

SAMPLE AGREEMENTS
CONTAINING SPECIAL CLAUSES
TO ENHANCE ENFORCEABILITY

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Sample Agreements Containing Special Clauses to Enhance Enforceability S-

S- Advanced Drafting: Estate Planning and Probate Course
SAMPLE AGREEMENTS

By

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The following sample pre-marital agreement and property agreement between spouses sets out clauses that could be included to improve enforceability of the agreements.

The following features should be noted:

1. Initials on each page attesting to reading each word;
2. "Whereas" clauses clearly state intent to bolster the operative clauses appearing later in the agreement;
3. Negate fiduciary relationship at time of signing (Para. 1.01);
4. Acknowledge disclosure; concede that schedules are not meant to be the disclosure mechanism (Para. 1.03);
5. Waiver of Jensen claim;
6. Need to waive or assign rights under the new equitable interest statute;
7. Beefed up "enforceability" paragraph (Para. 11.04);
8. Choice of law clause. Translation of Texas marital property concepts into common law concepts (Para. 11.05);
9. Various acknowledgements of estoppel and acceptance of benefits;
10. Non-reliance clause (Para. 11.06);
11. Attorney's fees for defending agreement (Para. 11.07);
12. Renounce "failure of consideration" defense to enforcement (Para. 11.09);
13. Amendments only in writing (Para. 11.10);
14. Merger clause (Para. 11.11);
15. Cover contingency that schedules are not attached (Para. 11.12);
16. Negate construction against draftsman (Para. 11.14);
17. Warranties (Para. 11.16);
18. Identify counsel (Para. 11.17);
19. WARNING with full signature (Art. XII);
20. Eyewitnesses to execution;
21. Jurat, not just acknowledgement;
22. Property Agreement Between Spouses ratifies pre-marital agreement;
23. ERISA waiver (Art. VII).

I have read each word
on this page.
page.

I have read each word

on this

Future Wife's
Initials

Future Husband's
Initials

AGREEMENT BETWEEN PERSONS ABOUT TO MARRY
THE STATE OF TEXAS§

§
COUNTY OF BEXAR§

This AGREEMENT BETWEEN PERSONS ABOUT TO MARRY (hereinafter "AGREEMENT") is made by and between [name of wife], (hereinafter "[future wife]"), a resident of San Antonio, Bexar County, Texas, and [name of husband], (hereinafter "[future husband]"), a resident of San Antonio, Bexar County, Texas, neither of whom is presently married.

WHEREAS [future husband] and [future wife], who are not now married, intend to become husband and wife by civil ceremony and to take up residence together in Bexar County, Texas; and

WHEREAS [future husband] and [future wife] are entering into this AGREEMENT pursuant to Art. XVI, Section 15, of the Texas Constitution, as amended by popular vote in 1987, and relevant sections of the Texas Family Code, altering by agreement what their marital property rights would be in their properties upon and during their marriage, and determining in part what claims they may assert against the other party and his/her estate, if and when the marriage is dissolved by judicial act or death; and

WHEREAS the Texas Legislature has provided in Section 4.003 of the Texas Family Code that the parties to a premarital agreement may contract with respect to:

- (1) the rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;
- (2) the right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;
- (3) the disposition of property on separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;
- (4) the modification or elimination of spousal support;
- (5) the making of a will, trust, or other arrangement to carry out the provisions of the agreement;
- (6) the ownership rights in and disposition of the death benefit from a life insurance policy;
- (7) the choice of law governing the construction of the agreement; and
- (8) any other matter, including personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty; and

WHEREAS each party presently owns and possesses real and personal property described in general terms on Schedules I and II, Schedule I containing the properties and financial

obligations of [future wife], and Schedule II containing the properties and financial obligations of [future husband], which schedules are attached hereto and made a part hereof for all purposes as though set forth verbatim in the body of this AGREEMENT; and

WHEREAS the parties do not intend hereby to make a gift from one to the other, but rather to enter into an agreement which will control their marital property rights and other spousal rights in a manner which is in some respects unique to the parties, and in a manner which is in important respects different from the separate and community rights or spousal claims which would arise by operation of law in the absence of this AGREEMENT; and

