

**ANTENUPTIAL AGREEMENT  
BETWEEN JOHN HERMEL AND SHEILA RUBENDALL**

This Agreement is made between John Hermel (“Hermel”), a resident of Nicollet County, Minnesota, and Sheila Rubendall (“Rubendall”), a resident of Redwood County, Minnesota, to settle all rights each may have or claim in the property and income of the other by reason of their contemplated marriage.

**ARTICLE ONE  
PURPOSE OF THE AGREEMENT**

1. The parties affirm that they are making this Agreement for the following purposes:
  - 1.1 Hermel and Rubendall wish to privately determine the rights and obligations they will have upon the death of either party or a termination of their marriage by dissolution or legal separation (hereinafter referred to as “Legal Proceeding”).
  - 1.2 Hermel wishes to protect his premarital assets and gifts and inheritances received prior to and during the marriage, and the passive and active appreciation, growth, and income on those assets during the marriage in the event of a Legal Proceeding or either party’s death, on the terms set forth herein.
  - 1.3 Rubendall wishes to protect her premarital assets and gifts and inheritances received prior to and during the marriage, and the passive and active appreciation, growth, and income on those assets during the marriage in the event of a Legal Proceeding or either party’s death, on the terms set forth herein.
  - 1.4 Hermel and Rubendall wish to avoid the intrusion of discovery and valuations of their premarital assets, except as agreed, the anticipated gifts and inheritances from their families or others, and all of their Nonmarital Property (as “Nonmarital Property” is defined in Article 2.1 below), in the event of a Legal Proceeding or death regarding their assets identified on **Exhibit A** for Hermel and **Exhibit B** for Rubendall, respectively, attached to this Agreement and incorporated herein, and all other assets classified as Nonmarital Property in this Agreement.
  - 1.5 Both parties want their premarital assets to remain as Nonmarital Property despite their marriage, and not be subject to invasion, valuation, or any other claim by the other in the event of a Legal Proceeding or upon the death of either party, except as specifically provided herein.
  - 1.6 The parties intended wedding date is June 27, 2020.

**ARTICLE TWO  
RIGHTS IN PROPERTY AND INCOME**

2. The parties agree that notwithstanding any contrary provision of the laws of Minnesota or any other state or country, the provisions of this Agreement will determine the rights that each party will have in the property and income now owned or acquired by the other party before, during, or after the parties’ marriage.

2.1 **Nonmarital Property.** For purposes of this Agreement, “Nonmarital Property” means the following interests in real and personal property:

2.1.1 All property, benefits, and rights acquired before the marriage as disclosed and discussed on **Exhibit A**, in the case of Hermel and **Exhibit B**, in the case of Rubendall, attached to this Agreement, which Exhibits are incorporated herein by reference.

2.1.2 All property which would be characterized as Nonmarital Property under Minnesota Statutes Chapter 518 and applicable Minnesota case law.

2.1.3 Income, dividends, distributions, whether from principal or income, and other earnings and/or distributions, and all appreciation or other increases in value and/or number of a party’s Nonmarital Property now owned or hereafter acquired, whether such consideration, appreciation, or increase is due to a party’s efforts, market forces, or any other factor whatsoever.

2.1.4 Any asset a party acquires or purchases, including pay down of encumbrances and other payments which increase equity, in exchange for his or her Nonmarital Property, or acquired with the proceeds of or other value from his or her Nonmarital Property.

2.1.5 Any increase in the value of Hermel’s Nonmarital Property, including increases due to Hermel’s efforts, the efforts of others, including, but not limited to Rubendall’s efforts, market conditions, or caused by any other factor, as well as any investments of money, effort, or other personal or property contributions by Hermel into any of Rubendall’s Nonmarital Property during the marriage, and any and all value and benefits flowing to Hermel from any of Hermel’s Nonmarital Property will be Hermel’s Nonmarital Property, despite the case of *Nardini v. Nardini*, 414 N.W.2d 184 (Minn. 1987) and *Baker v. Baker*, 753 N.W.2d 644 (Minn. 2008) and their progeny or any other contrary case law or statutory law now in effect or subsequently issued or enacted.

2.1.6 Any increase in the value of Rubendall’s Nonmarital Property, including increases due to Rubendall’s efforts, the efforts of others, including, but not limited to Hermel’s efforts, market conditions, or caused by any other factor, as well as any investments of money, effort, or other personal or property contributions by Rubendall into any of Hermel’s Nonmarital Property during the marriage, and any and all value and benefits flowing to Rubendall from any of Rubendall’s Nonmarital Property will be Rubendall’s Nonmarital Property, despite the case of *Nardini v. Nardini*, 414 N.W.2d 184 (Minn. 1987) and *Baker v. Baker*, 753 N.W.2d 644 (Minn. 2008) and their progeny or any other contrary case law or statutory law now in effect or subsequently issued or enacted.

2.1.7 Hermel’s Nonmarital Property shall include, but not be limited to, any earnings produced, received, or retained by any of Hermel’s Nonmarital Property as well as any distributions of principal, distributions or other payments made to or retained for Hermel as dividends, debts, income, including payments or other consideration received on or from sale of all or part of Hermel’s interest in any of Hermel’s Nonmarital Property, all of which will be Hermel’s Nonmarital Property.

The receipt of funds, the use of funds, the purchase of assets using these funds, or the reinvestment of funds from Hermel's Nonmarital Property will not create Marital Property but shall be Nonmarital Property.

