APPENDIX B

Sample Prenuptial Agreement

(Both Parties Financially Independent)

AGREEMENT made as	of this		day	of		1, 7	20, 1	etw	een
(referred to	herein	for	the	purpos	es of	this	agreer	nent	as
"Wife") and	(ref	erred	to	herein	for t	he pu	irposes	of	this
agreement as "Husband"), both	residing	g at							

WITNESSETH:

WHEREAS, each of the parties has known the other for a period of time, is fully satisfied with the disclosure of the financial circumstances of the other and desires to make an agreement regarding his and her property rights in consideration of the marriage to each other, and

WHEREAS, each of the parties has assets and earnings, or earnings potential, sufficient to provide for his or her own maintenance and support in a proper and acceptable standard of living without the necessity of financial contributions by the other, and each of the parties is aware of the hazards and risks of the continuance of earnings and of the changes in assets and liabilities of the other and of the possibility of substantially changed financial circumstances of the other with the result that the earnings and/or net worth of one party is or may be substantially different from those of the other party, and

WHEREAS, each of the parties desires to own, hold, acquire and dispose of property now and in the future and subsequent to their marriage to each other with the same freedom as though unmarried and to dispose of said property during their respective lifetimes or upon death or upon any other termination of the marriage without restriction or limitation in accordance with his or her own desires, and

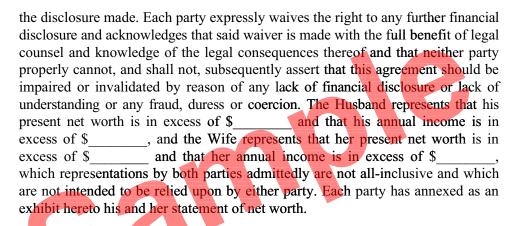
WHEREAS, it is the intention of each of the parties by entering into this agreement to determine unilaterally what property, now and in the future, shall be his or her own separate property and that all the property of each, however acquired or held, shall be free from any consideration as marital property, community property, quasi-community property or any other form of marital or community property, as those terms are used and understood in any jurisdiction, including but not limited to the State of New York,

NOW, THEREFORE, in consideration of the marriage of each party to the other and the mutual promises and covenants herein, the parties have mutually agreed as follows:

- 1. **Present Property.** Except as otherwise herein set forth, all the property, real, personal and mixed, that each party has previously acquired and now holds in his or her name or possession shall be and continue to remain the sole and separate property of that person, together with all future appreciation, increases and other changes in value of that property and irrespective of the contributions (if any) that either party might have made or may hereafter make to said property or to the marriage, directly or indirectly.
- 2. Future Property. Except as otherwise set forth, all the property, real, personal and mixed, that each party may hereafter acquire in his or her own name or possession shall be and remain the sole and separate property of that person, together with all future appreciation, increases and other changes in value of that property and irrespective of the contributions (if any) that either party may make to said property or to the marriage, directly or indirectly.
- 3. **Joint Property.** Any property, real, personal or mixed, that shall now or hereafter be held in the joint names of the parties shall be owned in accordance with the kind of joint ownership as title is held, and if there is no other designation, shall be presumed to be held equally by the parties with such survivorship rights (if any) as may be specifically designated by the title ownership or as may be implied or be derived by operation of law other than the operation of the so-called equitable distribution law or community property or any similar law of any jurisdiction involving marital property, community property, quasi-community property or any other form of marital or community property.
- 4. Estate Rights. Each party hereby releases, waives and relinquishes any right or claim of any nature whatsoever in the property of the other or otherwise, now or hereafter acquired, and, without limitation, expressly forever waives any right or claim that he or she may have or hereafter acquire, whether as the spouse of the other or otherwise, under the present or future laws of any jurisdiction: (a) to share in the estate and in any testamentary substitutes of the other party upon the death of the other party; and (b) to act as executor or administrator of the estate of the other or as trustee, personal representative or in any fiduciary capacity with respect to the estate of the other. All rights that either party may acquire in the other's estate by virtue of the marriage, including but not limited to rights of set-off in § 5-3.1, all distributive shares in § 4-1.1 and all rights of election in § 51.1A of the Estates, Powers and Trusts Law of New York, as such

laws may now exist or hereafter be changed, and any similar or other provision of law in this or any other jurisdiction are hereby waived by each party.

