

PRENUPTIAL AGREEMENT

THIS AGREEMENT made this _____ day of _____, 20____, by and between JANE SMITH, residing at _____, hereinafter referred to as “Jane” or “the Wife”, and JOHN DOE, residing at _____, hereinafter referred to as “John” or “the Husband”.

WITNESSETH:

A. Jane is presently ___ years of age, and has not previously been married and has no children. John is presently ___ years of age, has been married once previously and was divorced in _____. John has three children from his prior marriage, [*identify children by name, date of birth and age*].

B. The parties hereto have been residing together for a period of _____ years, and in consideration and recognition of their relationship and their mutual commitment, respect and love for one another, the parties contemplate marriage to one another in the near future, and both desire to fix and determine by antenuptial agreement the rights, claims and possible liabilities that will accrue to them by reason of the marriage.

C. The parties are cognizant that John has significant assets as reflected in Schedule “A” annexed hereto. It is the parties’ express intention and desire for this agreement to secure not only the pre-marital and separate property rights of John, but also to preserve, shield and protect the beneficial interest which John’s children have in their father’s estate. Inasmuch as John has been previously divorced, both John and Jane desire to enter into a contractual agreement which is intended to govern their financial affairs and obligations to one another in

the event of a dissolution of their marital relationship, said agreement being a deliberate and calculated attempt by John and Jane to avoid a painful and costly litigation process.

D. The parties are over the age of eighteen and are fully competent to enter into this Agreement, each being of a sufficiently mature and sound mind to understand fully the contemplated promises contained in this Agreement.

E. Except as expressly provided in this agreement to the contrary, each party desires that all property owned by him or her at the date of the parties' marriage together with any appreciation or increase thereon shall be free from any claim of the other that may arise by reason of their contemplated marriage, and that in the event of a termination event as hereinafter set forth, all such property shall be his or her respective separate property and shall not be subject to any equitable distribution or community property laws in the event that the parties establish a domicile or residence in a state that has adopted either of such systems.

F. The parties specifically intend and desire to enter into an agreement, under Section 236B, subdivision 3, of the New York Domestic Relations Law, that fully provides for the ownership and distribution of their marital property and for certain other rights and obligations arising from the marital relationship, which they further intend shall control and be determinative in all respects for the present and in the event of the dissolution of the marriage.

G. The parties further intend that this Agreement is made in consideration of and is conditioned upon the parties entering into a valid marriage with each other, and this Agreement shall become effective only upon the parties entering into a valid marriage with each other.

H. The parties further specifically intend and desire that this prenuptial agreement and the terms and provisions hereinafter set forth shall control and be binding upon them in the

event of divorce or a “Termination Event.” For purposes of this Agreement, a “Termination Event” shall be defined as set forth in Article 1 of this agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements hereinafter set forth, the parties do fully and voluntarily agree as follows:

ARTICLE I. TERMINATION EVENT

As used in this Agreement, “Termination Event” shall refer to any one of the following events:

1. The commencement by either party against the other party of an action or proceeding for divorce, separation, annulment or dissolution of the parties’ marriage;
2. The sending of a written notice by one party to the other party, by certified mail, return receipt requested, stating that the marriage between the parties is no longer viable and that the receipt of said letter shall constitute a Termination Event; or
3. The parties cease residing together and/or remain in a state of marital separation, for a period of sixty (60) days or more, and do not thereafter reconcile.

ARTICLE II. GENERAL PROPERTY WAIVERS

1. Except as otherwise specifically provided in this agreement, neither party shall by virtue of the marriage have or acquire any right, title or claim in or to the other party's real or personal property or estate upon the other party's death, or in the event of the dissolution of the impending marriage.

2. By the execution of the within Agreement, each party specifically waives any right that each now has or may ever have pursuant to the following provisions of New York’s Domestic Relations Law, and accepts the terms of the within Agreement in lieu thereof:

(a) Section 236 B(4) as to compulsory financial disclosure, except as may be required if the issue of child support is extant;

(b) Section 236 B(5) regarding disposition of marital property and declaration of separate property;

(c) Section 236 B(6) as to maintenance;

(d) Section 236 B(8) regarding specific relief in matrimonial actions; and

(e) Section 237 with regard to counsel fees and expenses, except as provided in Article XV of this agreement.

ARTICLE III. ESTATE WAIVERS

1. Except as otherwise provided in the within agreement, neither party shall by virtue of the marriage have or acquire any right, title or claim in or to the other party's real or personal property upon the other party's death. In the event of the death of either party, that party's estate shall descend to, or vest in his or her heirs at law, distributees, legatees or devisees and in such a manner as may be prescribed by his or her Last Will and Testament or Codicil thereto, or in default thereof, by the statutory law then in force, as though no marriage between the parties had ever taken place. The waivers set forth herein shall include, but shall not be limited to the following:

(a) RIGHT OF ELECTION: The right to elect to take against any present or future Last Will and Testament or Codicil of the other party pursuant to Estates, Powers and Trusts Law [of New York] (EPTL) § 5-1.1-A, and by law amendatory thereof, or supplemental or similar thereto.