2.1.8 Rubendall's Nonmarital Property shall include, but not be limited to, any earnings produced, received, or retained by any of Rubendall's Assets as well as any distributions of principal, distributions or other payments made to or retained for Rubendall as dividends, debts, income, including payments or other consideration received on or from sale of all or part of Rubendall's interest in any of Rubendall's Assets, all of which will be Rubendall's Nonmarital Property. The receipt of funds, the use of funds, the purchase of assets using these funds, or the reinvestment of funds from Rubendall's Nonmarital Property will not create Marital Property, except as otherwise identified herein, but shall be Nonmarital Property.

2.1.9 Hermel owns a home located at 520 Third Street, Nicollet, Minnesota, in which Hermel and Rubendall intend to make their principal residence and homestead. Rubendall acknowledges and agrees Hermel owned this home prior to the parties' marriage and that he has used nonmarital funds for its purchase, maintenance, improvements, mortgage, and other payments. The parties agree the equity at the date of marriage in the property shall be Hermel's Nonmarital Property. Any payments after the date of marriage, contributed to capital improvements of the homestead, and/or payments on mortgage debt service or real estate taxes on the homestead, which are not from Hermel's nonmarital funds or not from Rubendall's nonmarital funds, shall be classified and characterized as marital and shall be allocated fifty (50) percent to Hermel and fifty (50) percent to Rubendall pursuant to *Schmitz v. Schmitz*, 309 N.W.2d 748 (Minn. 1981). Payments from Hermel's nonmarital funds contributed to any home shall remain Nonmarital Property and shall increase his interest in said realty. Payments from Rubendall's nonmarital funds contributed to any home, in particular the reduction of the amount owed on the mortgage on the home, shall be Rubendall's Nonmarital Property and be her equity in the realty. In the event the Minnesota homestead is sold and the parties use the net proceeds to purchase a new home either in Minnesota or another state, Hermel's nonmarital interest in the proceeds shall be determined pursuant to *Schmitz and Antone v. Antone*, 645 N.W.2d 96 (Minn. 2002). Hermel and Rubendall agree that the title to the Homestead shall be held as joint tenants with right of survivorship. Hermel and Rubendall specifically acknowledge and agree that holding title to the Homestead as joint tenants does not create any Marital Property and that the Homestead is Hermel's Nonmarital Property, subject to any of Rubendall's nonmarital equity in the home as provided in this paragraph.

2.2 **Marital Property.** For purposes of this Agreement, "Marital Property" means all real and personal property acquired during the marriage, which is not "Nonmarital Property" as defined above. It is specifically acknowledged that the definition of Marital Property for this Agreement is more limited than the definition of Marital Property under

Minnesota law. Hermel and Rubendall intend to create Marital Property from their earned income from employment.

2.3 **Income.** "Income" shall mean all salaries, wages, bonuses, self-employment income, employee benefits, fringe benefits, rental income, distributions, as well as any other compensation or income received by Rubendall or Hermel for personal services rendered after the date of the marriage. To the extent that one party is not employed, the earned income of the other as defined herein shall create Marital Property.

2.4 Any Trusts (revocable or irrevocable) whether now existing or created in the future by a third party and funded by a third party will be the Nonmarital Property of the party who is the beneficiary of such Trust.

2.5 **References Not Determinative.** Reference to property as "ours" does not create a presumption of joint ownership in property which is otherwise Nonmarital Property. Property which would otherwise be Nonmarital Property under the definition of this Agreement will not be converted to Marital Property unless the specific requirements of Article 3.5 are met.

### **ARTICLE THREE RIGHTS DURING MARRIAGE**

3. During the marriage of the parties:

3.1 **Control of Nonmarital Property.** Neither party will acquire by reason of the contemplated marriage for himself or herself, his or her heirs, assigns or creditors any interest in or right to control the other's Nonmarital Property.

3.2 **Disposition of Nonmarital Property.** The Nonmarital Property of each party will be subject to such party's exclusive use and control, and each party will have the right to encumber and dispose of his or her Nonmarital Property upon his or her sole signature. Each party will cooperate fully, including signing relevant documentation if necessary to facilitate the transfer or other necessary action with respect to the other party's Nonmarital Property. It is acknowledged and agreed that each party may make gifts of his or her Nonmarital Property to his or her issue, other persons, or entities and the other party will cooperate fully to facilitate making such gifts in the maximum amount determined by the donor party.

3.3 **Additional Benefits.** Either party will have the right to provide additional benefits for the other by will, trust, beneficiary designation, or use of any other testamentary device or document effective upon death and neither party intends by this Agreement to limit or restrict in any way the rights and power to transfer and receive such testamentary conveyances.

3.4 **Restoration of Rights.** Either party may, during life or at death, including during any Legal Proceeding, restore statutory or other rights to the other party and no such restoration will be construed as a waiver or release of other obligations and waivers under this Agreement. Any such restoration will be considered by any court in determining substantive fairness and enforceability of this Agreement.

3.5 **Documenting Gifts.** Each gift from one party's Nonmarital Property to the other which is valued at \$5,000 or under in value and each gift of personal property such as jewelry, clothing, and other similar personal effects regardless of value, shall become the Nonmarital Property of the party receiving the gift. Any gift (other than a gift of personal property) which is in excess of \$5,000 and is intended to be an irrevocable lifetime gift from one party to the other party must be evidenced by a writing which: (a) identifies the property; (b) specifically states that a gift is intended; and (c) is signed and dated by the party making the gift. No gift not so evidenced will modify the rights of the parties under this Agreement.

