arising from “marital property” passing to the surviving party by operation of law or otherwise. The surviving party shall indemnify and hold harmless the estate of the deceased party and the successors to the estate of the deceased party from and against the marital debts and liabilities attaching to, arising from or associated with the “marital property” passing to the surviving party. *[Quotation marks deleted from “marital property”]*

<NOTE ON USE: If there is an agreement that marital property will go to someone other than the surviving party, consider addressing the issue in this agreement to provide that the surviving party be indemnified against any liabilities that attach to such marital property that does not pass to the surviving party.>

<DRAFTING NOTE: Do we want to add the duty to defend to cover attorney’s fees and related costs during any adversarial proceedings?>

2. Liabilities Regarding “Separate Property”. The estate of a deceased party shall be solely responsible for all separate debts of the deceased party and liabilities attaching to or arising out of the “separate property” of such deceased party. The estate of a deceased party shall indemnify and hold harmless the surviving party and his or her successors from and against the separate debts and liabilities attaching to, arising from or associated with the “separate property” of the deceased party. *[Quotation marks deleted from “separate property”]*

<DRAFTING NOTE: Do we want to add the duty to defend to cover attorney’s fees and related costs during any adversarial proceedings?>

F. PROVISIONS UPON DEATH.

1. Unused Exemption Amount. At the death of either spouse while the parties are married, if the survivor is eligible under federal, state, or other law to utilize the decedent’s unused estate tax exemption, or a similar death tax benefit, *1* and *2* agree that the surviving spouse may require the personal representative or executor of the deceased spouse’s estate to file any necessary forms and returns with the Internal Revenue Service, and any other appropriate taxing authority, to protect the deceased spouse’s unused exemption amount, as defined in Section 2010 of the Internal Revenue Code, (“DSUEA”), and to provide the surviving spouse with copies of all such documents, including amendments filed with such taxing agency and adjustments made by any taxing agency. All costs of reporting and preserving the DSUEA shall be paid by the surviving spouse. *1* and *2* agree to add such provisions to their estate planning documents as are necessary for the efficient administration of their estates consistent with the terms of this Agreement.

<NOTE ON USE: Federal law gives surviving spouses in a marriage the right to apply the DSUEA; federal law does not give such rights to partners in a civil union.>

*[OPTIONAL LANGUAGE (from Gordon Williams): Notwithstanding the provisions of Article III or any other provision herein, upon the death of either *1* or *2*, the survivor shall be entitled to elect portability of the deceased's unused exclusion amount in effect at the time of the deceased's death pursuant to I.R.C. § 2010. No waiver of the right to elect portability of the deceased's unused exclusion amount is intended by any provision hereunder.]*

2. **No Contest.** Except to the extent that such document fails to comply with the terms of this Agreement, *1* and *2* agree that neither of them will contest the validity of any testamentary or inter vivos estate planning document of the other now existing or hereafter executed.

*[ALTERNATIVE LANGUAGE: No Contest. *1* and *2* agree that neither of them will contest the validity of any testamentary or inter vivos estate planning document of the other now existing or hereafter executed, except to the extent that such document fails to comply with the terms of this Agreement.]*

<DRAFTING NOTE: We invite open discussion about the utility and enforceability of this No Contest clause (possibly including contract to will issues).>

3. **[OPTIONAL PROVISION:] Disposition Upon Death.** *1* and *2* agree to execute certain estate planning documents which effectuate their agreement as to how their assets shall be distributed upon each death. This estate plan consists of the following:

(a) *1* agrees to provide by will, trust, or beneficiary designation as follows: <INSERT PROVISIONS>;

(b) *2* agrees to provide by will, trust, or beneficiary designation as follows: <INSERT PROVISIONS>.

<NOTE ON USE: This paragraph is OPTIONAL. However, if the parties wish to agree as to how property will be distributed upon death, references to specific provisions in applicable estate planning documents may be inserted here. Practitioners should note that this may be considered a contract to will.>

<NOTE ON USE: In a second marriage situation, the parties may wish to provide for the surviving party for life but also make sure that the deceased party's assets come back to the deceased party's children upon the death of the surviving party. This could be accomplished through the use of a family trust.>

ARTICLE IV

MISCELLANEOUS PROVISIONS

1. Incorporation by Reference: The parties hereby agree that the Recitals that precede this Agreement, and any Schedules referred to herein and attached hereto, are hereby incorporated into this Agreement by this reference.