(b) RIGHT TO TAKE: The right to take his or her intestate share of the other party's estate pursuant to Article 5 of the EPTL, and by law amendatory thereof, or supplemental or similar thereto.

(c) RIGHT TO ACT: The right, if any, to act as administrator or administratrix of the other party's estate pursuant to Article 5 of EPTL, and by law amendatory thereof, or supplemental or similar thereto.

(d) RIGHT TO CLAIM: The right to claim or assert a claim for the declaration of marital property and the distribution thereof pursuant to the Domestic Relations Law of the State of New York, and any law amendatory thereof, or supplemental or similar thereto; except as specifically set forth in the within agreement.

(e) RIGHT TO ASSERT: The right to assert a claim for maintenance and/or support pursuant to the Domestic Relations Law of the State of New York, and any law amendatory thereof, or supplemental or similar thereto; except as specifically set forth in the within agreement.

2. Nothing herein contained shall be deemed to constitute a waiver by either party of any bequest that the other party may choose to make to him or her by Will or Codicil dated subsequent to the execution of this agreement.

ARTICLE IV. SEPARATE PROPERTY WAIVERS

1. All property owned individually by either of the parties at the time of their marriage, whether real, personal or mixed, wheresoever situated, and whether vested, contingent or inchoate, together with the appreciation, rents, issues, enhanced earning capacity, and profits thereof, whether passive or active, or due in part or in whole to the direct or indirect

contributions of the other party, and the proceeds of the sale thereof or mergers and acquisitions thereto, and the investments and reinvestments thereof and the appreciation, rents, issues, enhanced earning capacity, and profits of such investments and reinvestments along with any liabilities in connection thereto and together with all property, real, personal or mixed, which the parties may acquire in their individual names hereafter or during their marriage, from any source whatever, hereby is declared to be and shall remain the separate property, (as defined by Section 236, Part B, of the Domestic Relations Law) of the respective party now owning, or hereafter acquiring such property, free and clear of any rights, interests, claims or demands of the other. Each party hereby covenants and agrees to make no claim or demand on the separate property of the other, or on the heirs, executors, or administrators of the other in the event of his or her death, with respect to such separate property of the other, except as otherwise expressly provided herein.

2. Without in any way limiting the definition of separate property as set forth in paragraph numbered "1" of this Article, separate property shall include the following:

(i) John shall retain as his sole and separate property all of the assets set forth in Schedule "A" annexed hereto;

(ii) Jane shall retain as her sole and separate property all of the assets set forth in Schedule "B" annexed hereto;

(iii) all property derived from personal services, skills, efforts and employment, whether performed before or during the marriage or after the occurrence of a Termination Event, (e.g., including but not limited to wages, bonuses, royalties, commissions, deferred compensation plans, retirement plans, profit sharing plans, employer provided savings accounts, stock warrants,

stock options, incentive awards, and any other form of compensation or asset provided as a result of his or her employment); and

(iv) all articles and accessories of attire, jewelry, personal effects, and sports equipment acquired by way of purchase, gift (whether inter-spousal or from a third party) or otherwise, primarily for the use of that party.

3. Inheritance and Inter-Spousal Gifts: In addition, the parties make the following specific declarations relative to their respective separate property interests:

1. Any funds or property inherited by either party shall remain the sole and separate property of the party so inheriting such funds or property; and

2. Any inter-spousal gifts, i.e., gifts from Jane to John or gifts from John to Jane, during the parties marriage, shall constitute the sole and separate property of the recipient of the gift(s).

ARTICLE V. THE MARITAL RESIDENCE

1. The parties acknowledge that John is the owner of a house located at _____, New York. The parties acknowledge that John is the sole owner of this property and that Jane has made no contribution or investment therein. It is the intention of the parties to reside in this house after they are married.

2. During the course of the marriage while they reside in the said home, John shall be responsible for payment of the carrying charges (mortgage/home equity loan payment, if any, real estate taxes, homeowner's insurance, utilities, etc.) for the residence.

3. It is agreed and understood between the parties that upon the occurrence of a Termination Event, John may give Jane ninety (90) days written notice of his desire for Jane to

vacate the said residence, and Jane agrees that she shall, within forty-five (45) days of receipt of such written notice, remove herself from the said home.

4. Simultaneous with Jane's vacatur from the marital residence pursuant to this Article, John shall pay to Jane, as a rental allowance for a residence, a one-time lump sum payment of _____ (\$_____) Dollars.