3.6 **Liabilities and Nonmarital Property.** Each party's Nonmarital Property will remain free from any encumbrance resulting from liabilities of the other party unless otherwise agreed by the parties in writing. If either party is required by law to pay a liability or cost of the other not mutually agreed to from that party's Nonmarital Property, the party incurring the debt will indemnify and reimburse the payor party.

3.7 **Gift Tax Returns.** If requested by the other party, each party shall file a gift tax return splitting any gift of the other, provided the amount of any gift made by the other during the calendar year, if split, does not exceed the annual exclusion available to each party pursuant to the provisions of Section 2503(b) of the Internal Revenue Code and no additional gifts were made that would require either party to use any portion of his or her unified credit against estate taxes under Section 2010 of the Internal Revenue Code or to pay an actual gift tax. In either case, the party making the gift shall have sole control over all decisions, questions, audits, controversies, or litigation relating to said gift. Said party shall indemnify and hold harmless the other party from any liability with respect to such matters. The party consenting to the gift from the other party shall cooperate fully to enable the party making the gift to have full control over such reporting and related matters, including the execution of such waivers of the statute of limitations, appointment of agents and attorneys, execution of protests, petitions to the Tax Court or complaints in courts, as may be necessary or desirable in the sole judgment of the party whose transfer is at issue. In the event of the death of either party, said party's Personal Representative shall have the same rights and obligations as the deceased party.

#### **ARTICLE FOUR RIGHTS UPON COMMENCEMENT OF A LEGAL PROCEEDING**

4. The following terms and conditions shall apply to any Legal Proceeding regarding the parties' marriage.

4.1 **Rights to Nonmarital Property.** Both parties have been advised that parties in a Legal Proceeding may be permitted to perform appraisals or other evaluative procedures with respect to Marital Property or Nonmarital Property. Both parties have knowingly and intelligently waived any right or ability to conduct any appraisal or other evaluative procedure with respect to the other party's Nonmarital Property. Neither party shall have the other party's Nonmarital Property appraised or evaluated in any way. Except as otherwise provided in this Agreement, each party will be released from all claims of the other party against his or her Nonmarital Property as defined in this Agreement. Each party specifically waives the right to any invasion of the Nonmarital Property of the other based

on unfair hardship as provided for in Minnesota Statutes section 518.58 as amended or any other similar law or under any other equitable or legal theory. Each party will retain free and clear of any claim of the other party all of her or his benefits, assets, and value defined as Nonmarital Property in this Agreement.

4.2 **Binding Settlement Agreement.** The parties shall be bound by this Agreement the same as if it were executed contemporaneously with and incident to any Dissolution. Any decree of legal separation or dissolution of marriage shall incorporate the terms of this Article 4 with respect to the rights of the parties.

4.3 **Joint Assets.** Any asset acquired during the marriage that was purchased using one party's or both parties' Nonmarital Property will be divided between the parties in proportion to the actual monetary amount provided by each, with any gain or loss on the asset being divided equally between the parties. Any Marital Property contributed to any such asset will be assumed to be contributed equally by the parties.

Such assets that cannot be so divided will be sold, and the net proceeds (e.g., after costs of sale and any applicable taxes) attributable to each party's proportionate contribution will be distributed to that party. Either party will have the opportunity to purchase the other party's interest in the asset at a price to be established between the parties or by an independent neutral appraiser. If the parties are unable to agree upon either a value or identification of an independent and neutral appraiser, the parties shall each select an appraiser and those appraisers will select a third appraiser, who will provide the independent neutral appraisal. If both parties wish to purchase the asset and the parties cannot agree on the disposition, the issue will be submitted for final decision to binding arbitration with a qualified family law arbitrator. The arbitration shall be governed by the provisions of Minnesota Statutes sections 572.08 to 572.30.

4.4 **Spousal Maintenance.** Except for situations in which either party is disabled from employment, Hermel and Rubendall each waive all rights to make any claim against the other for temporary or permanent spousal maintenance, alimony, or other periodic payment for spousal support if a Legal Proceeding is commenced. This waiver is made in consideration of the mutual agreements contained in this Agreement and in view of the fact that each of the parties is able to provide self-support. The parties acknowledge the waiver is fair and equitable and supported by adequate consideration. The consideration for this waiver is the likely length of the marriage, the respective ages of the parties, the respective incomes and standards of living they have acquired prior to the marriage, the anticipated economic contribution each will make during their marriage to the other's assets and income and professional advancement and their anticipated work life going forward during their marriage.

4.5 **Marital Property.** The parties' Marital Property as defined in this Agreement, will be divided equally between the parties.

4.6 **Marital Residence.** In the event of a legal Legal Proceeding, the Homestead or Marital Residence shall be awarded to Hermel as part of the division of assets between the parties. The award shall be subject to the remaining terms of this agreement regarding non-marital and marital property as provided for in Sections 2.1 and 2.2 above. In the event of a Legal Proceeding, Rubendall shall vacate the Homestead or Marital Residence within 60 days after the commencement of the proceeding.

4.7 **Effecting Provisions.** The parties intend this Agreement to provide an expedient resolution of all issues in the event of a Legal Proceeding and intend to be bound by its terms. To effect this intent, the following duties and obligations will apply:

4.7.1 Any appropriate pleadings seeking a Legal Proceeding will specifically reference this Agreement and a copy of this Agreement will be attached to such pleadings.