~~1. Necessary documents. Each party shall, upon the request of the other, execute, acknowledge, and deliver any instruments or documents appropriate or necessary to carry into effect the intentions and provisions of this Agreement.~~

<NOTE ON USE: The practitioner may consider adding the following language to this paragraph to ensure that the signature of both parties is on all documents necessary to effect the agreement. However, this will not work for any qualified retirement plans covered by ERISA plans.

"Each party hereby appoints the other party as their attorney in fact for the limited purpose of executing any such document which is necessary to effectuate the purpose of this Agreement and which the first party has failed for any reason to execute within seven (7) days after request and presentment."

2. Binding effect. This Agreement shall inure to the benefit of and shall be binding upon *1* and *2* and their respective heirs, legatees, devisees, executors, administrators, guardians, conservators, trustees, fiduciaries, personal representatives, grantees, donees, successors and assigns.

3. Construction; Choice of Law. This Agreement shall be enforced, construed and interpreted according to the laws of the State of Colorado, whether either or both of *1* and *2* are at any time a temporary or permanent resident or domiciled in any other jurisdiction, or whether any assets or events are situated in Colorado or any other place.

<NOTE ON USE: The new Uniform Premarital and Marital Agreements Act provides for limited choice of law. A state other than Colorado may be chosen if that state has a significant relationship to one of the parties or to the agreement itself, and if such other state laws regarding enforcement are not contrary to those of Colorado or to Colorado public policy.>

<DRAFTING NOTE: The following alternative language has been suggested. Should we include this in a note on use?

"Governing Law.

a. Each party recognizes that the provisions of the laws of the State of Colorado affecting the rights and interests of persons in the property or estate of their spouses or partners, during their lifetime or at death, may from time-to-time be changed, limited, or enlarged, and that the laws of other jurisdictions or places may contain the same or similar or substantially different provisions. It is the intention and agreement of the parties to waive and release all such rights and interests now or hereafter granted by, or as they may be changed, limited, or

enlarged in the future under the laws of the State of Colorado, and any other jurisdiction or place.

b. The parties agree that, in the event that any time during their marriage or civil union they become domiciled in a "community property" or other equitable distribution state or jurisdiction under the laws of which a spouse or partner, in the absence of a marital or other contrary agreement, acquire property interests in the property of the community or of the other, or in any other state or jurisdiction under the laws of which property interests, in the absence of an agreement, are different from the property interests of a spouse or partner under the laws of the State of Colorado, their respective property rights, real and personal, tangible and intangible, including all of the earnings, appreciation, accretion, and any other increases in value thereof, shall be determined consistent and based upon the characterization, terms, and provisions set forth in this Agreement.

c. This Agreement shall extend to all property, (whether real, personal, or tangible) whether located within Colorado or not, now owned or hereafter acquired during the marriage or civil union in any way by either party or by both parties.

d. The parties agree that the validity, interpretation, and implementation of this Agreement shall be determined pursuant to the laws of the State of Colorado as it existed on the date of the parties' marriage or civil union, even though the parties, or either of them, may now be or hereafter become domiciled in another jurisdiction.

e. Although this Agreement is being executed in and pursuant to the laws of the United States of America, the parties intend and desire that it be fully enforceable and effective in every country and jurisdiction in the world, regardless of any law to the contrary in any such jurisdiction. Accordingly, each of them shall at all times execute such documents and take such actions, upon the request of the other, to make this Agreement enforceable and effective in one or more other countries or jurisdictions.>

4. Changes in the Law. *1* and *2* recognize that the laws of Colorado and other applicable jurisdictions affecting marital rights and interests in the property, assets, and estates of the parties may be amended or increased. It is the intention and agreement of *1* and *2* to be bound by the terms of this Agreement, regardless of any changes to applicable laws.

<NOTE ON USE: If the alternative language above is used for Paragraph 3, this language may be duplicative.>

<DRAFTING NOTE: If the alternative language above for Paragraph 3 is not used, then this NOTE ON USE will not be necessary.>

5. Effective Date. This Premarital Agreement shall become effective on the marriage or civil union of the parties. If the marriage or civil union does not take place within six (6) months from the date hereof, this Premarital Agreement will be null and void.

