

## MONTANA PRENUPTIAL AGREEMENT

BE IT KNOWN, this agreement is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_ and \_\_\_\_\_. Whereas, the parties contemplate legal marriage under the laws of the State of Montana, and it is their mutual desire to enter into this agreement so that they will continue to own and control their own property.

WITNESSETH:

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The premises being considered, upon consideration of the mutual promises hereinafter set forth and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**I. Effective Date of Agreement.** This Agreement shall take effect only upon the lawful the marriage of the parties to one another. Further, the effective date of this Agreement is the date upon which the parties are legally married.

### **II. Separate Property.**

- A. Definition of "Separate Property". As used in this agreement, the term "Separate Property" means all rights and interests in property of any kind, including contingent interests, owned by each party on the effective date of this agreement. The term "Separate Property", as used in this agreement, is further defined below.
- B. Earnings After Effective Date of Agreement Also Separate Property.
  1. Earnings During Marriage--Passive Income. Passive income derived from property of any type shall have the same character for purposes of this agreement as the property from which it is derived. Thus, passive income from Separate Property earned or accruing after the effective date of this agreement shall be the Separate Property of the owner of that asset. Likewise, passive income from marital or community property shall have that character once earned or accrued.

- a. The term "passive income" means dividends, capital gains, interest, rents, royalties, disruptions and other income accrued from property of a party and obtained after the effective date of this agreement.
- b. The term "passive income" also includes accrued but unrecognized appreciation in the value of capital assets classified as separate property.
- c. In the case of ownership of interests in corporations as separate property, all dividends therefrom are to be considered passive.
- d. In the case of ownership of interests in trusts and partnerships which do not operate a business enterprise, all distributions and income allocations therefrom to a party are to be considered passive.
- e. In the case of ownership of interests in trusts, partnerships, limited liability companies (LLCs) and like business entities which operate a business enterprise, all distributions and income allocations therefrom to a party are to be considered passive unless a party materially participates in the business. Where a party materially participates in a business operated by a trust, partnership, LLC, or like business entity, all income and distributions from said entity are to be treated as earned income.
- f. Income not falling within the definition of "passive income" is to be considered earned income and treated as set forth in the next section entitled, "Earnings During Marriage--Earned Income".
- g. The term "materially participates" has the same meaning as given under the tax laws of the United States (Title 26, USC) for determining when a partner materially participates in a partnership.

2. Earnings During Marriage--Earned Income.

- a. Earned income of the parties during the marriage shall be considered the Separate Property of either party during the marriage.
- b. The term "earned income" means any income obtained by a party after the effective date of his agreement that does not meet the definition of passive income as set forth in the previous section. Types of earned income include, but are not limited to, salary and bonus from employment, earnings derived from the performance of services as an independent contractor, and income derived from a business run as a sole proprietorship.

3. Common Living Expenses.

- a. Common Living Expenses incurred during the marriage shall be paid first from the liquid assets of the parties NOT classified as Separate Property under this agreement (i.e., from marital property, community property, or quasi-community property).
- b. Those Common Living Expenses which cannot be paid from said liquid assets of the parties are to be paid from the Separate Property of the parties in the following percentages: \_\_% by \_\_\_\_\_ and \_\_% by \_\_\_\_\_.

- c. The term "common living expenses" means common expenses incurred by the couple in daily life such as food, home rental fees, condo fees, medical insurance, medical expenses, travel, entertainment, and home utility expenses. For any home which the parties either jointly own or is otherwise NOT defined as Separate Property under this agreement, then the term "common living expenses" shall include taxes, insurance, property fees, and maintenance expenses related to that home.
  - d. The term "liquid assets" means cash, savings accounts, checking accounts, money market funds, brokerage accounts, cash equivalents, and other marketable securities.
4. Each of the parties shall have the unrestricted right to dispose of such Separate Property, free and clear of any claim that may be made by the other by reason of their marriage and with the same effect as if no marriage had been consummated between them. The parties hereby agree and elect that all property designated as "Separate Property" in this agreement shall be exempt from claims, and is not to be classified, as "community property", "quasi-community property", or "marital property" under state law.

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8. Contributions and accumulations in retirement plans and accounts: In regard to retirement plans and accounts, the parties covenant and agree that all accumulations in, and contributions to, retirement plans and accounts whether **before or during** the marriage shall be the Separate Property of the party who owns the account or is the plan beneficiary.
- C. Waiver of Rights and Claims To Separate Property. Except as otherwise provided herein, each party waives and releases all rights, interests in and claims to the Separate Property of the other party arising under common or statutory law of any jurisdiction (present or future). This waiver does not apply to any right a party may possess to seek assistance from the federal government as a surviving spouse such as under the Social Security Act.

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**III. Alimony.** Each party hereby waives, releases and relinquishes any and all rights whatsoever, whether arising by common or statutory law (present or future) of any jurisdiction to spousal alimony, maintenance or other allowances incident to divorce or separation (also known as "spousal support" or "spousal maintenance" and/or "rehabilitative maintenance"). Such waiver, release and relinquishment shall not apply and is not effective with respect to any rights or entitlements a party may have as a surviving spouse under the Social Security laws or with respect to any other governmental benefit or governmental program of assistance. This Agreement shall not limit the right of either party to make such transfers of property to the other as he or she may wish during their respective lifetimes, or by will, or to acquire property jointly or in any other form of ownership.