4.7.2 In the event either party challenges the enforceability or interpretation of any term of this Agreement, the issue will be bifurcated and immediately submitted to a court of competent jurisdiction for determination or, if the parties agree, to a Consensual Special Master or to binding arbitration for determination pursuant to Minnesota Statutes sections 572.08 to 572.30.

4.7.3 The parties will cooperate fully so any needed Court orders or arbitration decisions implementing the provisions of this Agreement are entered expeditiously.

4.7.4 The parties may change the beneficiary of any applicable life insurance or trust they have established and may continue to use and control their Nonmarital Property as defined in this Agreement, regardless of the standard restraining orders contained in a Summons or other order generated in the Legal Proceeding. Neither party shall seek any order from the Court which is inconsistent with the provisions of this Agreement.

4.8 **Valuation Date.** The parties agree the valuation date for a Legal Proceeding will be the date the Legal Proceeding is commenced. No Marital Property shall be created from and after the date a Legal Proceeding is commenced. Any income or asset(s) received or acquired by a party after the valuation date will be that party's Nonmarital Property regardless of source.

## **ARTICLE FIVE RIGHTS UPON DEATH**

5. In the event of the death of either party:

5.1 **Rights in Nonmarital Property.** The surviving party will have no rights as a surviving spouse in the Nonmarital Property of the deceased party except as provided in this Agreement.

5.2 **Waiver of Rights.** Both parties renounce and knowingly waive any statutory or other rights they may possess: (a) granting priority to a surviving spouse in the appointment and selection of a personal representative of the deceased spouse's estate; (b) to the Nonmarital Property as defined in this Agreement of the deceased spouse under any law, including but not limited to a law conferring dower or curtesy rights; (c) to an allowance for support and maintenance from the deceased spouse's estate; (d) to any right in the homestead or cemetery lot which would be accorded to a surviving spouse; and (e) to renounce or elect against (i) any bequest, devise, legacy, or gift in the decedent's Will, Trust Agreement, or other instrument effective on the decedent's death, including a gift of the homestead, or (ii) the transfer by the decedent of Nonmarital Property, during his or

her lifetime, in which the surviving spouse might have an interest but for the execution of this Agreement.

**5.3 Statutory Rights of a Surviving Spouse to Intestate Estate.** Both parties renounce and knowingly waive any rights they would have as a surviving spouse in the property or estate of the deceased party under any law governing the descent and distribution of intestate property, and if any interest in the property or estate of the deceased party is held to have passed to the surviving party under any such law, the surviving party will disclaim such interest or immediately transfer it to those who would have been entitled to receive it had he or she not survived the deceased party.

**5.4 Omitted Spouse.** The surviving party will make no claims as an omitted spouse against the estate of the deceased spouse pursuant to Minnesota Statutes section 524.2-301, any similar statute, or the corresponding statute(s) of any other jurisdiction.

**5.5** Hermel and Rubendall shall direct in their estate planning or testamentary documents that the surviving party shall receive all Marital Property, including the marital equity in the Marital Residence. Any property owned by the parties as joint tenants with the right of survivorship should pass to the surviving owner.

**5.6** The surviving party shall receive his or her primary vehicle, free of any liens or encumbrances which shall be paid in full from the deceased party's estate.

**5.7** The surviving party shall be entitled to all household goods, furnishings, furniture, and appliances owned by the parties at the time of the other party's death, excluding any items that are specifically awarded to a third party in the deceased party's estate planning documents.

**5.8** Hermel and Rubendall expressly reserve the right to determine the recipients of all other assets they own at the time of their respective deaths.

**5.9** Upon the commencement of a Legal Proceeding by either party to this Agreement, the parties may change any estate planning in place which benefits the other party, regardless of any contrary restraining orders contained in a summons or other court order. Neither party shall seek a court order which is inconsistent with this provision.

## **ARTICLE SIX CONSENTS TO TRANSFERS**

**6.** Each party agrees that, in consideration of the waivers of rights and other provisions of this Agreement, upon the request of the other party or of his or her heirs, legal representatives, assigns, or devisees, he or she will:

**6.1 Execution of Release.** Execute and acknowledge any instrument concerning any Nonmarital Property of the other, to evidence the release of his or her rights in such property; and to enable the owning party to freely exercise all rights of ownership in such Nonmarital Property.

**6.2 Retirement Plans.** Execute any consent required under the Retirement Equity Act of 1984 or other requirements of any plan or law, to permit the designation of a beneficiary other than the spouse for death or survivor benefits payable under a retirement plan which exists now or is acquired by a party in the future.

6.3 **Execution to Transfer.** Execute and acknowledge any instrument that may be reasonable or necessary to transfer any interest in Nonmarital Property of the other acquired under a community property or other law, to the person entitled to the property in accordance with this Agreement.

6.4 **Consents.** Execute a consent to any will or trust that does not conflict with this Agreement, and execute a waiver of the right of election of a surviving spouse and the rights of the surviving spouse to the homestead, exempt property and family allowances, or any of them, pursuant to Minnesota Statutes section 524.2-204 or any successor provision.

## ARTICLE SEVEN CONSTRUCTION OF AGREEMENT

7. The parties agree that the following provisions will govern the interpretation and enforcement of this Agreement.

7.1 **Effective.** This Agreement will become effective only on the solemnization of the parties' marriage.