5. The provisions of this Article shall apply to any subsequent or successor residence of the parties that is owned in the name of John only.

6. It is specifically agreed that all items of furniture, furnishings, household goods and appliances, books, works of art and other miscellaneous items of personal property presently located at _____, New York, shall belong to John, with the exception of the personal effects belonging to Jane, which shall remain her separate property.

ARTICLE VI: AFTER-ACQUIRED PROPERTY

1. All property and accounts hereafter acquired in the name of each party shall remain the separate and distinct property of the party acquiring such property or accounts. However, all property and accounts acquired or maintained by the parties jointly and in the joint names of the parties shall be considered for purposes of this agreement the joint property of the parties. Such jointly held property shall be subject to the following:

a. Upon the occurrence of a Termination Event, the jointly held property shall be divided equally between the parties, as follows:

(i) the joint property shall be valued as near as practicable to the time of the Termination Event;

(ii) if an item of joint property lends itself to a distribution in kind, to the extent possible, the property shall be distributed equally in kind;

(iii) if the item of joint property does not lend itself to distribution in kind, the parties shall attempt to resolve between themselves a method of distributing such property so that all such property is distributed equally. If, within ninety (90) days following the occurrence of a Termination Event, the parties are unable to agree upon a method of distributing such property, the property shall be sold and the proceeds shall be divided equally with each party receiving one-half of the net proceeds (defined as the total selling price less the expense of sale) and each party bearing one-half of any tax consequences

b. Upon the death of a party during marriage, the surviving spouse shall be entitled to the full interest in the jointly held property, i.e., such jointly held property shall be deemed to be held as joint tenants with the right of survivorship.

2. Co-Mingled Separate/Non-Marital Property:

a. In the event of a Termination Event, and in the event that Jane and John shall co-mingle any of their Separate Property, including any income or profits derived therefrom, their Separate Property shall not as a result become Marital Property, unless Jane and John express in writing their intent that it become Marital Property. If the Separate Property of Jane and/or John may be co-mingled with the Separate Property of the other or with Marital Property, then it shall be known as “co-mingled property”.

b. If it is the nature of the co-mingled property that it lends itself to division and distribution in kind and it is possible to determine Jane’s and John’s contributions therein, then

co-mingled property shall be divided and distributed to Jane and John in kind, the appreciation and interest to be divided *pro rata* in accordance with the parties' contributions.

c. If it is the nature of the co-mingled property that it lends itself to distribution in kind, but it is not possible to determine Jane's and John's contribution, then, unless Jane and John can agree in writing on some other arrangement, the property shall be divided and distributed equally.

d. If it is the nature of the co-mingled property that it cannot be distributed in kind and it is possible to determine Jane's and John's contributions to the cost of the property, then, unless Jane and John can agree in writing on some other arrangement, the property shall be sold and the proceeds of sale shall be divided and distributed *pro rata* with respect to their respective contributions.

e. If it is the nature of the co-mingled property that it cannot be distributed in kind and it is not possible to determine Jane's and John's contributions to the original cost of the property, then unless Jane and John can agree in writing on some other arrangement, the property shall be sold and the proceeds of sale shall be divided and distributed equally. Therefore, when co-mingling assets, Jane and John should make a special effort to document their respective contributions.

ARTICLE VII: WAIVER OF INTEREST IN QUALIFIED PLAN

1. Any individual retirement account, pension, retirement, death benefit, stock bonus, annuity or profit-sharing plan with respect to which John was, is, or shall at any time hereafter be, a participant or member including, without limitation, any plan of deferred compensation to which Section 401(a)(11)(B) of the Code and/or Section 205(b)(1) of ERISA

shall apply, shall be deemed the separate property of John. Jane hereby renounces and disclaims, and covenants to renounce and disclaim, all interest under any such plan. Jane hereby consents to John's election to waive a qualified joint and survivor annuity form of benefit and a qualified preretirement survivor annuity form of benefit under any plan of deferred compensation to which Section 401(a)(11)(B) of the Code and/or Section 205(b)(1) of ERISA shall apply. Jane further consents to John's current and future designation of any alternative form of benefit and of beneficiaries other than Jane under any of such plans (and to any revocation and/or modification of such designations), including any of such plans referred to in Section 401(a)(11)(B)(iii) of the Code or Section 205(b)(1)(C) of ERISA. Jane hereby further agrees to execute any and all documents or forms which shall be required, at any time, and from time to time, by any or all such plans, including, but not limited to, any consents required by Sections 401(a)(11)(B)(iii) or 417(a)(2) of the Code or Sections 205(b)(1)(c) or 205(c)(2) of ERISA, together with any modifications or amendments thereto, to effect the payment of benefits in this manner. Jane hereby acknowledges that she understands the effect of John's elections and her consents thereto. Jane further acknowledges that she understands that, absent the consent contained in this paragraph, she would have the right to limit her consent to the designation by John of a specific beneficiary or a specific form of benefits, and Jane hereby voluntarily elects to relinquish both such rights. In the event that, notwithstanding the renunciations and disclaimers set forth in this paragraph, Jane receives any right, title or interest in any property so renounced or disclaimed, then Jane shall immediately transfer all such right, title and interest to the estate of John. It is the essence of this Agreement that after the marriage of the parties each party shall reaffirm in

writing the foregoing and provide such papers and documents properly executed and acknowledged to carry out and implement the foregoing.

