

State of South Dakota

# SOUTH DAKOTA POSTNUPTIAL AGREEMENT

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This Postnuptial Agreement (this "Agreement") is entered into on \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between:

**First Party:** \_\_\_\_\_ (the "First Party") and

**Second Party:** \_\_\_\_\_ (the "Second Party")

both currently residing at \_\_\_\_\_ [Address]. First Party and Second Party may be referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, the Parties were married on \_\_\_\_\_ [Date] in \_\_\_\_\_ [City], \_\_\_\_\_ [State]; and

WHEREAS, the Parties are currently married and living together and anticipate continuing to be married and living together; and

WHEREAS, the Parties currently have \_\_\_\_\_ child(ren) together; and

WHEREAS, the First Party has \_\_\_\_\_ child(ren) from a previous relationship; and

WHEREAS, the Second Party has \_\_\_\_\_ child(ren) from a previous relationship; and

WHEREAS, the Parties wish to provide for their rights and obligations with respect to their own and each other's assets and property, including the property of each Party separately owned before the marriage and the property the Parties have or will acquire separately during the marriage, in the event the marriage is terminated; and

WHEREAS, each Party has made full, fair and reasonable disclosure to the other Party of his or her financial information regarding net worth, assets, income, holdings, liabilities and debts as set forth in Exhibits A and B to this Agreement. The First Party's financial information and property are set forth in Exhibit A to this Agreement. The Second Party's financial information and property are set forth in Exhibit B to this Agreement; and

WHEREAS, each Party acknowledges receipt, review and understanding of the other Party's financial information prior to signing this Agreement; and

WHEREAS, the Parties represent that they have had the opportunity to separately consult with legal counsel, however chose not to engage legal counsel in the drafting and negotiation of this Agreement.

NOW THEREFORE, the parties freely and fully accept the provisions, terms and conditions hereof and in consideration of the promises and mutual covenants herein contained as well as for other good and valuable considerations not herein specifically set forth, the parties do hereby agree to the following:

**1. Premarital Property.** (Check one)



**Joint property.** With respect to property acquired prior to the marriage, each Party's property listed in Exhibit A and Exhibit B that is separately owned prior to the marriage will be considered the marital property of both Parties.

**Separate property.** With respect to property acquired prior to the marriage, each Party's property listed in Exhibit A and Exhibit B will remain as the respective Party's non-marital, separate property during and after the marriage, including any increase in the value relating to the property, exception for the following property will be considered the marital property of both Parties: \_\_\_\_\_ (Optional).

Each Party will have the full right and authority to manage, sell, gift, transfer or otherwise dispose of his or her separate property.

## 2. Property Acquired During Marriage. (Check one)

**Joint property.** With respect to property acquired during the marriage, all assets, real property, and personal property earned, acquired and given to either Party individually during the marriage and earned and acquired by both Parties through their joint efforts or given to both Parties will be treated as marital property and owned by both Parties equally or as otherwise designated in a writing signed by both Parties.

**Separate property.** With respect to property acquired during the marriage, any property earned, acquired and given to either Party individually during marriage will be treated as such Party's non-marital, separate and individual property, including any increase in the value relating to the property, except for the following property will be considered the marital property of both Parties: \_\_\_\_\_ (Optional).

Each Party will have the full right and authority to manage, sell, gift, transfer or otherwise dispose of his or her separate property. All assets and property that are earned and acquired by both Parties through their joint efforts or given to both Parties will be treated as marital property and owned equally by the Parties or as otherwise designated in a writing signed by both Parties.

## 3. Division of Marital Property. In the event the marriage is terminated, all marital property: (Check one)

Shall be divided between the Parties with the First Party receiving \_\_\_\_\_% of the marital property and the Second Party receiving \_\_\_\_\_% of the marital property.

Is subject to division as determined by the jurisdiction whose law governs the construction of this Agreement.

**4. Ownership of Business.** With respect to ownership of business, any business acquired by both parties through their joint efforts or given to both Parties will be treated as marital property and jointly owned by both Parties. In the event the marriage is terminated, ownership of the business and any appreciation in the value of the jointly owned business during the course of the marriage will be: (Check one)

Granted to the First Party

Granted to the Second Party

Shared equally by the Parties

Divided between the Parties as follows: \_\_\_\_\_% to the First Party and \_\_\_\_\_% to the Second Party

or as otherwise designated in a writing signed by both Parties.