WHEREAS the parties intend by this AGREEMENT that all income arising from [future wife]'s separate property, and all of the fruits of her time, toil, talent and labor, shall be the separate property of [future wife] and shall remain under the sole ownership, management, and control of [future wife] during this marriage, as well as upon dissolution of this marriage by death, divorce, or annulment, unless such separate property is otherwise transferred to [future husband] by will or other written instrument voluntarily executed by [future wife]; and

WHEREAS the parties intend by this AGREEMENT that all income arising from [future husband]'s separate property, and all of the fruits of his time, toil, talent and labor, shall be the separate property of [future husband] and shall remain under the sole ownership, management, and control of [future husband] during this marriage, as well as upon dissolution of this marriage by death, divorce, or annulment, unless such separate property is otherwise transferred to [future wife] by will or other written instrument voluntarily executed by [future husband]; and

WHEREAS the parties intend by this AGREEMENT that no community property shall arise during the parties' marriage; and

WHEREAS each party stipulates and agrees that the marital relationship is being entered into by both parties as a legal and institutional embodiment of the parties' mutual love and respect for each other and not for financial advantage or security on the part of either party;

NOW, THEREFORE, in consideration of the mutual promises, agreements, partitions, exchanges, conveyances, releases, waivers, and assignments, contained herein, and in consideration of the parties' desire to establish rights and obligations deriving from their marital status by this agreement, and **WITH INTENT TO BE BOUND FULLY BY THE TERMS HEREOF**, the parties agree, contract, and covenant, as follows:

ARTICLE I

BINDING STIPULATIONS

1.01 No Fiduciary or Trust Relationship Between The Parties.

The parties stipulate that neither party has any fiduciary or confidential relationship of any kind or character with or toward the other. In entering into this AGREEMENT, neither party is relying on any fiduciary, confidential, or special relationship between the parties. Neither party is relying upon representations made by the other party, as to legal or financial matters or anything else, other than those representations of fact and intent explicitly stated in this AGREEMENT.

1.02 Intended Marriage.

The parties intend to be married on or about _____.

1.03 Disclosure.

The parties agree and stipulate that they have made to each other a fair and reasonable disclosure of the nature, extent, and possible value of their respective estates, properties, and

expectancies, and liabilities on Schedules I and II attached hereto. Independently from this, [future husband] and [future wife] have heretofore waived in writing, and hereby voluntarily and expressly do waive in writing, any right to disclosure of the property or financial obligations of the other party. Any inaccuracy or failure in fair and reasonable disclosure shall not diminish the enforceability of all or any part of this AGREEMENT. The parties understand and agree that the Schedules attached hereto are not meant to be a comprehensive disclosure of financial information. The parties stipulate that all requirements of financial disclosure have been waived, and further that such requirements have been met.

[Jensen waiver] As to Existing Financial Arrangements (Businesses, Partnerships, Etc.).

The parties recognize that under Texas law a spouse may expend a reasonable amount of talent or labor in the management and preservation of his or her separate estate without impressing a community character upon that estate, or giving rise to a claim for reimbursement in favor of the community estate. In the case of *Vallone v. Vallone*, 644 S.W.2d 455, 459 (Tex. 1982), the Supreme Court of Texas stated that a right of reimbursement to the community estate "arises when community time, talent and labor are utilized to benefit and enhance a spouse's separate estate, beyond whatever care, attention, and expenditure are necessary for the proper maintenance and preservation of the separate estate, without the community receiving adequate compensation." In another case, *Jensen v. Jensen*, 665 S.W.2d 107, 110 (Tex. 1984), the Supreme Court of Texas held that "[t]he right to reimbursement is only for the value of the time, toil and effort expended to enhance the separate estate other than that reasonably necessary to manage and preserve the separate estate, for which the community did not receive adequate compensation."

[future wife] hereby releases any right she or any community estate may hereafter acquire in connection with [future husband]'s time, toil, talent, and labor, expended for the benefit of any businesses or activities [future husband] may hereafter engage in. [future husband] hereby releases his own separate estate from any right any community estate may hereafter acquire in connection with [future husband]'s time, toil, talent, and labor, expended for the benefit of the business mentioned above.