2. It is expressly acknowledged and agreed by Jane that her proper and timely execution of the waivers and consents required herein shall be a pre-condition to her receiving any benefits provided under this Agreement. In the event that Jane shall fail to execute any waiver or consent required herein, such failure shall be deemed to be a material breach of this Agreement. In the event that Jane receives any benefits because she has failed to execute the foregoing waivers or consents of benefit plan rights, Jane shall thereupon become the constructive trustee of such received benefits, to hold and distribute such received benefits (net of any income tax Jane is required to pay thereon as a result of her erroneous receipt of such benefits) to such beneficiaries, other than Jane, who shall have been designated in writing by John to receive such benefits.

3. Any individual retirement account, pension, retirement, death benefit, stock bonus, annuity or profit-sharing plan with respect to which Jane was, is, or shall at any time hereafter be, a participant or member including, without limitation, any plan of deferred compensation to which Section 401(a)(11)(B) of the Code and/or Section 205(b)(1) of ERISA shall apply, shall be deemed the separate property of Jane. John hereby renounces and disclaims, and covenants to renounce and disclaim, all interest under any such plan. John hereby consents to Jane's election to waive a qualified joint and survivor annuity form of benefit and a qualified preretirement survivor annuity form of benefit under any plan of deferred compensation to which Section 401(a)(11)(B) of the Code and/or Section 205(b)(1) of ERISA shall apply. John further consents to Jane's current and future designation of any alternative form of benefit and of

beneficiaries other than John under any of such plans (and to any revocation and/or modification of such designations), including any of such plans referred to in Section 401(a)(11)(B)(iii) of the Code or Section 205(b)(1)(C) of ERISA. John hereby further agrees to execute any and all documents or forms which shall be required, at any time, and from time to time, by any or all such plans, including, but not limited to, any consents required by Sections 401(a)(11)(B)(iii) or 417(a)(2) of the Code or Sections 205(b)(1)(c) or 205(c)(2) of ERISA, together with any modifications or amendments thereto, to effect the payment of benefits in this manner. John hereby acknowledges that he understands the effect of Jane's elections and his consents thereto. John further acknowledges that he understands that, absent the consent contained in this paragraph, he would have the right to limit his consent to the designation by Jane of a specific beneficiary or a specific form of benefits, and John hereby voluntarily elects to relinquish both such rights. In the event that, notwithstanding the renunciations and disclaimers set forth in this paragraph, John receives any right, title or interest in any property so renounced or disclaimed, then John shall immediately transfer all such right, title and interest to the estate of Jane. It is the essence of this Agreement that after the marriage of the parties each party shall reaffirm in writing the foregoing and provide such papers and documents properly executed and acknowledged to carry out and implement the foregoing.

4. In the event that John shall fail to execute any waiver or consent required herein, such failure shall be deemed to be a material breach of this Agreement. In the event that John receives any benefits because he has failed to execute the foregoing waivers or consents of benefit plan rights, John shall thereupon become the constructive trustee of such received benefits, to hold and distribute such received benefits (net of any income tax John is required to

pay thereon as a result of his erroneous receipt of such benefits) to such beneficiaries, other than John, who shall have been designated in writing by Jane to receive such benefits.

5. Notwithstanding any other provision in this agreement to the contrary, Jane shall be entitled to share in the appreciated value of John's interest in the _____ 401(K) Plan ("the Plan" hereinafter) subject to the following terms and conditions:

(a) if the parties are married for less than five (5) years prior to the occurrence of a Termination Event, Jane shall receive a sum equal to ___% of the appreciation in value in the Plan from the date of this agreement (that being fixed at \$_____) to the Termination Event;

(b) if the parties are married for at least five (5) years but less than ten (10) years prior to the occurrence of a Termination Event, Jane shall receive a sum equal to ___ % of the appreciation in value in the Plan from the date of this agreement (that being fixed at \$ _____) to the Termination Event;

(c) if the parties are married for at least ten (10) years prior to the occurrence of a Termination Event, Jane shall receive a sum equal to ___% of the appreciation in value in the Plan from the date of this agreement (that being fixed at \$_____) to the Termination Event; and

(d) if the parties are married for at least fifteen (15) years prior to the occurrence of a Termination Event, Jane shall receive a sum equal to ___% of the appreciation in value in the Plan from the date of this agreement (that being fixed at \$_____) to the Termination Event.