Ownership of business prior to marriage (Check one)

Not applicable.



With respect to ownership of business, any business that is separately owned prior to the marriage will remain as that Party's non-marital, separate and individual property and will not be subject to division in the event the marriage is terminated. Any appreciation in the value of the business during the course of the marriage will be: (Check one)

- Granted to the Party that owns the business
- Shared equally by the Parties
- Divided between the Parties as follows: \_\_\_\_\_ % to the First Party and \_\_\_\_\_ % to the Second Party

or as otherwise designated in a writing signed by both Parties.

**5. Waiver of Rights.** Except as otherwise stated herein, each Party waives and releases any claims that he or she may otherwise acquire in the assets and property of the other Party as a result of the marriage, regardless of whether the assets and property were owned prior to the marriage or acquired thereafter. This waiver applies regardless of whether the property is considered marital or community property by the jurisdiction whose law governs the construction of this Agreement.

**6. Premarital Debts.** (Check one)

**Joint debt.** With respect to debts incurred prior to the marriage, each Party's existing debts or obligations listed in Exhibit A and Exhibit B that is the sole responsibility of either Party prior to the marriage will be considered the marital debt of both Parties.

**Separate debt.** With respect to debts incurred prior to the marriage, each Party's pre-existing debts or obligations listed in Exhibit A and Exhibit B will remain as the respective Party's sole responsibility during and after the marriage, except for the following debts, which will be considered the marital debt of both Parties: \_\_\_\_\_

(Optional).

Except for the debts stated above, any increase in the value of the pre-existing debts or obligations will also remain the sole responsibility of the respective Party. Each Party will indemnify the other Party and be responsible for all related expenses including attorney's fees if a debt or obligation is asserted as a claim or demand against the other Party's property.

**7. Debts Acquired During Marriage.** (Check one)

**Joint debt.** With respect to any debts or obligations incurred during marriage, all debts or obligations incurred by either Party, individually or jointly, will be treated as marital debt and will be the responsibility of both Parties equally, or as otherwise designated in writing signed by both Parties.

**Separate debt.** With respect to any debts or obligations incurred during marriage, any debts or obligations incurred by either Party during the marriage will be such Party's sole responsibility, and the other Party will not assume or become responsible for such debts or obligations without his or her written consent. Each Party will indemnify the other Party and be responsible for all related expenses including attorney's fees if a debt or obligation is asserted as a claim or demand against the other Party's property.

**Separate debt, with exceptions.** With respect to any debts or obligations incurred during marriage, any debts or obligations incurred by either Party during the marriage will be such Party's sole responsibility, and the other Party will not assume or become responsible for such debts or obligations without his or her written consent, except for the following debts, which will be considered the marital debt of both Parties: \_\_\_\_\_

Except for the debts stated above, each Party will indemnify the other Party and be responsible for all related expenses including attorney's fees if a debt or obligation is asserted as a claim or demand against



the other Party's property. All debts and obligations that are incurred by both Parties jointly will be treated as marital debt and will be the obligation of both Parties equally or as otherwise designated in a writing signed by both Parties.

**8. Division of Marital Debt.** In the event the marriage is terminated, the marital debt: (Check one)

- Is subject to division as determined by the jurisdiction whose law governs the construction of this Agreement.
- Shall be divided between the Parties with the First Party responsible for \_\_\_\_\_% of the marital debt and the Second Party responsible for \_\_\_\_\_% of the marital debt.

**9. Spousal Support.** In the event the marriage is terminated, the Parties have agreed to the following terms regarding spousal support or alimony: (Check one)

- No Spousal Support will be provided. Each Party waives and releases any claims that he or she may have against the other Party for spousal support.
- Spousal Support will be provided. Spousal Support will commence after either Party files for termination of the marriage in the state of the governing law. The  First Party  Second Party will make payments to the  First Party  Second Party as follows: (Check one)
  - Indefinitely. A payment of \$\_\_\_\_\_ will be made on the \_\_\_\_\_ of each  week  month  year until the death of either spouse, the remarriage of the  First Party  Second Party, or until a court order modifies or terminates the agreement, whichever comes first.
  - For a Specified Term. A payment of \$\_\_\_\_\_ will be made on the \_\_\_\_\_ of each  week  month  year for a duration of: (Check one)
    - \_\_\_\_  months  years after either Party files for terminate the marriage.
    - Until \_\_\_\_\_, 20.
- Other arrangements: \_\_\_\_\_.