<NOTE ON USE: The new Uniform Marital and Premarital Agreements Act provides that a premarital agreement is effective upon the marriage or civil union, and a marital agreement is effective upon signing by both parties. C.R.S. § 14-2-307.>

ALTERNATIVE LANGUAGE FOR A MARITAL AGREEMENT:

5. Effective Date. This Agreement shall become effective upon execution by both parties.

6. Waiver. Neither the failure nor any delay on the part of either party to exercise any right, power, or privilege hereunder shall operate as a waiver of such right, power or privilege.

7. Legal Fees Regarding the Interpretation, Enforcement, or Performance of this Agreement. In the event that a dispute arises between the parties hereto relating to the interpretation, enforcement, or performance of this Agreement and such matter is referred to an attorney for resolution, the prevailing party in any litigation or alternative dispute resolution shall be entitled to collect his or her reasonable attorney's fees, costs, and/or expenses (including expert fees) incurred in such litigation or alternative dispute resolution or on appeal from the nonprevailing party.

<NOTE ON USE: The new Uniform Premarital and Marital Agreements Act provides that provisions relating to attorney's fees will be unenforceable if considered unconscionable at the time of enforcement. See the Act for provisions deemed unconscionable.>

8. Headings. Paragraph titles or captions contained in the Agreement are inserted only as a matter of convenience and for reference. Such titles and captions in no way define, limit, extend or describe the scope of this Agreement nor the intent of any provision of this Agreement.

9. Severability. If any provision of this Agreement shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

10. Competence; Fairness. *1* and *2* are each competent to enter into this Agreement. *1* and *2* enter into this Agreement freely and voluntarily, and not on the basis of any duress, coercion, time pressure, or other pressure or influence from any person or circumstances. Each party believes that the Agreement, as a whole, and each of its provisions, is fair.

11. Amendments. This Agreement may not be amended, supplemented, or terminated, except by an agreement in writing, expressly referring to the Agreement and signed by both *1* and *2* while both are living and competent.

<NOTE ON USE: In order for an amendment or revocation of a premarital or marital agreement to be enforceable, it must also comply with the terms of the Uniform Premarital and Marital Agreements Act under C.R.S. § 14-2-309.>

12. Confidential Document. With the exception of disclosure to professionals for purposes of examining financial disclosure information as referred to in section 5 of the Recitals herein. Each party agrees to keep confidential and not disclose any financial information respecting the other, except with the other's consent, or as necessary to enforce the provisions contained herein. If in the future it becomes necessary to file this Agreement with any court or take other action, the result of which would or could be the making of this Agreement a public record, ~~Schedule A and Schedule B~~ all schedules attached shall be deleted from any such filing or publication and shall only be disclosed, if necessary, under the circumstances most reasonably calculated to protect, to the greatest extent possible, the confidentiality of such information.

13. Enforcement; Specific Performance. *1* and *2* intend in good faith that this Agreement shall be fully enforced as written; and any questions, disagreements, or ambiguities shall be resolved in favor of the enforceability of this Agreement at any future time in any jurisdiction. Neither *1* nor *2* shall be entitled to any rescission, modification, or other relief from any of the terms of this Agreement, or to any additional or different rights or relief of any kind against the other, by reason of mistake of law or mistake of fact. In addition to and not in lieu of any other remedies or methods of enforcement, the parties agree this Agreement may be enforced by specific performance or injunctive relief.

14. Voluntary Gifts. The waivers contained in this Agreement shall not affect either party's rights to make gifts during life or at death to the other party or to receive any gift which either party may choose to make to the other. Each party is free to make any disposition in favor of the other party which could be made in the absence of this Agreement, including naming the other party as a devisee under a will or a beneficiary under a trust, naming the other party as a beneficiary of death benefits, life insurance policies, annuities, employee benefit plans, self-employment benefit plans, and similar arrangements. No gift shall constitute an amendment of this Agreement.

15. Changed Circumstances. *1* and *2* anticipate that the value of the separate property of either or both of them may increase or decrease during the marriage or civil union. *1* and *2* agree that no such increase or decrease in the value of the separate property of either party, and no other changed circumstance affecting the relative financial positions of the parties, shall in any way affect the validity and binding effect of this Agreement. However, such changed circumstances could be considered for amending this Agreement, or drafting estate planning documents.