7.2 **Severance.** If any part of this Agreement is held unenforceable, the remaining parts of this Agreement will remain enforceable.

7.3 **Enforcement.** No failure of a party to enforce any part of this Agreement will affect either party's right to enforce any other part of this Agreement. No waiver of a breach of any part of this Agreement will waive any succeeding breach of any other part of this Agreement.

7.4 **Obligations Imposed by Law.** This Agreement will not alter any obligation imposed by law on either party to support a child of this marriage.

7.5 **Modification.** The terms and provisions of this Agreement will be subject to modification and amendment by mutual agreement of the parties at any time and from time to time, but such modifications and amendments will be effective only after they have been made in writing, executed, witnessed and acknowledged by the parties. Any modification and amendment of this Agreement shall not be deemed a post-nuptial agreement as defined in Minnesota Statutes section 519.11. The parties specifically agree that the requirements of said statute are not applicable to any modification and amendment of this Agreement.

7.6 **Minnesota Law Governs.** Except as provided at Article 8.1 below, the validity, interpretation, and enforcement of this Agreement will be governed by the laws of the State of Minnesota, and this Agreement will bind and be enforceable by the parties and their heirs, legal representatives, assigns, and devisees.

7.7 **Foreign Property.** Except as provided at Article 8.1 below, if during their marriage the parties are residents of, or own property situated in any state or country other than Minnesota and the United States, their interests and rights in such property will, notwithstanding the law of such state or country, be determined under this Agreement.

7.8 **Captions.** Captions are for convenience only and are not intended to alter any of the provisions of this document.

**7.9 Procedural and Substantive Fairness.** In entering into this Agreement Rubendall and Hermel are mindful of the procedural and substantive fairness requirements as set forth in *McKee-Johnson v. Johnson*, 444 N.W.2d 259 (Minn. 1989) and Minnesota Statutes section 519.11. Rubendall and Hermel have entered into this Agreement in compliance with those requirements.

**7.9.1 Reasonable Expectations of the Parties.** Rubendall and Hermel acknowledge that they have thoroughly explored and discussed the substantive fairness of the provisions of this Agreement with respect to the rights and claims of each of them in the event of the termination of their marriage by a Legal Proceeding or by the death of one of them during the marriage. They have taken into consideration the circumstances as they now exist and the reasonable expectations of each of the parties as to the effect of this Agreement upon a termination of the marriage by a death or Legal Proceeding. The parties have entered into this Agreement after serious consideration of and reflection about their reasonable expectations for the future. The parties' reasonable expectations include:

- The nature and estimated value of the property each of them now owns or which provides benefits to them;
- The discrepancy in their incomes and Nonmarital Property and the discrepancy that will likely exist in the future;
- The potential growth and increase in value that may occur to either party's Nonmarital Property;
- Hermel is employed with the United States Postal Service and is a self-employed farmer;
- Rubendall is employed with the Redwood Falls Hospital as an occupational therapist assistant;
- The parties have not resided together prior to their marriage;
- The parties' relative economic prospects if the marriage now contemplated does not occur;
- The parties' current health status and the possibility that one or both of them may suffer declining health in the future;
- The possibility that a party's net worth and/or income may decline rather than grow in the future; and
- The possibility that a significant portion of the marital property will be consumed or spent by the parties.
- After considering these and all other factors which they consider pertinent, Hermel and Rubendall agree that the provisions of this Agreement are not only fair and reasonable at the time of execution of this Agreement, but they have every reason to expect that such provisions will be fair and reasonable in the event of a termination of their marriage by a Legal Proceeding or the death of one of the parties during the marriage now contemplated.

**7.9.2 Acknowledgement of Procedural Fairness.** The parties have each made full and fair financial disclosure of assets, liabilities, earnings, and other income to the other, as summarized in this Agreement and its Exhibits. Both parties not only have unrestrained access to advice from independent counsel but have engaged in negotiations where each party has made additional concessions in response to proposals or counter-proposals made by the other party or through counsel. Each party has independently chosen his or her counsel; there has been no pressure, coercion or undue influence regarding either the selection of counsel or the unrestrained access and use of counsel. The parties also acknowledge that they have complied fully with the requirements of Minnesota Statutes section 519.11, subdivision 1.

**7.10 Substantive Fairness.** Hermel and Rubendall further acknowledge and agree that this Agreement replaces their rights under applicable Minnesota law in the event of a Legal Proceeding. It is the parties' intent and agreement that the substantive fairness of this Agreement at time of enforcement should *not* be determined by comparing what is being received under this Agreement to what either party would receive under applicable law in the absence of this Agreement. It is *not* intended that this Agreement will approximate a division suggested by property division statutes in either the Minnesota Probate Code or in the Minnesota marital law affecting legal separation or dissolution of marriage. Accordingly, neither party will seek an appraisal or other valuation of the Nonmarital Property owned by the other party; neither party will present legal arguments to the Court that it should determine what a party should receive under applicable law in the absence of this Agreement as compared to what a party is entitled to receive under the provisions of this Agreement. The primary purpose of this Agreement is to alter applicable Minnesota law regarding property rights, the right to receive spousal maintenance and other applicable rights under state statutory law involving termination of a marriage by a Legal Proceeding.

## **ARTICLE EIGHT CHANGE OF RESIDENCE OR APPLICABLE LAW**

8. The parties agree that the following provisions will apply in the event of a change of their state and/or country of residence or of the current law in Minnesota.