[Need to write waiver or assignment of equitable interest under Family Code Sections 3.401-3.406]

[General Waiver Clause]

Each party hereby agrees that the separate property of each party, and the property described in this AGREEMENT as being the separate property of, or belonging to the separate estate of, each party, shall be free from any claim of the other party that may arise as a result of the marriage relationship, including without limitation, right to reimbursement to any estate, separate or community. This waiver includes any right of dower or curtesy that may arise during marriage. This waiver shall extend to any rights, whether choate or inchoate, that may arise under the laws of any jurisdiction, whether Texas or some other jurisdiction.

MISCELLANEOUS PROVISIONS

11.01 When Effective.

The parties will execute this AGREEMENT before their marriage, effective the time of their marriage, and it will exist through the whole of their marriage and thereafter, until such time as the AGREEMENT is fully performed by each. This AGREEMENT will be without binding force until the marriage contemplated by the parties has been solemnized or otherwise becomes legally recognizable.

11.02 Execution of Documents.

Each party will cooperate fully with the other in performing the acts and deeds and in executing, acknowledging, and delivering any instruments or documents required to accomplish the intent of this AGREEMENT.

11.03 Partial Invalidity.

If any provision of this AGREEMENT or the application thereof to any person or circumstance is invalid or unenforceable to any extent, the remainder of this AGREEMENT and the application of such provision to other persons or circumstances will not be affected thereby and will be enforced to the greatest extent permitted by law.

11.04 Enforceability.

This AGREEMENT may be enforced by suit in law or equity by either of the parties or by their heirs, executors, attorneys, or assigns. Each party hereby agrees that by signing this AGREEMENT and accepting any benefit whatsoever hereunder, including without limitation the creation of the marriage, he or she shall be estopped and barred from making any claim of any kind at any time to any separate properties or the separate estate of the other party, or any property described herein as being the separate property of the other. Each party hereby waives his or her right to make claims to any separate property of the other party, or to any properties designated in Article III and Article IV of this AGREEMENT as belonging to the separate estate of the other party, whether such properties be acquired prior to, during, or after the date this AGREEMENT is signed.

11.05 Place of Performance; Governing Law; Application.

All rights, duties and obligations under this AGREEMENT are payable and enforceable in San Antonio, Bexar County, Texas. The laws of the state of Texas or of the federal government of the United States, as applicable, shall govern the construction and enforcement of this AGREEMENT. The parties expressly intend and agree that this AGREEMENT will apply to and govern all real and personal property, wherever situated, owned by either party at the time of marriage or acquired by either party after marriage, regardless of any change of domicile of the parties or the location of the real estate. This AGREEMENT BETWEEN PERSONS ABOUT TO MARRY is made in the State of Texas and the parties agree that the laws of the State of Texas shall govern and be applied in the interpretation and enforcement of this AGREEMENT. In the event that the laws of Texas regarding agreements such as this are changed, then the law of Texas as it exists at the time of contracting will apply, unless enforcement of this AGREEMENT is more easily established under subsequent versions of the law, in which case the subsequent law shall to that extent apply. In the event that one or both of the parties shall ever become domiciled in a jurisdiction other than Texas, the status of all property thereafter acquired by such party shall be controlled to the maximum extent by the terms of this AGREEMENT interpreted under the laws of the State of Texas as it exists at the time of contracting, or as it may hereafter may exist, whichever permits the broadest enforcement of this AGREEMENT. The desire of the parties to preserve their "separate property" or "separate estate" under Texas law, and to keep it free from the claims of the other future spouse, corresponds to their desire to have and hold such property free from the claims of the other future spouse under the laws of any other jurisdictions, even if such other jurisdictions do not recognize community property, but instead speak of "marital property" and "non-marital property" or like terms. When this AGREEMENT speaks of property

as being or becoming the separate property of a party, reference is made to giving the property a status where the other future spouse has no right or interest of any kind, whether choate or inchoate.

11.06 AGREEMENT Voluntarily and Clearly Understood.

Each party hereby agrees that by signing this AGREEMENT and accepting any benefit whatsoever hereunder, including without limitation, the creation of the marital relationship, he or she shall be estopped from making any claim of any kind at any time against any separate property of the other party hereto, or against any property described herein as being the separate property of the other, or described herein as belonging to the separate estate of the other.