(e) Providing that the divorce is not contested by Jane and that Jane does not challenge the financial provisions of this agreement, Jane's aforesaid share shall be paid to her as soon as allowable under the terms of the Plan following the entry of a Judgment of Divorce, in accordance with a qualified domestic relations order (QDRO) which order shall direct the payment of Jane's aforesaid share into a rollover individual retirement account in Jane's name to be designated by her. John and Jane shall jointly retain the pension actuary and any costs attributable therefor shall be paid by John.

ARTICLE VIII: **MAINTENANCE**

(Option 1)

1. John acknowledges that he is in good health, is employed as a _____ at the offices of _____, and earns an annual income of \$_____. John acknowledges that he is self-supporting, and that he will have sufficient means to provide fully for his own support, regardless of his future earning capacity. Accordingly, John does hereby waive, release, relinquish, and forever renounce any claim of past, present or future alimony, maintenance or spousal support, temporary or permanent, whether in the form of payments made directly to him as the spouse or to a third party.

2. Jane acknowledges that she is in good health, is employed as a _____, at the offices of _____, and earns an annual salary of \$_____. Jane acknowledges that she is self-supporting, and that she will have sufficient means to provide fully for her own support, regardless of her future earning capacity. Accordingly, Jane does hereby waive, release, relinquish, and forever renounce any claim of past, present or future alimony,

maintenance or spousal support, temporary or permanent, whether in the form of payments made directly to her as the spouse or to a third party.

3. The foregoing waiver by Jane of her right to apply for spousal support, alimony or maintenance (temporary or permanent), necessities or otherwise shall not preclude a request for child support for a child in the event that Jane becomes pregnant or the parties become parents of a child or children.

4. Nothing herein contained shall be deemed a waiver of obligations to provide household support and the sharing of normal household and marital expenses during the course of the marriage as the parties mutually agree.

(Option 2)

1. Jane acknowledges that she is in good health, and is gainfully employed as _____, at the offices of _____, earning an annual salary of approximately \$_____. Jane acknowledges that she is capable of self-support and that she will have sufficient means to provide fully for her own support, regardless of her future earning capacity.

2. Jane further acknowledges that she is entering into this agreement with full knowledge that John has substantial financial responsibilities to his former wife, _____ and to the children of his first marriage, including but not limited to maintenance obligation, child support payments, medical and life insurance premiums, education and extra-curricular expenses and miscellaneous other expenses pertaining to his children.

3. Notwithstanding the foregoing, the parties agree that upon the occurrence of a Termination Event, John shall pay to Jane, toward her support and maintenance, the following sums, payable in monthly installments, and continuing for the durational periods set forth herein, but subject to earlier termination upon the earliest occurrence of any of the following events:

a. The death of either of the parties hereto;

b. The remarriage of Jane, which shall be defined to include a ceremonial marriage, regardless of whether such remarriage shall thereafter be terminated by divorce, annulled, voidable or declared null and void;

c. Jane’s habitual living with another male and holding herself out as his “wife” within the meaning of Domestic Relations Law §248;

d. The sharing by Jane of the same principal residence with an unrelated adult for a substantially continuous period of six (6) months or more, even though no ceremonial marriage may have been performed. “Cohabitation” as used herein shall mean living with such adult while engaged in an intimate relationship, even though no religious or civil ceremonial marriage may have been performed, and without the necessity of demonstrating that Jane and the unrelated adult share household expenses or in any manner functioned as a single economic unit.

4. The maintenance payments shall be as follows:

<i>Termination Event occurring on or before the following anniversary date of the marriage:</i>	<i>Annual Amount (in equal monthly installments)</i>	<i>Duration (in months)</i>
3 rd Anniversary	\$	
5 th Anniversary	\$	
8 th Anniversary	\$	
10 th Anniversary	\$	
15 th Anniversary	\$	

18 th Anniversary	\$	
20 th Anniversary	\$	
After 20 th Anniversary	\$	

5. The parties are aware of the fact that under Federal and State income tax law, Jane is required to include the aforesaid maintenance payments in her income for income tax purposes, and John is entitled to deduct said payments on his income tax returns. Hereafter, neither party shall assert a position upon his/her separate income tax returns inconsistent with this undertaking. Should the tax effect as set forth above ever cease to be the case, whether by reason of a prospective or retroactive change in the federal and/or state tax law, the sums due hereunder shall be renegotiated so as to achieve, as closely as possible, the same after-tax effect for the payor spouse, i.e., John, as is contemplated herein.

6. Except as provided for in this Article, Jane and John each waive and forever relinquish any right or claim she or he may have or might ever have against the other for payments of temporary or permanent maintenance, spousal support or alimony, whether in the form of payments made directly to him as the spouse or to a third party, under the laws of any jurisdiction.