16. Effect of Drafting of Provision by Either Counsel. No provision in this Agreement is to be interpreted for or against *1* or *2* because that person's counsel drafted the provision.

17. Integrated Agreement. This Agreement contains the entire agreement between *1* and *2* with regard to the subject matter of the agreement. All prior agreements, covenants,

representations, warranties, express and implied, whether oral or written, of the parties with regard to their financial relationship, are either contained in this Agreement or are void. No other enforceable agreements, covenants, representations or warranties, express or implied, oral or written, have been made by either party to the other with respect to the subject matter of this Agreement.

[OPTION FOR ADDITIONAL LANGUAGE: *The parties acknowledge that they have been fully advised to their entire satisfaction of the rights they would have in the absence of this Agreement and that they fully understand all of the provisions of this Agreement.]*

18. **Counterparts.** *1* and *2* have signed this Agreement in two (2) original documents, one to be retained by each party. This Agreement may be executed in several counterparts, and as so executed, a set of all the pages shall constitute one Agreement, binding on all of the parties hereto, notwithstanding that all of the parties are not signatory to one original or to the same counterpart.

19. **Independent Counsel.** *1* and *2* have been advised of their right to independent counsel regarding this Agreement, and have either sought such counsel or elected not to seek such counsel. Both parties have had reasonable time to decide to retain independent counsel, to locate a lawyer, and to obtain and consider that lawyer's advice. If either party is unrepresented, such party acknowledges that he/she has the financial ability to retain a lawyer, or the represented party has agreed to pay the reasonable fees and expenses of representation for the unrepresented party.

<NOTE ON USE: It is a requirement of the new Uniform Premarital and Marital Agreements Act that the party against whom enforcement is sought had meaningful access to independent legal representation.>

20. **Acknowledgement.** **THE PARTIES ACKNOWLEDGE THAT BY SIGNING THIS AGREEMENT, EACH PARTY MAY BE:**

- (A) Giving up the right to be supported by the person you are marrying or to whom you are married;
- (B) Giving up the right to ownership or control of money and property;
- (C) Agreeing to pay bills and debts of the person you are marrying or to whom you are married;
- (D) Giving up the right to money and property if the marriage ends or the person to whom you are married dies; or
- (E) Giving up the right to have your legal fees paid.

[OPTION #1]

20. **Acknowledgement.** *Each of the parties makes the following acknowledgments as evidenced by their signing this Agreement:*

- (A) *That he or she has been provided with sufficient time and adequate information to review this Agreement and the attached schedules;*

(B) That he or she has had the opportunity to ask for, and has received, such requested additional information;

(C) That he or she is satisfied with the knowledge he or she has acquired with regard to the other's income, property, financial obligations, and other financial circumstances; and

(D) That he or she may be:

(i) Giving up the right to be supported by the person you are marrying or to whom you are married;

(ii) Giving up the right to ownership or control of money and property;

(iii) Agreeing to pay bills and debts of the person you are marrying or to whom you are married;

(iv) Giving up the right to money and property if the marriage ends or the person to whom you are married dies; or

(v) Giving up the right to have your legal fees paid.]

<DRAFTING NOTE: C.R.S. § 14-2-309(3) requires the use of specific language contained in that statute (or language "substantially similar" to the specific language. That does not refer to civil unions. Should we add references to civil unions in this paragraph?>

<NOTE ON USE: If one party is not represented by independent counsel, you MUST insert this acknowledgement language (see C.R.S. § 14-2-309(3)).>

<NOTE ON USE: The practitioner may want to consider using the "Checklist for Premarital/Marital Agreement Execution", which is attached to this form as Exhibit E.>

IN WITNESS WHEREOF, *1* and *2* have subscribed their initials on each page of this Agreement and the Schedules attached hereto, and have signed and acknowledged this Agreement as of the date first set forth above, and further state:

1

I, *1*, acknowledge that I am fully acquainted with the nature and extent of the current income and holdings and the current liabilities of *2*. *2* has answered any and all questions I have asked him/her about his/her income, assets, and liabilities. I have carefully weighed all of the facts and circumstances and desire to marry or enter into a civil union with *2* regardless of any financial arrangements made for one another's benefit. I am entering into this Agreement freely, voluntarily and with full knowledge of all material facts, including but not limited to the amount, character and value of *2*'s separate property, income, and liabilities, as set forth, in part, in Schedule B.