**10. Taxes.** During their marriage, the Parties agree to file: (Check one)

- Joint** federal and state income tax returns, or as otherwise designated in writing. If the Parties jointly file federal and state income tax returns, it shall not create any community property or any other rights or interests unless otherwise intended by the provisions of this Agreement, and each Party will continue to be liable for any and all taxes associated with his or her separate property. Federal gift tax laws and federal estate tax laws impacting the rights of spouses shall continue to apply independent of this Agreement.
- Separate** federal and state income tax returns, or as otherwise designated in writing. This Agreement does not waive the Parties' right to report their income for federal or state income tax purposes jointly. If the Parties later elect to jointly file federal and state income tax returns, it shall not create any community property or any other rights or interests unless otherwise intended by the provisions of this Agreement, and each Party will continue to be liable for any and all taxes associated with his or her separate property. Federal gift tax laws and federal estate tax laws impacting the rights of spouses shall continue to apply independent of this Agreement.
- Do not specify.

**11. Housing Arrangements.** (Check one)



**Do not specify.**

**Parties own the marital home.** The Parties' marital residence located at \_\_\_\_\_ is owned by (Check one)  the First Party  the Second Party  both parties, in accordance with the property deed. (Check one)  The First Party  The Second Party  Both Parties will be equally responsible for the mortgage payments, real estate property taxes, and/or other maintenance expenses related to the residence.

Division of marital home (Check one)

- The residence will remain as the non-marital, separate property of the **First Party** during and after the marriage.
- The residence will remain as the non-marital, separate property of the **Second Party** during and after the marriage.
- The residence will be treated as marital property and owned equally by **both Parties**.

Party to remain in marital home (Check one)

- In the event the marriage is terminated, the **First Party** shall have the right to continue living in the Parties' marital residence for a period of \_\_\_\_\_ years after the termination of the marriage.
- In the event the marriage is terminated, the **Second Party** shall have the right to continue living in the Parties' marital residence for a period of \_\_\_\_\_ years after the termination of the marriage.
- Not applicable.

**Parties rent the marital home.** The Parties' marital residence located at \_\_\_\_\_ . For the lease payments, rental insurance premiums and/or any other maintenance expenses related to the residence, (Check one)  the First Party will be responsible  the Second Party will be responsible  both parties will be equally responsible.

Party to remain in marital home (Check one)

- In the event the marriage is terminated, the **First Party** shall have the right to continue living in the Parties' marital residence.
- In the event the marriage is terminated, the **Second Party** shall have the right to continue living in the Parties' marital residence.
- Not applicable.

**12. Household Expenses.** The First Party will be responsible for the payment of the following household expenses from the First Party's separate account: \_\_\_\_\_

The Second Party will be responsible for the payment of the following household expenses from the Second Party's separate account: \_\_\_\_\_

Both Parties will be equally responsible for payment of the following household expenses. The household expenses will be paid from a joint account funded by both Parties. The regular household expenses include: \_\_\_\_\_

**13. Pet Custody.** Any pet that is separately owned prior to the marriage will remain as that Party's non-marital, separate personal property during and after the marriage. In the event the marriage is terminated,



sole custody of the pet will remain with the original owner with no required visitation rights, unless otherwise designated in writing.

Pets acquired during marriage (Check one)

**Sole custody, NO visitation rights.** With respect to any pet that is acquired during the marriage, in the event the marriage is terminated, the custody of any such pet will be: (Check one)

Granted to the **First Party** without visitation rights, unless otherwise designated in a writing signed by both Parties.

Granted to the **Second Party** without visitation rights, unless otherwise designated in a writing signed by both Parties.

**Sole custody, with visitation rights.** With respect to any pet that is acquired during the marriage, in the event the marriage is terminated, the custody of any such pet will be: (Check one)

Granted to the **First Party** with visitation rights (Check one)  on a monthly basis  on a weekly basis  other: \_\_\_\_\_, or as otherwise designated in a writing signed by both Parties.

Granted to the **Second Party** with visitation rights (Check one)  on a monthly basis  on a weekly basis  other: \_\_\_\_\_, or as otherwise designated in a writing signed by both Parties.