- 5. **Wills.** Nothing in this agreement shall prevent or limit either party from hereafter making provisions for the other by a last will and testament, in which event the provisions thus made shall control.
- 6. Waiver of Maintenance. Each party represents to the other and agrees that each has sufficient income, income potential and financial resources to be financially self-sustaining now and in the future, that neither seeks nor desires any support or maintenance from the other now or in the future and, insofar as may be permitted by law, irrevocably waives all right or claim for support or maintenance whether permanent, temporary or otherwise, from the other now and hereafter.
- 7. **Debts.** Neither party will at any time contract any debt, charge or liability whatsoever for which the other party may be or become liable, except as they may hereafter otherwise agree in a writing signed by both of them. Each party shall indemnify the other of all loss, expenses (including but not limited to attorneys' fees) and damages of the other party in the event of a breach of this paragraph by the defaulting party.
- 8. **Pensions.** The parties acknowledge and agree that each may be a participant in one or more individual retirement accounts, pension plans or other types of deferred income plans, namely: [give exact title of each plan] (collectively called the "plans"); that each shall hold all rights in their respective plans without any claim, in fact or in law, that the other party may have therein; that each expressly waives all rights that may now or hereafter exist in the plans of the other, including but not limited to preretirement and joint survivor annuities or to be a participant or beneficiary in the plans of the other or to require the consent of the other with respect to any right, option, distribution or benefit that a party may now or hereafter have or choose to exercise. It is the essence of this agreement that at any time after the marriage of the parties and upon the request of either party, the other party, without charge, shall promptly reaffirm the foregoing and provide such papers and documents properly executed and acknowledged to carry out and implement the foregoing. Notwithstanding the foregoing, in the event that either party shall hereafter expressly designate the other party as a participant or beneficiary in any of the plans under the provisions of the plans, said designation shall control.
- 9. **Disclosure.** Each party has been apprised of the right to obtain full disclosure of the financial circumstances of the other party and is satisfied with



11. General Provisions. This agreement shall be construed as an agreement made and to be performed in the State of New York regardless of where the parties may hereafter reside or be domiciled and cannot be changed, or any of its terms waived, except by a writing signed and acknowledged by both parties. If any provision of this agreement should be invalid or unenforceable, no other provision shall be affected thereby. Each party hereby consents to the personal jurisdiction of the State of New York in the event of any dispute or question regarding the interpretation, enforcement, validity and making of this agreement. The recitals herein are made a part of this agreement. Each party acknowledges receipt of a fully executed copy of this agreement, has had an opportunity to read it and understands the same after consultation with independent counsel and is fully satisfied with the disclosure made of the financial circumstances of the other party. Each party shall provide such papers and documents and perform such acts as may be necessary or desirable to carry out and effectuate the provisions of this agreement and the intent of the parties. This constitutes the entire agreement of the parties, merging herein all promises, understandings and representations. The paragraph captions in this agreement are for the purpose of convenience only and are not part of this agreement.

IN WITNESS WHEREOF, the parties, for themselves, their heirs, next of kin, representatives and assigns, have executed these presents prior to their marriage to each other as of the day and year first above written.

		L.S.
	[Wife's name]	
	[Husband's name]	L.S.
STATE OF NEW YORK)).ss.:	
COUNTY OF		
known to me or proved to individual whose name is su to me that she executed the	20, before me, the unde, personally appeared [Wife's me on the basis of satisfactory estable to the within instrument estame in her individual capacity the individual, or the person upon the instrument.	name], personally evidence to be the and acknowledged y, and that by her
	Notary Public	
STATE OF NEW YORK) ss.:	18
COUNTY OF		
Public in and for said state, known to me or proved to individual whose name is su to me that he executed the	personally appeared [Husband's me on the basis of satisfactory electric basis of satisfactory	name], personally evidence to be the and acknowledged y, and that by his

Notary Public

Alternative and Additional Clauses

Substitute Provision for Paragraph 6 "Waiver of Maintenance" to Provide for Maintenance

6. Maintenance (Alimony) Payments on Dissolution of Marriage. In the event the parties cease to be married to each other (as marriage is hereinafter defined**) for any reason other than the death of a party, then the Husband* shall pay to the Wife* maintenance (alimony) at the rate of \$ per vear for a period of time based upon the duration of their marriage. For each full year of marriage up to and including five (5) full years, there shall be maintenance payments for one full year. Payments shall be made in equal monthly installments at the rate of \$ per month, in advance, commencing on the first day of the month immediately following the date when the parties cease to be married and continuing on the first day of each successive month thereafter until the earliest happening of any of the following events: (a) the death of either party; or (b) the remarriage of the Wife*; or (c) the date for termination of payments based upon the duration of the marriage. For example, if the parties are married to each other for four years and three months, then the Wife* shall be entitled to forty-eight (48) monthly payments of maintenance at the rate of per month, subject, however, to earlier termination in the event of the death of either party or the remarriage of the Wife* (as remarriage is hereinafter defined**)*. If the parties cease to be married as aforesaid after five full years of marriage, then the obligation, if any, for the payment of maintenance shall be made in accordance with then-existing law without regard to any of the foregoing provisions of this paragraph and as though this paragraph never existed.