I acknowledge that I have received “A” and have had time to review it and consult with counsel.

$$[* 1 *]$$

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that *1* is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20____.

Print Name: _____
 NOTARY PUBLIC in and for the State of _____
 My commission expires: _____

I, *2* , acknowledge that I am fully acquainted with the nature and extent of the current income and holdings and the current liabilities of *1* . *1* has answered any and all questions I have asked him/her about his/her income, assets, and liabilities. I have carefully weighed all of the facts and circumstances and desire to marry or enter into a civil union with *1* regardless of any financial arrangements made for one another's benefit. I am entering into this Agreement freely, voluntarily and with full knowledge of all material facts, including but not limited to the amount, character and value of *1* 's separate property, income, and liabilities, as set forth, in part, in Schedule A.

STATE OF _____)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that *2* is the person who appeared before me, and said person acknowledged that he/she signed this instrument and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this instrument.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20__.

Print Name: _____
 NOTARY PUBLIC in and for the State of _____

 My commission expires: _____

ATTORNEY CERTIFICATE

The undersigned hereby certifies that he/she is an attorney at law, duly licensed and admitted to practice in the State of Colorado; that he/she has been employed by *1*, a party to this agreement, and that he/she has advised such party with respect to this agreement and explained to him/her the meaning and legal effect of it; and that *1* has acknowledged his/her full and complete understanding of this agreement and its legal consequences, and has freely and voluntarily executed this agreement in the undersigned's presence.

Dated: _____

ATTORNEY CERTIFICATE

The undersigned hereby certifies that he/she is an attorney at law, duly licensed and admitted to practice in the State of Colorado; that he/she has been employed by *2*, a party to this agreement, and that he/she has advised such party with respect to this agreement and explained to him/her the meaning and legal effect of it; and that *2* has acknowledged his/her full and complete understanding of this agreement and its legal consequences, and has freely and voluntarily executed this agreement in the undersigned's presence.

Dated: _____

SAMPLE SCHEDULE A and/or B

**Separate Property declared by _____ to be separate
before marriage and to be held separate throughout the union.**

Employment

1 is currently employed by _____ as _____, and
had income during 2015 of _____.

Assets

- 1) _____ Bank, _____ Branch, account no. _____, value of
approximately \$ _____.
- 2) Two firearms:
 - a) Glock 9 millimeter handgun, serial number _____, value of approximately
\$ _____.
 - b) HK 91 rifle, 308 caliber, serial number _____, value of approximately
\$ _____.
- 3) Runco Cinema Pro Digital 750 Projection Theatre System, serial number _____,
Onkyo 5.1 Theatre Surround Sound System, Yamaha 7.1 Theatre Surround Sound System
and Chapman speakers originally from the Paramount Theater, 2 at 350 Watts, and 2 at 250,
Watts, total value of approximately \$ _____.
- 4) Snap-On Tools and roller box and toolbox, value of approximately \$ _____.
- 5) _____ Retirement Fund, value of approximately \$ _____.
- 6) The residence and real property located at _____, value of approximately
\$ _____, more particularly described as follows:

*****legal description*****
- 7) All interest in the _____ Living Trust dated April 1, 1999 as beneficiary of said
Trust, value unknown, estimated at between \$ _____ to \$ _____.
- 8) Motor vehicles belonging to _____ acquired before marriage, including:
 - 8.1) 1968 Ford Torino Convertible GT, # _____, value of approximately
\$ _____;
 - 8.2) 1960 Cadillac Deville Hardtop, value of approximately \$ _____;
 - 8.3) 1988 Chevrolet Iroc Camaro, value of approximately \$ _____;
 - 8.4) 1983 Toyota 4X4, value of approximately \$ _____;
 - 8.5) 1985 928 Porsche, value of approximately \$ _____;
 - 8.6) 1977 GMC Pickup Truck, value of approximately \$ _____;

- 8.7) 1968 Dodge Charger, value of approximately \$_____; and
8.8) Used JetSki, value of approximately \$_____.