7. New Maintenance Guidelines Legislation: The parties acknowledge receiving advice that pursuant to the new Maintenance Guidelines Legislation signed into law by Governor Andrew M. Cuomo on September 25, 2015 (Chapter 269, Laws of 2015), the “temporary maintenance provisions” contained in this new law are applicable to matrimonial actions commenced on or after October 26, 2015, and that “post-divorce maintenance provisions” apply to matrimonial actions commenced on or after January 25, 2016. The parties acknowledge

receiving advice that, among other provisions, the new statute contains (a) various formulas for calculating temporary maintenance and post-divorce maintenance; (b) the definition of “income” to be utilized when undertaking maintenance calculations for temporary and post-divorce maintenance; (c) *advisory* durational schedules for post-divorce maintenance based upon the length of the marriage (i.e., from the date of the marriage until the date of commencement); and (d) the requirements when deviating from the maintenance guidelines where the payor’s income exceeds a “cap” of \$178,000 per year, with a COLA adjustment to the “cap” every two years thereafter. In accordance with this legislation, the following are the 15 post-divorce maintenance factors which are to be considered in determining the additional amount of maintenance, if any, on the payor’s income which exceeds the cap, or where there is to be an adjustment or “deviation” in the guidelines amount:

- (a) The age and health of the parties;
- (b) The present or future earning capacity of the parties, including a history of limited participation in the workforce;
- (c) The need of one party to incur education or training expenses;
- (d) The termination of a child support award before the termination of the maintenance award when the calculation of maintenance was based upon child support being awarded which resulted in a maintenance award lower than it would have been had child support not been awarded;
- (e) The wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration;
- (f) The existence and duration of a pre-marital joint household or a pre-divorce separate household;
- (g) Acts by one party against another that have inhibited or continue to inhibit a party’s earning capacity or ability to obtain meaningful employment. Such acts

include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law;

(h) The availability and cost of medical insurance for the parties;

(i) The care or children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity;

(j) The tax consequences to each party;

(k) The standard of living of the parties established during the marriage;

(l) The reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage;

(m) The equitable distribution of marital property and the income or imputed income on the assets so distributed;

(n) The contributions and services of the payee as a spouse, parent, wage earner and homemaker and to the career or career potential of the other party; and

(o) Any other factor which the court shall expressly find to be just and proper (*which, in post-divorce maintenance only, must also include consideration of the effect of any barrier to remarriage*).

Note: Except as otherwise noted, all of the above factors are also included in the 13 temporary maintenance factors, with the exception of factors "(m)" and "(n)".

A copy of the Maintenance Guidelines is reproduced and incorporated herein as Schedule "___".

8. Opting Out of the New Maintenance Guidelines: The parties further acknowledge receiving advice that nothing in the new legislation prohibits parties from entering into validly executed agreements which *deviate* from the maintenance guidelines. Thus, notwithstanding the effect of the new maintenance guidelines legislation, after due consideration of the 15 post-divorce maintenance factors delineated above, the parties expressly intend and agree that the

maintenance obligation shall be governed by the terms of this Agreement, and they expressly *wai*ve their right to fix the maintenance obligations under the new Maintenance Guidelines.

ARTICLE IX: INCOME TAX RETURNS

The parties agree that, at the election of John, they shall execute and file joint income tax returns, both federal and state, for any year during their marriage. In connection with said joint tax returns:

1. Jane shall provide to John, at his request, information regarding her income for the prior year.

2. John shall decide, no later than March 15th of any year, whether joint returns shall be filed for the year ending on December 31st immediately preceding such March 15th.

3. Such joint returns shall be prepared at the expense of John by his tax advisors, provided that Jane may have the same reviewed by her tax advisors at her expense.

4. Aside from any withholding taxes from any wages earned by Jane, John agrees that he will forever save, hold harmless and indemnify Jane on account of all tax levies, assessments or fines arising out of said joint returns to the extent that the same are applicable to any item other than Jane's undisclosed independent income and/or improper deductions, if any. All refunds, if any, due from said returns shall be the sole property of John, who is hereby granted the right to endorse the signature of Jane on all refund checks.

5. Any party receiving any notice of any kind from any taxing authority relative to any joint income tax returns filed by the parties shall forthwith tender a complete copy thereof to the other party.

6. John, at his sole cost and expense, shall have the right to contest the validity and amount of any claims for additional taxes, interest and penalties made by any Federal, State or City income tax authority arising out of any joint income tax returns hereafter filed by the parties, and he shall be entitled to litigate any such claims or demands. Jane agrees to cooperate with John, his accountants and counsel in connection with any proceedings for the purpose of contesting, abating, reducing or obtaining any refund of any tax, penalty, or interest assessed or due, or any part thereof. Such cooperation shall include, but shall not be limited to: (i) the execution of any amended tax return; (ii) the making available of such books, records and other data as may be necessary in order to conduct any tax audit or examination or deal with any dispute arising thereunder; and (iii) the joining in and execution of any protest, petition or document in connection with any proceedings for the purpose of contesting, abating, reducing or obtaining any refund of any tax, penalty or interest assessed or due or any part thereof.

ARTICLE X: **LIFE INSURANCE** *(if applicable)*

1. John agrees to maintain in full force and effect a policy or policies of life insurance, insuring his life, with Jane as beneficiary of an aggregate death benefit in the sum of \$_____, which insurance shall be maintained from the time of the parties' marriage and until John is no longer obligated to provide maintenance payments to Jane pursuant to Article VIII of this agreement.

2. Jane acknowledges that John's obligation to provide life insurance is contingent upon John being insurable, i.e., being able to obtain a life insurance policy from an insurance company for the amount set forth herein owing to his age and health history at reasonable

premium rates relative to the coverage. John agrees to make a diligent effort to secure such life insurance.

3. Promptly after the execution of this agreement, John shall deliver to Jane such insurance policy or policies or a certificate or other instrument evidencing such designation of Jane as beneficiary of said insurance as provided herein, or documentation verifying the fact that he is not insurable.

ARTICLE XI: CHILDREN

Neither of the parties hereto contemplate that there will be any children born of this marriage. In the event that there are children born of this marriage, the parties jointly acknowledge their joint responsibility for the health, welfare, support and education of such children, and they agree that upon the occurrence of a Termination Event, they shall be joint legal custodians of any child(ren) of the marriage, and shall share decision making responsibility with respect to any such child(ren).

ARTICLE XII: DISCLOSURE & VOLUNTARINESS

1. Each party represents to the other that they have made substantial disclosure of his or her means, assets and resources as may hereinafter more fully be set forth in Exhibits "A" and "B" annexed hereto and that he or she is entering into this agreement freely, voluntarily and with full knowledge.

2. John acknowledges that:

(a) He is fully acquainted with the income, assets and the resources of Jane;

(b) Jane has answered all of the questions he has asked about her income and assets;

(c) He regards such information as sufficient to enable him to make an informed decision concerning this Agreement and that he wishes no further disclosure from Jane, either oral or written;

(d) He is under no duress or other pressure to refrain from obtaining detailed written disclosure;

(e) He has at all times received the advice of independent counsel of his own choosing, namely, _____, with offices located at _____;

(f) Upon the advice of his independent legal counsel, he is fully aware of and understands all of the rights that he is surrendering, waiving or releasing and the obligations he is undertaking pursuant to this Agreement;

(g) He has carefully weighed all of the facts and circumstances likely to influence his judgment, and he desires to marry Jane regardless of any financial arrangements made whether for his benefit or not, and;

(h) He has entered into this agreement, freely, voluntarily and with full knowledge of Jane's means and resources as represented in Exhibit "B" attached.

3. Jane acknowledges that:

(a) She is fully acquainted with the income, assets and the resources of John;

(b) John has answered all of the questions she has asked about his income and assets;

(c) She regards such information as sufficient to enable her to make an informed decision concerning this Agreement and that she wishes no further disclosure from John, either oral or written;

(d) She is under no duress or other pressure to refrain from obtaining detailed written disclosure;

(e) She has at all times received the advice of independent counsel of her own choosing, namely, _____, with offices located at _____;

(f) Upon the advice of her independent legal counsel, she is fully aware of and understands all of the rights that she is surrendering, waiving or releasing and the obligations she is undertaking pursuant to this Agreement;

(g) She has carefully weighed all of the facts and circumstances likely to influence her judgment, and she desires to marry John regardless of any financial arrangements made whether for her benefit or not, and;

(h) She has entered into this agreement, freely, voluntarily and with full knowledge of John's means and resources as represented in Exhibit "A" attached.

ARTICLE XIII: DISSOLUTION OF MARRIAGE

1. In the event of the dissolution of the impending marriage of the parties, the terms and provisions of this agreement shall constitute full settlement, satisfaction and discharge of any and all obligations that may arise from the marital relationship and each party covenants and agrees with the other to accept the terms and provisions of this agreement in full and final settlement, satisfaction and discharge of any obligation that may arise as a result of the marriage and in lieu

of any other rights, claims or causes of action that they may have had against the other absent this agreement.

2. In the event that either party commences an action or proceeding for divorce, separation or dissolution of the marital relationship of the parties, each covenants and agrees to immediately provide his or her respective attorneys with a copy of this agreement and each further covenants and agrees to prepare and execute a Property Settlement Agreement, if necessary, pursuant to the terms of this antenuptial agreement.

3. The parties further covenant and agree that in the event any Order, Judgment or Decree, results from the commencement of action affecting the marital relationship, neither party shall seek an Order or Decree which shall be inconsistent with any of the provisions of this antenuptial agreement or any Property Settlement Agreement prepared and executed pursuant hereto. The parties further covenant and agree that the terms and provisions of the within antenuptial agreement or Property Settlement Agreement prepared and executed pursuant thereto shall be incorporated in and shall survive any such Judgment, Order or Decree, and shall not merge therein.

4. The parties further covenant and agree that in the event of either party commencing an action or proceeding for divorce, separation or dissolution of the marriage, each party shall be solely responsible for all attorney's fees, costs, and disbursements attendant to the interpretation of this Prenuptial Agreement, the preparation and execution of a Property Settlement Agreement, or the prosecution or defense of any matrimonial action affecting the marital relationship.

ARTICLE XIV: DEBTS

A. Except as otherwise provided in this agreement, Jane covenants and represents that she has not heretofore incurred or contracted, nor will she at any time in the future incur or contract any debt, charge or liability whatsoever for which John, his legal representatives or his property or estate is now or may become liable, and Jane further covenants at all times to keep John free, harmless and indemnified of any from any and all debts, charges, liabilities heretofore or hereafter contracted by her.

B. Except as otherwise provided in this agreement, John covenants and represents that he has not heretofore incurred or contracted, nor will he at any time in the future incur or contract any debt, charge or liability whatsoever for which Jane, her legal representatives or her property or estate is now or may become liable, and John further covenants at all times to keep Jane free, harmless and indemnified of and from any and all debts, charges and liabilities heretofore or hereafter contracted by him.

ARTICLE XV: COUNSEL FEES

1. Each party shall be responsible for the payment of his/her own counsel fees in connection with the negotiation and execution of this prenuptial agreement.

2. In the event of an action between the parties for divorce, separation, annulment or dissolution of the parties marriage, each party shall be responsible for the payment of his/her own legal fees and expenses, regardless of the outcome of the legal proceeding, and each party shall keep the other party free, harmless and indemnified on account of any liability therefor.

ARTICLE XVI: GENERAL PROVISIONS

1. In the absence of modification, and except to the extent specifically modified, this agreement shall continue in full force and effect. Any and all modifications to this agreement shall be in writing, and shall be acknowledged in the same manner and with the same formality as this agreement.

2. Each party shall, upon the other's request, take any and all steps to execute, acknowledge and deliver unto the other party any and all further instruments necessary or expedient to effectuate the purposes of this agreement.

3. The consideration for this agreement is the mutual promises and waivers herein contained and the marriage about to be solemnized. If the marriage does not take place, this agreement shall be in all respects and for all purposes null and void.

4. Jane acknowledges that she has entered into this agreement without coercion of any kind from any source whatsoever and that she clearly understands and consents to all of the provisions contained herein. She believes this agreement to be fair, just and reasonable, and acknowledges that the within agreement has been fully explained to her by her attorneys, to wit:

_____, and that this agreement has been negotiated and executed at the specific instance and request of Jane.

5. John acknowledges that he has entered into this agreement without coercion of any kind from any source whatsoever and that he clearly understands and consents to all of the provisions contained herein. He believes this agreement to be fair, just and reasonable, and acknowledges that the within agreement has been fully explained to him by his attorneys, to wit:

_____, and that this agreement has been negotiated and executed at the specific instance and request of John.

6. This agreement contains the entire understanding of the parties. There are no representations, warranties, promises or covenants, undertakings or otherwise other than those expressly set forth herein.

7. This agreement has been negotiated by the parties pursuant to Section 236 B(3) of the Domestic Relations Law of the State of New York, which specifically provides that the parties may enter such Agreement before marriage and such Agreement shall be valid and enforceable subject to the provisions of Section 5-311 of the General Obligations Law of the State of New York, provided that such terms were fair and reasonable at the time of the making of such Agreement and such terms and conditions and provisions contained therein are not unconscionable at the time of entry of final Judgment. This Agreement shall be examined, construed, interpreted and enforced pursuant to the Laws of the State of New York.

8. This agreement shall inure to the benefit of and shall be binding upon the heirs, executors and administrators of the parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals this ____
day of _____, 20____.

JOHN DOE

JANE SMITH

ACKNOWLEDGMENTS

STATE OF NEW YORK)

SS.:

COUNTY OF)

On the _____ day of _____ 20__, before me, the undersigned, personally appeared JOHN DOE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)

SS.:

COUNTY OF NASSAU)

On the _____ day of _____ 20__, before me, the undersigned, personally appeared JANE SMITH, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

SCHEDULE "A"

ASSETS AND LIABILITIES OF JOHN DOE

SCHEDULE "B"

ASSETS AND LIABILITIES OF JANE SMITH