Each party acknowledges and declares that he or she:

A. is fully and completely informed by attorneys of his/her own choice about the law relating to the subject matter of this AGREEMENT and about the spousal rights and obligations of both parties upon entering into marriage, both with this AGREEMENT and the agreement reflected in Exhibit A;

B. enters into this AGREEMENT voluntarily after receiving the advice of independent counsel;

C. has given careful and mature thought to the making of this AGREEMENT;

D. has carefully read each provision of this AGREEMENT;

E. fully and completely understands each provision of this AGREEMENT, as to both the subject matter and the legal effect;

F. has performed an investigation of the property and financial obligations of the other party sufficient to satisfy any questions in that regard, and expressly waives any right to disclosure of the property and financial obligations of the other party; and

G. is not relying upon any fiduciary obligations owed by one party to the other, or relying upon any duty of disclosure founded upon a confidential, trust or other special relationship between the parties, and is not relying upon any legal or accounting advice or representations of fact or law provided by the other or anyone acting for the other.

11.07 Attorney's Fees and Expenses.

If either party brings an action or other proceeding to enforce this AGREEMENT or to enforce any judgment, decree, or order made by a court in connection with this AGREEMENT, and such enforcement is contested, the party seeking enforcement, if successful, shall be entitled to recover reasonable attorney's fees and other necessary costs from the other party. In the event that the marriage is terminated by divorce, annulment, or suit to declare marriage void, and in the event the court has the power under the law to award attorney's fees, it is agreed that neither party can recover from the other (or his or her property) any attorney's fees, accountant fees, appraiser fees, and fees of expert witnesses of every kind and character, whether or not same are taxed as court costs, which relate to services rendered towards the assertion of claims against the other party's separate estate or separate assets. If either party unsuccessfully seeks to invalidate some or all of this AGREEMENT BETWEEN PERSONS ABOUT TO MARRY, or the related PROPERTY AGREEMENT BETWEEN SPOUSES, or unsuccessfully seeks to recover property in a manner at variance with this AGREEMENT BETWEEN PERSONS ABOUT TO MARRY or the related PROPERTY AGREEMENT BETWEEN SPOUSES, then such party shall be liable to the other party for all reasonable and necessary attorney's fees and litigation expenses incurred by such other party in successfully defending his or her rights under this AGREEMENT BETWEEN PERSONS ABOUT TO MARRY and the related PROPERTY AGREEMENT

BETWEEN SPOUSES.

11.08 Waiver.

No consent to or waiver of any breach, default, failure, or refusal of either party to perform his or her obligations under this AGREEMENT shall be deemed or construed to be a consent to or waiver of any breach or default in performance by the other party of the same or of any other obligations of the other party under this AGREEMENT or to diminish or impair the rights of any party to full enforcement of all provisions of this AGREEMENT. Indulgence or failure on the part of either party to complain of any act or failure to act of the other party or to declare the other party in default, irrespective of how long that indulgence or failure continues, shall not constitute a waiver by the party of his or her rights hereunder. Waiver of any term of this AGREEMENT can be accomplished only prospectively and as to future performance and only by an instrument in writing signed by both parties expressly stating the clauses waived.

11.09 Exclusive Remedies for Non-Monetary Breach.

The parties agree that the exclusive judicial remedy of [future wife] against [future husband] or of [future husband] against [future wife] for failure to perform any non-monetary duty or obligation pursuant to any enforceable provision of this AGREEMENT or of the PROPERTY AGREEMENT BETWEEN SPOUSES shall be judicial enforcement by judgment for specific performance or mandatory injunction to compel performance plus reasonable attorneys fees, and/or a suit for conversion; neither party shall be entitled to recover any contractual damages (actual or consequential) for any non-monetary breach of this AGREEMENT; and the full effectiveness of each and all provisions of this AGREEMENT shall never be diminished or impaired by any failure of either party to perform any duty or obligation under this AGREEMENT.

11.10 Amendment or Modification.

Neither this AGREEMENT nor any of its provisions, nor Exhibit A, may be waived, modified, amended, discharged, or terminated except by instrument in writing signed by the party against whom the enforcement of such waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in this AGREEMENT or in such instrument.

11.11 Entire AGREEMENT.

This AGREEMENT BETWEEN PERSONS ABOUT TO MARRY supersedes any and all other antenuptial agreements, either oral or in writing between the parties relating to their property after their marriage. Except for the PROPERTY AGREEMENT BETWEEN SPOUSES, this instrument expresses the entire agreement between the parties concerning the subject it purports to cover, and merges all prior discussions, negotiations, understandings, or accords. There are no contemporaneous agreements, written or oral, relating to the parties' relationship, or mutual rights or obligations.