**8.1 Foreign Residence.** Any time during their marriage, if the parties establish a new residence in a different state or country:

8.1.1 The parties will promptly obtain review of this Agreement by local legal counsel;

8.1.2 Each party will agree to amendments to this Agreement, transfers of interest or execution of other Agreements, documents, or instruments that are reasonably necessary to conform to the law of the state or country, other than the United States, of the parties' residence and that as closely as possible effect the parties' original intentions as stated in this Agreement so this Agreement will be enforceable under the laws of that state or country; and

8.1.3 If necessary, each party will re-execute this Agreement, agree to other formalities and take all action necessary to conform to the law of the state or country, other than the United States, of the parties' residence.

8.1.4 Any litigation or arbitration involving this Agreement shall occur in Minnesota, unless the parties otherwise agree in writing.

8.2 **Compliance with Minnesota Law.** This Article will not be construed as negating the parties' intention to have the validity, interpretation and enforcement of this Agreement governed by Minnesota law. In the event the parties change their residence to another state or country they may amend this Agreement to have the law of that jurisdiction apply to the validity, interpretation and enforcement of this Agreement. Such a change will only be effective if it is in a writing signed by both parties and no Legal Proceeding is commenced within two years of the change. If a Legal Proceeding is commenced within two years, then Minnesota law will apply.

8.3 **Amendment to Comply.** In the event Minnesota law regarding a spouse's rights upon death, divorce, or legal separation or Minnesota law regarding antenuptial agreements changes so that all or any part of this Agreement would be unenforceable, then the parties agree to amend the Agreement in conformity with the changed law but to preserve the intent and operational effect of this Agreement. If an amendment cannot preserve the intent and operational effect of this Agreement, it shall not be made, and this Agreement shall be enforced pursuant to Minnesota law now in effect.

## ARTICLE NINE CIRCUMSTANCES OF AGREEMENT

9. The above Agreement is based on the parties' disclosures to each other, their knowledge of their present circumstances their reasonable expectations, and the professional counsel and advice they have received.

9.1 **Disclosures.** Each party has fully advised the other of the nature and probable value of his or her property.

9.1.1 Hermel represents that the attached **Exhibit A** fully and fairly discloses his income, property and liabilities. Hermel represents that all of the statements contained in **Exhibit A** are true and correct to the best of Hermel's knowledge and belief based on the information available to Hermel at the time of this Agreement. Rubendall acknowledges that the values assigned to the property and financial obligations set forth in **Exhibit A** represent Hermel's best estimate of the current fair market value of Hermel's property, financial obligations, and income. Rubendall further acknowledges that Hermel's property, financial obligations, and income have not been formally appraised for purposes of this Agreement.

9.1.2 Rubendall represents that the attached **Exhibit B** fully and fairly discloses her income, property and liabilities. Rubendall represents that all of the statements contained in **Exhibit B** are true and correct to the best of Rubendall's knowledge and belief based on the information available to Rubendall at the time of this Agreement. Hermel acknowledges that the values assigned to the property and financial obligations set forth in **Exhibit B** represent Rubendall's best estimate of the current fair market value of Rubendall's property, financial obligations and income. Hermel further acknowledges that Rubendall's property, financial obligations and income have not been formally appraised for purposes of this Agreement.

9.1.3 Both parties acknowledge that they have had sufficient time and satisfactory disclosures to fully understand the income and property affected by this Agreement.

9.1.4 Each party acknowledges and agrees that the values set forth in **Exhibit A** and **Exhibit B** for the various assets now owned by or for the benefit of the parties are good faith estimates of approximate value based on information now available to the parties. Said values may not coincide with the precise fair market value that would be determined by a professional appraiser or expert, and said values may not include accrued interest, appreciation, or changes in market factors since the estimate was made. Said values do, however, constitute a full and fair disclosure of all assets and liabilities to the best of each party's knowledge. Because valuation in some cases is an art and not a science and there may be differences of opinion as to the value of some assets, such differences will not affect the enforceability of this Agreement unless there is an intentional, fraudulent misrepresentation.

9.1.5 Each party acknowledges and agrees that he or she has had a full opportunity to obtain any and all underlying documentation respecting the assets listed on **Exhibit A** and **Exhibit B** from the other party and that each party has had a full opportunity to retain any appraiser or expert as desired by him or her to evaluate the assets held by the other party.

9.1.6 Rubendall acknowledges she is satisfied with the financial information she has received from Hermel and that she has had the opportunity to request and review further information and the methodology used to value the assets but has declined to do so.

9.1.7 Hermel acknowledges he is satisfied with the financial information he has received from Rubendall and that he had the opportunity to request and review further information about the methodology used to value them but has declined to do so.

9.2 **Legal Representation.** Hermel is represented by Michael H. Boyle, Esq., with Blethen Berens. Rubendall is represented by Roger H. Hippert, Esq., with Nierengarten & Hippert Ltd.

9.3 **Legal Advice.** Each party has been fully advised by his or her chosen counsel that this Agreement imposes limitations or forfeitures of certain rights he or she would otherwise have under Minnesota law in the property and income of their spouse by reason of their marriage. The parties are informed:

9.3.1 Those rights which are, or may be, limited or forfeited by this Agreement include but are not limited to, all rights of a surviving spouse under Minnesota Statutes and all rights of a spouse under Minnesota Statutes.