Provision for Life Insurance

12. **Death Benefits.** From and after the marriage of the parties (as *marriage* is hereinafter defined**), the Husband shall maintain at his own expense a policy or policies of life insurance on his life having death benefits payable in the sum of not less than \$______ for the benefit of the Wife* until the earlier occurrence of the death of either party or the remarriage of the Wife* (as *remarriage* is hereinafter defined**), and he will not encumber said insurance whereby the death benefits shall be less than \$______ . In addition, within a reasonable time after the marriage of the parties, the Husband* shall make provision in an appropriate instrument for the Wife* to be entitled to receive an additional \$______ in the event of the Husband's death.

13. Limitation of Estate Rights. Notwithstanding anything in this agreement to the contrary, in the event of the death of the Husband during the marriage of the parties (as marriage is hereinafter defined**), the Wife*, as legatee or distributee, shall be entitled to receive by way of inheritance, as a distribution out of the distributable assets from the net estate of the Husband, a percentage of said estate, which percentage shall depend upon the duration of the marriage of the parties. If said duration is up to one year, the percentage shall be 5%; up to two years, 9%; up to three years, 13%; up to four years, 17%; up to five years, 21%; and five years or longer, 25%. In no event shall said percentage exceed 25%. For example, if the duration of the marriage is three years and nine months, the percentage will be 17% of the net estate. Said percentage share shall not be considered in computing the estate available for distribution to legatees or distributees. The term estate of the Husband as used herein shall mean his estate as it would be calculated for the purposes of determining the elective share of the Wife if she were entitled to make such an election under § 5-1.1-A of the Estates, Powers & Trusts Law of the State of New York in effect at the time of the Husband's death, less all federal, state and local taxes of every nature allocable to said elective share. However, nothing herein shall be construed to give the Wife a right of election under said law or any similar law of New York or of any jurisdiction.

Provision for Use of Marital Residence in the Event of Death

14. Primary Residence. In the event that the Husband should predecease the Wife during the time that they are married (as married is hereinafter defined), the Wife shall have the right to continue to reside in their primary residence until the occurrence of the remarriage of the Wife (as remarriage is hereinafter defined**), provided, however, that the Wife* shall pay all expenses of every kind and nature in connection with said residence (including but not limited to all repairs, whether ordinary, extraordinary, structural or otherwise), except only for the payment of real estate taxes and, if the primary residence is a condominium or cooperative apartment, the maintenance or common charges, as the case may be, which real estate taxes and maintenance charges or common charges, as applicable, shall be paid for by the Husband's estate as an obligation of the estate. If the primary residence is rented and occupied by the parties under a lease (not a proprietary lease of a cooperative apartment), the Wife* shall have the right to cause said lease to be transferred to her sole name, including any rent security deposited under said lease, without payment to the Husband's* estate, provided that said request is made in writing to the Husband's estate representatives within ninety (90) days after his death. This paragraph shall apply only to the primary

residence of the parties and not to any other residence that they or either of them may own at the time of the Husband's death.

Provision for Medical and Long-Term Health Care Insurance

15. **Medical and Health Insurance.** The Husband at his sole expense shall provide to the Wife and also for himself for as long as they are married (as *married* is hereinafter defined). Medicare Part B insurance plus AARP-sponsored Medigap insurance and also AARP-sponsored long-term health care insurance with the broadest coverage and minimal deductible available, said obligation to continue for as long as and to the extent necessary for either or both of them, as the case may be, to qualify and be eligible for Medicaid entitlements. At the reasonable request of the Wife, the Husband shall provide documentation to her of his compliance with the foregoing obligation, and the Wife, in addition, is hereby authorized to obtain direct confirmation from any insurer.

Provision for Definition of Remarriage and Married— Ties in with Other Applicable Provisions

- 16. **Definitions.** The following definitions shall apply to the respective expressions whenever used in this agreement:
- (a) Remarriage as used everywhere in this agreement shall be deemed a remarriage of the Wife*, regardless of whether said remarriage shall be void or voidable or terminated by divorce or annulment or otherwise, and shall also be deemed to include circumstances whereby the Wife* shall live with an unrelated person in a husband-wife relationship (irrespective of whether or not they hold themselves out as such) for a continuous period of 60 days or for a period or periods of time aggregating 120 days or more on a noncontinuous, or interrupted, basis in any 18-month period.
- (b) The time during which the parties are *married*, or the period of the *marriage* of the parties, as used everywhere in this agreement shall be deemed for the purposes of this agreement to constitute the period of time commencing with the ceremonial marriage of the parties to each other and continuing until the earliest happening of any of the following events: (i) the commencement of a matrimonial action; (ii) the divorce or legal separation (by decree or judgment or by agreement) of the parties; (iii) the physical separation of the parties wherein either or both of the parties have commenced to live separate and apart from the other with the intent not thereafter to live together, regardless of whether that intent is expressed in writing, orally or otherwise; or (iv) the death of either party. *Matrimonial action* as used everywhere in this agreement shall be as it is

presently or may be hereafter defined by $\S 105(p)$ of the Civil Practice Law & Rules of the State of New York.