11.12 Incorporation of Schedules.

All schedules to this AGREEMENT are hereby fully incorporated into this AGREEMENT as though fully set forth verbatim at the respective point of reference to each. In the event that Schedule I or Schedule II are not attached to this AGREEMENT at the time it is signed, the failure to attach the Schedule(s) shall not diminish the enforceability of this AGREEMENT.

11.13 Titles or Captions.

Section headings, titles, or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this

AGREEMENT or any provision hereof.

11.14 No Construction Against Draftsman.

No provision of this AGREEMENT is to be interpreted for or against any party because the party or that party's legal representative drafted the provision.

11.15 Successors Bound.

The parties hereby agree that the terms of this AGREEMENT BETWEEN PERSONS ABOUT TO MARRY shall be binding upon the parties, their heirs, devisees, legatees, personal representatives, assigns, transferees, and successors-in-interest.

11.16 Warranties.

A. [future wife] warrants and agrees: that she signs and acknowledges this AGREEMENT only after carefully reading same, and after such reading, she has fully considered and understands all of the terms and provisions hereof; that after having the opportunity to consult with independent counsel of her own choosing, she believes it is in her best interest to sign, execute, and deliver this instrument; that this AGREEMENT is just, fair, and equitable; that this AGREEMENT is signed willingly as her act and deed, without reliance upon any representations of [future husband] (other than those expressly set out in this AGREEMENT) or any advice from or representations by [future husband] or his agents; that she does so sign, execute and deliver this instrument with intent and informed consent to be bound fully by all terms of this AGREEMENT; and that she has intent that [future husband] be bound fully by all terms;

B. [future husband] warrants and agrees: that he signs and acknowledges this AGREEMENT only after carefully reading same, and after such reading, he has fully considered and understands all of the terms and provisions hereof; that after having the opportunity to consult with independent counsel of his own choosing, he believes it is in his best interest to sign, execute, and deliver this instrument; that this AGREEMENT is just, fair, and equitable; that this AGREEMENT is signed willingly as his act and deed, without reliance upon any representations of [future wife] (other than those expressly set out in this AGREEMENT); that he does so sign, execute and deliver this instrument with intent and informed consent to be bound fully by all terms of this AGREEMENT; and that he has intent that [future wife] be bound fully by all terms.

11.17 Identity of Counsel.

The attorney advising [future wife] is _____. [future husband] has not received any legal, financial or other kind of advice from [future wife] or from his attorney, _____, in connection with the advisability or nonadvisability of entering into this AGREEMENT. The attorney advising [future husband] is _____. [future wife] has not received any legal, financial or other kind of advice from [future husband] or from his attorney, _____, in connection with the advisability or nonadvisability of entering into this AGREEMENT.

ARTICLE XII

WARNING!

EACH PARTY TO THIS AGREEMENT UNDERSTANDS THAT BY SIGNING THIS DOCUMENT HE OR SHE PERMANENTLY SURRENDERS RIGHTS HE OR SHE OTHERWISE MIGHT HAVE UNDER TEXAS LAW (AND ALSO UNDER THE LAWS OF OTHER JURISDICTIONS) TO INCOME, PROPERTY, AND SUPPORT.

I acknowledge having read

and contemplated this WARNING.

[future wife]

I acknowledge having read
and contemplated this WARNING.

[future husband]

EXECUTED in duplicate originals on the date of the acknowledgements shown below.

DATED: _____, 1996.

Witness

[future wife]

Witness

[future husband]

STATE OF TEXAS§

COUNTY OF BEXAR§

BEFORE ME, the undersigned authority, on this date personally appeared [name of wife], known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed. [name of wife] also swore under oath that the statements of fact and statements of her intent contained in the main body of the foregoing AGREEMENT are true.

GIVEN UNDER MY HAND AND SEAL this _____ day of _____,
1996.