9.3.2 Each party has also been advised that he or she may have or acquire other rights granted to spouses under the laws of other states and/or countries in which the parties, or either of them may reside or own property now or in the future and that such other rights will be limited or forfeited by this Agreement.

9.4 **Specific Circumstances of This Agreement.** The parties acknowledge and agree with the following:

9.4.1 The parties do not expect to have children born during their marriage.

9.4.2 Hermel is 48 years of age. He has not been married previously. Hermel has no children.

9.4.3 Rubendall is 48 years of age. She has been married previously. Rubendall has one (1) adult child from her prior marriage.

9.4.4 The parties would like to preserve their respective assets for their respective children and/or other heirs.

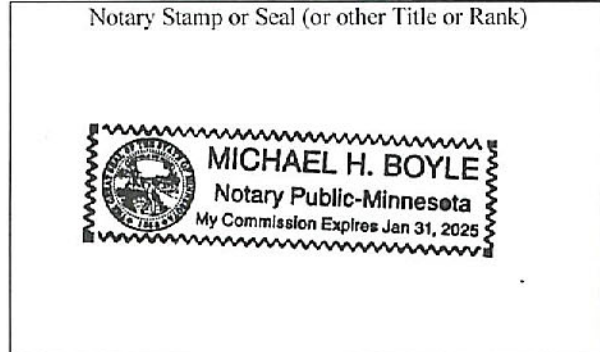
9.4.5 Each of the parties has earned income as reflected on **Exhibit A** and **Exhibit B**, but neither one is asserting that they will continue to earn similar income in the future.

STATE OF MINNESOTA

COUNTY OF BROWN

} ss.

On this 26th day of June, 2020, John Hermel, being first duly sworn, stated that he had read and understood the foregoing Agreement and acknowledged that he signed the Agreement willingly and executed it as his free and voluntary act for the purposes therein expressed.



*Michael H Boyle*  
Signature of Notary Public or Other Official

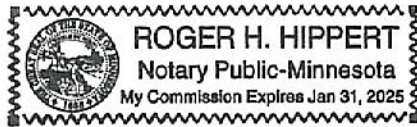
STATE OF MINNESOTA

COUNTY OF BROWN

} ss.

On this 26th day of June, 2020, Sheila Rubendall, being first duly sworn, stated that she had read and understood the foregoing Agreement and acknowledged that she signed the Agreement willingly and executed it as her free and voluntary act for the purposes therein expressed.

Notary Stamp or Seal (or other Title or Rank)



A handwritten signature in blue ink, appearing to read "Roger H. Hippert", written over a horizontal line.

Signature of Notary Public or Other Official

THE UNDERSIGNED AGREE TO THE PROVISIONS OF THIS ANTENUPTIAL AGREEMENT, TO BE EFFECTIVE ON THE LAST DATE SIGNED BY EITHER OF THEM IN DUPLICATE ORIGINALS.

WITNESSES FOR JOHN HERMEL

Diane M. Franta  
Sara-Ann Gould

John Hermel  
John Hermel

Date: June 26, 2020

WITNESSES FOR SHEILA RUBENDALL

Heather Stone  
T. O.

Sheila Rubendall  
Sheila Rubendall

Date: June 26, 2020

### ATTORNEY'S CERTIFICATION

The undersigned Michael H. Boyle, Esq. hereby certifies that he is an attorney at law duly licensed and admitted to practice in the State of Minnesota, that he has been employed by John Hermel and that he has advised and consulted with John Hermel in connection with said Agreement.

Date: June 26, 2020

  
\_\_\_\_\_  
Attorney for John Hermel

The undersigned Roger H. Hippert, Esq. hereby certifies that he is an attorney at law duly licensed and admitted to practice in the State of Minnesota, that he has been employed by Sheila Rubendall and that he has advised and consulted with Sheila Rubendall in connection with said Agreement.

Date: June 26, 2020

  
\_\_\_\_\_  
Attorney for Sheila Rubendall

**EXHIBIT A**

**Assets, Liabilities, and Income of John Hermel**

Income as Reported to IRS:

Year 2019	\$10,681.00
Current Year	\$

**Assets:**

Cash Accounts

Account #1	\$nominal
Account #2	\$ _____
Account #3	\$ _____
Gold/silver/other precious metal	\$ _____

Investment Accounts

Account #1 - Ameriprise	\$41,591.64
Account #2	\$ _____
Account #3	\$ _____
Account #4	\$ _____
Account #5	\$ _____

Retirement Accounts

Account #1	\$ _____
Account #2	\$ _____

Trust Assets

_____ Irrevocable Trust (\$__ million death benefit)	\$ _____
_____ Insurance Trust (\$__ million death benefit)	\$ _____

Life Insurance

Farm Bureau Financial Services	\$23,795.63 (cash value)
\$148,979.59 (death benefit)	

Business Assets

Stock Options	\$ _____
---------------	----------

\_\_\_% interest in LLC or Partnership

Private Company Investments

Direct Investments \$ \_\_\_\_\_

If applicable, list out direct investments and values

Real Estate

Residence – **520 3rd Street, Nicollet, Minn.** \$130,100.00

Nicollet County farmland (EMV without deduction for mortgage) \$345,200.00

Sibley County farmland (value of undivided one half remainder interest subject to mother's life estate) \$901,258.00

Personal Property

Furnishings \$ \_\_\_\_\_

Antiques \$ \_\_\_\_\_

Jewelry \$ \_\_\_\_\_

2003 Buick LeSabre \$4,200.00

1996 Ram Pickup \$15,000.00

Motorcycle \$ \_\_\_\_\_

Boat \$ \_\_\_\_\_

Classic Cars \$61,000.00

Farm equipment \$150,850.00 (See inventory)

**Total Assets:** \$ \_\_\_\_\_

Liabilities:

Home Mortgage \$39,810.00

Farm Mortgage \$235,745.00

Credit cards \$ \_\_\_\_\_

Car payment \$ \_\_\_\_\_

**Total Liabilities** \$ \_\_\_\_\_

**Net Worth** \$ \_\_\_\_\_

**EXHIBIT B**

**Assets, Liabilities, and Income of Sheila Rubendall**

Income as Reported to IRS:

Prior Year	54,881.00	
Current Year	32,088.46	(to 6/19/20)

**Assets:**

**Cash Accounts**

Account #1 – Wells Fargo	\$5000.00
Account #2 – Lucan State Bank	\$5845.71
Account #3	\$ _____
Gold/silver/other precious metal	\$ _____

**Investment Accounts**

Account #1	\$ _____
Account #2	\$ _____
Account #3	\$ _____
Account #4	\$ _____
Account #5	\$ _____

**Retirement Accounts**

Account #1 – Bright house Financial IRA	\$49,708.79
Account #2 – Roth IRA	\$ _____
Account #3 – PERA account (Redwood Area Hospital)	\$ _____
Account #4 – Carris Health retirement account	\$ _____

**Trust Assets**

_____ Irrevocable Trust (\$__ million death benefit)	\$ _____
_____ Insurance Trust (\$__ million death benefit)	\$ _____

**Life Insurance**

\$ \_\_\_\_\_ Insurance Co. (\$ \_\_\_\_\_ death benefit) \$25,000.00

Business Assets

Stock Options \$ \_\_\_\_\_

\_\_\_\_\_% interest in LLC or Partnership

Private Company Investments

Direct Investments \$ \_\_\_\_\_

If applicable, list out direct investments and values

Real Estate

Residence – **305 Oak Street, Lucan, Minn.** \$52,500.00

Personal Property

Furnishings \$ \_\_\_\_\_

Antiques \$ \_\_\_\_\_

Jewelry \$ \_\_\_\_\_

Vehicle #1 2015 Equinox \$6,000.00

Vehicle #2 \$ \_\_\_\_\_

Motorcycle \$ \_\_\_\_\_

Boat \$ \_\_\_\_\_

Jet skis \$ \_\_\_\_\_

**Total Assets:** \$ \_\_\_\_\_

Liabilities:

Mortgage \$ \_\_\_\_\_

HELOC \$ \_\_\_\_\_

Credit cards \$ \_\_\_\_\_

Car payment (loan) \$4000.00

**Total Liabilities** \$ \_\_\_\_\_

**Net Worth** \$ \_\_\_\_\_

**EXHIBIT C**  
**SUMMARY OF SURVIVING SPOUSE'S RIGHTS**  
**UNDER MINNESOTA LAW**

1. The right to elect against the deceased spouse's Will and receive a percentage of the "augmented estate." The calculation of the augmented estate is complex; basically, it includes all of the deceased spouse's assets and the surviving spouse's assets. The percentage is based on the length of the marriage:

YEARS OF MARRIAGE	PERCENTAGE
1 – 2	3%
2 – 3	6%
3 – 4	9%
4 – 5	12%
5 – 6	15%
6 – 7	18%
7 – 8	21%
8 – 9	24%
9 – 10	27%
10 – 11	30%
11 – 12	34%
12 – 13	38%
13 – 14	42%
14 – 15	46%
15 or more	50%

The elective share amount (the above percentage times the combined assets of both spouses) is then reduced by all the assets owned by the surviving spouse.

2. The right to the entire homestead if the deceased spouse did not leave any surviving descendants or the right to a life estate if the deceased spouse left surviving descendants. A life estate is the right to live in the homestead rent-free for life, but paying all expenses.
3. The right to select:
  - a. Household furniture, furnishings, appliances, and personal effects not exceeding \$15,000, net of security interests, but subject to an award of sentimental value property to the deceased spouse's children; provided, however, if the encumbered property and the value in excess of security interests, plus that of other exempt property, is less than \$15,000, or if there is not \$15,000 worth of exempt property in the Estate, the surviving spouse is entitled to other personal property of the Estate, if any, to the extent necessary to make up the \$15,000 value; and
  - b. One automobile, if any, without regard to value.
4. The right to a family allowance from the Estate of up to \$2,300 per month (or more if authorized by the court) for one year if the estate is insolvent or for 18 months if the Estate is solvent.
5. The right to a cemetery lot or burial plot.
6. The right to receive an intestate share of the deceased spouse's estate as an omitted spouse if the deceased spouse's Will predates the marriage.
7. The right to an intestate share of the deceased spouse's estate if the deceased spouse dies without a Will. The intestate share of the surviving spouse is as follows:
  - a. The entire intestate estate if the deceased spouse has no children or if all of the decedent's children are also children of the surviving spouse (the "marital children") and the surviving spouse does not have any nonmarital children.
  - b. The first \$225,000 plus one-half of the balance of the intestate estate if either the decedent or the surviving spouse had any nonmarital children.
8. The right to serve as personal representative of the Estate and elect a successor personal representative.