**IV. Waiver of Rights Upon Death.** Upon the death of either or both of the parties, it is agreed that the other party (including heirs and assigns) shall make no claim against or assert any right to a share in the probate estate of such deceased party. The rights and claims waived by this paragraph include those as an omitted spouse or under the intestate succession laws of the applicable jurisdiction.

Nothing in this paragraph shall be construed as restricting the ability of a surviving spouse to be a beneficiary of the deceased spouse as a named beneficiary under a valid last will executed by said deceased spouse, nor does this paragraph waive the right of surviving spouse to make a claim against the estate of deceased spouse as a creditor, a claimant for breach of contract, a tort claimant, or to dispute the ownership of property also claimed by the estate.

**V. Waiver of Right to Independent Legal Counsel.** Both parties affirm that they have had an adequate opportunity to consult with an independent legal counsel regarding this agreement prior to its execution. To the extent either party has not consulted with independent legal counsel, the parties hereby expressly and voluntarily waive the opportunity to consult with independent legal counsel before entering into this agreement.

**VI. Cohabitation.** Each party waives any and all claims, including contingent claims, against the party deriving from periods of cohabitation, if any, prior to their marriage.



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**X. Integration.** This Agreement sets forth the entire agreement between the parties with regard to the subject matter hereof. All prior agreements, and covenants, express or implied, oral or written, with respect to the subject matter hereof, are contained herein and are hereby superseded by this agreement. The term "subject matter hereof", as used in this paragraph, expressly includes (among other things) matters of alimony,

property settlement, spousal support, and promises by one party to transfer money, property or an asset of any kind to the other party in the future. This is an integrated agreement.

**XI. Binding on Successors.** Each and every provision hereof shall inure to the benefit of and shall be binding upon the heirs, assigns, personal representatives, and all successors in the interest of the parties.

**XII. Severability.** In the event any provision of this Agreement is deemed to be void, invalid, or unenforceable, that provision shall be severed from the remainder of this Agreement so as not to cause the invalidity or unenforceability of the remainder of this Agreement. All remaining provisions of this Agreement shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope or

breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

**XIII. Modification.** This Agreement may be modified, superseded, or voided only upon the written agreement of the parties. Further, the physical destruction or loss of this Agreement shall not be construed as a modification.

**XIV. Acknowledgements.** Each party acknowledges that he or she has had an adequate opportunity to read and study this Agreement, to consider it, to consult with attorneys if he or she has so desired, without any form of coercion, duress or pressure.

**XV. State Law.** It is intended that this Agreement be valid and enforceable under the laws of the state of Montana, and that the laws of this state shall govern the agreement's interpretation.

### Definition of Terms Applicable to this Agreement:

As used in this agreement, the following terms shall the designated definition:

- A. "Consulted with an attorney" means an instance of a party having shown the prenuptial agreement to an individual licensed to practice law in any state of the United States (or the District of Columbia) **and** having received comments of any kind from said attorney regarding the prenuptial agreement prior to the time the agreement was signed by said party.
- B. "Debts" means all liabilities and claims of a monetary nature that any party may possess against you such as a bank loan, credit card debt, tax debts including contingent debts. The term "debts", in our agreement forms, encompasses "contingent" claims for which fault or a value have not, as yet, been determined.
- C. "Intestate succession laws" means the probate laws of the applicable jurisdiction that control distribution of the assets of an estate for a decedent dying without a valid last will.
- D. "Omitted spouse" means a surviving spouse who has been omitted from the last will of the decedent and seeks to receive a forced share of the decedent's probate estate under applicable probate law. The term "omitted spouse" also includes a surviving spouse named as a beneficiary in the last will of the decedent but whose bequest under said last will is less than otherwise obtainable as a forced share under applicable probate law.
- E. "Retirement Plans and Accounts" means any employer sponsored pension, profit-sharing, stock bonus or other retirement plan and 401(k), IRA, and other tax deferred accounts that qualify for special federal income tax treatment under Internal Revenue Code Sections 401, 403, or 408 (or equivalent statutes).

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**Schedule A**  
**Summary Financial Statements**  
**of the Parties**

A.	<b>ASSETS</b>	<b>Estimated Fair Market Value</b>	<b>Estimated Fair Market Value</b>
	<b>NAME</b>		
1	Cash		
2	Stocks, bonds, and marketable securities		
3	Closely held business interest		
4	Home Equity		
5	Other Real Estate		
6	IRAs		
7	Other Retirement Assets		
8	Trust assets		
9	All other assets		
	<b>TOTAL ASSETS</b>		
B.	<b>DEBTS</b>		
	<b>NAME</b>		
10	Credit Card Debt		
11	Tax Debts		
12	Other Debts		
	<b>TOTAL DEBTS</b>		

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