Notary Public in and for
the State of Texas

My Commission Expires:

Printed Name of Notary:

EXHIBIT A

PROPERTY AGREEMENT BETWEEN SPOUSES

THE STATE OF TEXAS§

COUNTY OF BEXAR§

This AGREEMENT, made by and between [name of wife], ["wife"] of Bexar County, Texas, and [name of husband], ["husband"] of Bexar County, Texas, hereinafter sometimes referred to individually as "Spouse," and collectively as "Spouses," is entered into in accordance with the AGREEMENT BETWEEN PERSONS ABOUT TO MARRY, which was previously entered into by the Spouses, and to which this AGREEMENT is attached.

WHEREAS, the Spouses were recently married; and

WHEREAS, each Spouse presently possesses real and/or personal property in his or her separate right, some of which is described on Schedules I and II of the aforementioned AGREEMENT BETWEEN PERSONS ABOUT TO MARRY, Schedule I containing a description of some of the properties owned at the time of marriage by [wife] as her sole and separate estate as well as her debts and obligations, and Schedule II containing a description of some of the properties owned at the time of marriage by [name of husband] as his sole and separate estate, as well as his debts and obligations; and

WHEREAS, the Spouses desire to ratify their AGREEMENT BETWEEN PERSONS ABOUT TO MARRY and to provide by this AGREEMENT: (1) that all income arising from [husband]'s separate property shall be the separate property of [husband] and shall remain under the ownership, management and control of [husband], both during this marriage and upon dissolution of this marriage by death or court decree, unless such separate property is otherwise voluntarily transferred from [husband] to [married name of wife], by will or other written instrument executed by [husband], as provided in the aforementioned AGREEMENT BETWEEN PERSONS ABOUT TO MARRY; and (2) that all income arising from [wife]'s separate property shall be the separate property of [wife] and shall remain under the ownership, management and control of [wife] both during this marriage and upon dissolution of this marriage by death or court decree, unless such separate property is otherwise voluntarily transferred from [wife] to [husband] by will or other written instrument executed by [wife], as provided in the aforementioned AGREEMENT BETWEEN PERSONS ABOUT TO MARRY; and

WHEREAS, the Spouses desire to effect the transfer and release referred to in their AGREEMENT BETWEEN PERSONS ABOUT TO MARRY;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, and pursuant to the AGREEMENT BETWEEN PERSONS ABOUT TO MARRY previously entered into between Spouses, the Spouses agree as follows:

I.

WARNING!

EACH PARTY TO THIS AGREEMENT UNDERSTANDS THAT BY SIGNING THIS DOCUMENT HE OR SHE MAY PERMANENTLY SURRENDER RIGHTS TO INCOME, PROPERTY, OR SUPPORT HE OR SHE OTHERWISE WOULD

HAVE UNDER TEXAS LAW AND/OR THE LAW OF OTHER STATES

II.

DISCLOSURE

The parties agree and stipulate that they have made to each other a fair and reasonable disclosure of the nature, extent, and possible value of their respective estates, properties, and expectancies, and liabilities on Schedules I and II attached to the AGREEMENT BETWEEN PERSONS ABOUT TO MARRY. Independently from this, [future husband] and [future wife] have heretofore waived in writing, and hereby voluntarily and expressly do waive in writing, any right to disclosure of the property or financial obligations of the other party. Any inaccuracy or failure in fair and reasonable disclosure shall not diminish the enforceability of all or any part of this PROPERTY AGREEMENT BETWEEN SPOUSES. The parties understand and agree that the Schedules attached to the AGREEMENT BETWEEN PERSONS ABOUT TO MARRY are not meant to be a comprehensive disclosure of financial information. The parties stipulate that all requirements of financial disclosure have been waived, and further that such requirements have been met.

V.

RATIFICATION OF AGREEMENT BETWEEN PERSONS ABOUT TO MARRY

This PROPERTY AGREEMENT BETWEEN SPOUSES, as well as being an agreement in its own right, shall be considered to be a ratification of the AGREEMENT BETWEEN PERSONS ABOUT TO MARRY previously executed by the Spouses before their marriage.

VI.

WAIVER OF REIMBURSEMENT, ETC., CLAIMS

[Provisions omitted]

THEREFORE, in light of the foregoing, [husband] and [wife] do hereby effect the following release and transfer.