9) The 401K Salary Reduction Plan & Trust through _____ as existing and in the amount before marriage and held through the offices of Lincoln National Life Insurance Company, and through _____'s employment with _____, Annuity Contract No. _____, value of approximately \$_____ to \$_____.

Debts and Liabilities

Household utilities: approximately \$_____.

Signature

Date

SCHEDULE A

**Separate Property declared by *1* to be separate
before marriage and to be held separate throughout the union.**

Employment

1 is currently employed by _____ as _____, and
had income during 2015 of _____.

Assets

General personal property: \$_____ – \$_____.

Debts and Liabilities

None.

Signature

Date

SCHEDULE B

**Separate Property declared by *2* to be separate
before marriage and to be held separate throughout the union.**

Employment

2 is currently employed by _____ as _____, and
had income during 2015 of _____.

Assets

General personal property: \$ _____ – \$ _____.

Debts and Liabilities

None.

Signature

Date

EXHIBIT C
<to be signed after the marriage>

**POSTMARITAL WAIVER OF RIGHTS
UNDER THE RETIREMENT EQUITY ACT**

The undersigned parties to that certain Premarital Agreement entered into by them on _____, 2015, hereby affirm, ratify and agree to all of the provisions of Article III, Section B, Paragraph 5 (Retirement Benefits) and Article III, Section C, Paragraph 2 (Retirement Benefits Waived), and each party consents to any designation of beneficiary or method of payment made by the other party with respect to such other party's qualified plan benefit. Each party waives any right to any such qualified plan benefit accorded to spouses under the Retirement Equity Act of 1984, or the provisions of any other federal or state law, and each party shall, upon the request of the other, execute, acknowledge, and deliver any instruments or documents appropriate or necessary to carry into effect the intentions and provisions of the Premarital Agreement.

Dated on: _____

1

2

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by *1* and *2*.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

<NOTE ON USE: Federal law gives spouses in a marriage pre-retirement and survivor benefits in pension plans, profit-sharing plans or any other qualified deferred compensation plans established by the other spouse or the other spouse's employer. Federal law does not give such rights to partners in a civil union. Under ERISA, retirement benefits cannot be waived until after the date of marriage. Exhibit C (attached) or a post marital agreement should be signed after the marriage in order to effectuate any waiver of such benefits. Additional ERISA

language may be required in this or any subsequent agreement and in any waiver submitted to the plan administrator. In addition, specific ERISA forms may need to be submitted to the plan administrator. See Kennedy v. Plan Administrator for DuPont, 555 U.S. 285 (2009). Such language and forms are beyond the scope of this Form.>

EXHIBIT D
TAX RETURNS

EXHIBIT E

CHECKLIST FOR PREMARITAL/MARITAL AGREEMENT EXECUTION

Date: _____

Each of us acknowledges that:

1

2

- | | | | |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------|--|
| 1. I have had sufficient time to discuss the Agreement with my attorney prior to signing it | _____ | _____ | |
| 2. I have not consumed any alcohol, drugs or other substances within the last 12 hours that would impair my ability to understand the terms of this Agreement and to sign it at this time freely, voluntarily and with full knowledge | _____ | _____ | |
| 3. I have reviewed my partner's schedule of assets, liabilities, and income attached to this Agreement | _____ | _____ | |
| 4. I have accurately prepared my own schedule of assets, liabilities, and income attached to the Agreement | _____ | _____ | |
| 5. I understand after full consideration with my attorney that the Agreement does or may provide to me substantially more or less assets and income than I would receive in the absence of the Agreement under Colorado law in the event of death or dissolution of marriage | _____ | _____ | |
| 6. I am under no pressure or coercion by any person or circumstance to sign this Agreement | _____ | _____ | |
| 7. I have had sufficient time to consider each term and the Agreement in its entirety before signing the Agreement at this time | _____ | _____ | |
| 8. I am satisfied in every respect with the representation I received from my attorney | _____ | _____ | |
| 9. I am signing the Agreement freely and voluntarily | _____ | _____ | |

1

2

<NOTE ON USE: This Exhibit E is drafted assuming that both parties are represented. If either party is not represented, this exhibit should be revised accordingly.>