**Joint custody.** With respect to any pet that is acquired during the marriage, in the event the marriage is terminated, the custody of any such pet will be shared equally by both Parties otherwise designated in a writing signed by both Parties. If custody of a pet is shared (Check one)  the **First Party** agrees to solely fund  the **Second Party** agrees to solely fund  **both Parties** agree to contribute equally to the cost of caring for the pet for the remainder of the pet's life.

#### 14. Disability. (Check one)

If either Party becomes partially or totally disabled, the caring Party shall be completely responsible for providing necessary care to the disabled Party to the full extent of the caring Party's capacity and ability.

If either Party becomes partially or totally disabled, the caring Party shall NOT be responsible for providing necessary care to the disabled Party.

**15. Rights upon Death of One Party.** If one Party survives the death of the other, the surviving Party (Check one)  shall NOT  shall have the right to continue living in the Parties' marital residence for the remainder of the surviving Party's lifetime or as otherwise specified in the respective property deed or in the Living Will and Testament of the decedent Party.

If one Party survives the death of the other, the surviving Party (Check one)  shall NOT  shall receive the personal property of the decedent Party unless otherwise stipulated in writing or a Last Will and Testament by the decedent party. The surviving Party understands and agrees that any right to the (Check one)  marital home and marital property  marital home  marital property will be governed by the respective property deed unless otherwise stipulated in writing or the Last Will and Testament of the decedent Party. The Last Will and Testament of the decedent or applicable state laws shall control. Both Parties, however, understand and agree that they may name the other Party as a beneficiary in their Last Will and Testament, life insurance policy or retirement plan. Such a transfer, bequest, or designation takes precedence over any provisions of this Agreement.



**16. Children from Marriage.** If there are any children of the marriage between the Parties, this Agreement will not affect the rights of such children to support from either or both of the Parties.

**17. Binding Effect.** This Agreement will inure to the benefit of and be binding upon the Parties, their successors, heirs, executors, administrators, assigns and representatives.

**18. Severability.** In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the validity, legality and enforceability of the remaining provisions shall not be affected and the remaining provisions shall be construed, to the extent possible, to give effect to this Agreement without the inclusion of such invalid, illegal or unenforceable provision.

**19. Governing Law.** The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_, not including its conflicts of law provisions.

**20. Dispute Resolution.** Any dispute arising out of or related to this Agreement that the parties are unable to resolve by themselves shall be resolved through: (Check one)

Court litigation. Disputes shall be resolved in the courts of the State of \_\_\_\_\_.

(Check if applicable)

If either Party brings legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover from the other Party its expenses (including reasonable attorneys' fees) incurred in connection with the action and any appeal.

Binding arbitration. Binding arbitration shall be conducted in accordance with the rules of the American Arbitration Association.

Mediation.

Mediation, then binding arbitration. If the dispute cannot be resolved through mediation, then the dispute will be resolved through binding arbitration conducted in accordance with the rules of the American Arbitration Association.

**21. Further Assurances.** At the written request of either Party, the other Party shall execute and deliver such other documents and take such other actions as may be reasonably necessary to effect the terms of this Agreement.

**22. Headings.** The section headings herein are for references purposes only and shall not otherwise affect the meaning, construction or interpretation of any provision in this Agreement.

**23. Entire Agreement.** This Agreement, including all Exhibits attached hereto, contains the entire understanding between the Parties and supersedes and cancels all prior agreements of the Parties, whether oral or written, with respect to such subject matter.

**24. Amendment or Revocation.** This Agreement may be amended or modified only by a written agreement signed by both of the Parties. This Agreement may be revoked if both Parties sign a written agreement before the presence of a notary public or other authorized official. Revocation shall become effective when properly recorded as required by state and local laws.

**25. Acknowledgment.** The Parties acknowledge that they have been informed of their legal rights, have been given an adequate amount of time to consider entering into this Agreement, have read and



understand this Agreement, agree with the contents of this Agreement and believe it to be fair, have not been pressured or coerced into signing this Agreement and have chosen to freely and voluntarily enter into this Agreement.

**26. Additional Provisions.** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first written above.

\_\_\_\_\_  
**First Party's** Signature

\_\_\_\_\_  
**First Party's** Full Name

\_\_\_\_\_  
**Second Party's** Signature

\_\_\_\_\_  
**Second Party's** Full Name







**Exhibit A**

FIRST PARTY'S FINANCIAL AND PROPERTY DISCLOSURE



**Exhibit B**

SECOND PARTY'S FINANCIAL AND PROPERTY DISCLOSURE