I, [wife], do hereby release my interest in any and all claims I might have, or that any community estate might have, against [husband] and his property (including businesses, partnerships, and joint ventures) for reimbursement, fraud, constructive fraud, diversion of community opportunity, or other claims, legal or equitable, relating to the use by [husband] of assets or credit to discharge his separate property obligations. I, [wife], do hereby transfer to [husband], to hold as his sole and separate property, any and all claims that I might have, or that the community estate might have, against [husband], and his property, for reimbursement, fraud, constructive fraud, diversion of community opportunity, or other claims, legal or equitable, relating to the use by [husband] of assets or credit to discharge his separate property obligations.

I, [husband], do hereby release my interest in any and all claims I might have or that any community estate might have, against me, and my property, for reimbursement, fraud, constructive fraud, diversion of community opportunity, or other claims, legal or equitable, relating to the use by me of community assets or community credit to discharge my separate property obligations. I, [husband], do hereby transfer to myself, to hold as my sole and separate property, any and all claims that I might have, or that the community estate might have, against me, and my property, for reimbursement, fraud, constructive fraud, diversion of community opportunity, or other claims, legal or equitable, relating to the use by me of assets or credit to discharge my separate property obligations.

I, [husband], do hereby release my interest in any and all claims I might have, or that any community estate might have, against [wife] and her property (including businesses, partnerships, and joint ventures) for reimbursement, fraud, constructive fraud, diversion of community opportunity, or other claims, legal or equitable, relating to the use by [wife] of assets or credit to discharge her separate property obligations. I, [husband], do hereby transfer to [wife], to hold as her sole and separate property, any and all claims that I might have, or that the community estate might have, against [wife], and her property, for reimbursement, fraud, constructive fraud, diversion of community opportunity, or other claims, legal or equitable, relating to the use by [wife] of assets or credit to discharge her separate property obligations.

I, [wife], do hereby release my interest in any and all claims I might have or that any community estate might have, against me, and my property, for reimbursement, fraud, constructive fraud, diversion of community opportunity, or other claims, legal or equitable, relating to the use by me of community assets or community credit to discharge my separate property obligations. I, [wife], do hereby transfer to myself, to hold as my sole and separate property, any and all claims that I might have, or that the community estate might have, against me, and my property, for reimbursement, fraud, constructive fraud, diversion of community opportunity, or other claims, legal or equitable, relating to the use by me of assets or credit to discharge my separate property obligations.

VII.

EMPLOYMENT-RELATED BENEFITS

Any retirement benefit, account or right of a spouse, including any distributions or other payments to a spouse, and any increase in such benefit or account during the term of the marriage, either by contributions, earnings or appreciation, regardless of whether the employee spouse (Participant Spouse) or others make investment decisions, are hereby partitioned and exchanged and set aside to the employee spouse's separate property. The non-employee spouse (non-Participant Spouse or alternate payee) waives any right in and to such benefits, and promises not to seek a Qualified Domestic Relations Order or other order that would attempt to award to the non-employee spouse any rights in such retirement benefits. The employee spouse will receive 100% of all such retirement benefits, and the non-employee spouse will receive none, regardless of when it is paid. The non-employee spouse hereby acknowledges that the effect of signing this Agreement is to waive rights under ERISA. It is further agreed that the employee spouse will be free to name a death beneficiary of his or her own choosing, to receive such benefits upon the death of the employee spouse. At the present time [husband] is the employee-Participant under ERISA-type plans through his current employer, _____. The non-employee spouse agrees to sign and have notarized upon request any written waiver that may be required to effectuate this agreement.

VIII.

INDEPENDENT ADVISORS

The attorney advising [wife] is _____. The attorney advising [husband] is _____. [wife] has not received any legal, financial or other kind of advice from [husband] or from his attorney, _____, in connection with the advisability or nonadvisability of entering into this AGREEMENT. [husband] has not received any legal, financial or other kind of advice from [wife] or from her attorney, _____, in

connection with the advisability or nonadvisability of entering into this AGREEMENT.

DATED: _____, 1996.

[wife]

[husband]

STATE OF TEXAS§

COUNTY OF BEXAR§

BEFORE ME, the undersigned authority, on this date personally appeared [wife], known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed. [wife] also swore under oath that the statements of fact and of her intent contained in the foregoing AGREEMENT are true.

GIVEN UNDER MY HAND AND SEAL this _____ day of _____,
1996.

Notary Public in and for
the State of Texas

My Commission Expires:

Printed Name of Notary:
