

PREMARITAL AGREEMENT

This Premarital Agreement (“Agreement”) is made and entered into by ALLISON GELBE (“ALLISON”), a single woman of Little Elm, Texas, and MARK PINKUS, (“MARK”), a single man of Little Elm, Texas, (sometimes referred to singularly as “Party” or collectively as “Parties”). This Agreement will take effect on the Parties’ completion of all legal formalities required for the recognition of a formal marriage (“Marriage”).

Stipulations and Recitals

ALLISON and MARK are not currently married and have never been married, but intend to marry each other on or about December 20, 2008.

It is the desire of ALLISON and MARK that conflicts regarding financial matters be minimized during their planned marriage, and this Agreement is intended to prevent such conflicts. ALLISON and MARK desire to fix and determine by this Agreement the rights and claims that will accrue to each of them in the estate and property of the other by reason of the marriage, and to accept the provisions of this Agreement in lieu of and in full discharge, settlement, and satisfaction of all such rights and claims.

By this Agreement, ALLISON and MARK intend to specify their respective ownership interests in property that each of them owns before their Marriage and that each of them may acquire during their Marriage. This Agreement is based on the current version of Texas Constitution article 16, section 15, and the applicable sections of the Texas Family Code. **This Agreement alters what each Party’s marital-property rights would be without this Agreement and the claims each Party may maintain against the other and against property rights or interests of the other Party. Accordingly, this Agreement alters the ownership, division and distribution of assets and rights upon cessation of the Parties’ marriage by death or divorce.**

ALLISON and MARK acknowledge that there has not been, and there is not currently, any agreement between them about their property or income.

ALLISON and MARK acknowledge that neither of them has any claim to the property or income of the other, and no such claim has ever been made.

ALLISON and MARK currently respectively own certain property and expect to acquire additional property in the future through gift, devise, bequest, inheritance, employment, investment earnings, and otherwise.

By this Agreement, ALLISON and MARK intend to do the following:

1. identify clearly as his or her respective separate property the property that is owned or claimed by each of them at the time of the Marriage;
2. acknowledge that all property that may come to either of them by gift, devise, bequest, or inheritance during the Marriage, including but not limited to any distributions of income or principal that may be received by a Party from a gifted or inherited trust or an estate that the Party is a beneficiary of, is the separate property of the Party receiving it;
3. partition and exchange between themselves certain types of property expected to be acquired by the Parties during the Marriage;
4. acknowledge that each Party retains and has sole management, control, and disposition rights over his or her separate property;
5. waive certain rights that either of them, or the survivor of them, could claim to the property or the estate of the other;
6. avoid the accumulation of any community property during their marriage;
7. agree that the character of all assets and property interests designated in this Agreement as the separate property of a Party will be preserved as separate property during and after the Marriage, and any enhanced value of such separate property resulting from the time, toil and talent of either party, as well as any property or monies furnished from any source, for the enhancement or maintenance of such property, shall accrue to such separate property estate without any right of reimbursement to either party or to either party's separate estate for such enhancement or maintenance; and
8. waive any rights that either of them may have that the other party has not been properly compensated by an entity owned or controlled by such other party.

In consideration of the mutual love and respect between the parties; in consideration of the mutual promises, agreements, partitions, exchanges, conveyances, releases, waivers, and assignments contained in this Agreement; in consideration of the parties' desire to establish rights and obligations by this Agreement; and with the intent to be bound fully by the terms of this Agreement, the parties covenant, agree, partition, exchange and contract as follows:

ARTICLE 1
REPRESENTATIONS AND DISCLOSURES

1.1. No Oral Representations

Neither party is relying on any representations made by the other party about financial matters of any kind, other than the representations stated in this Agreement and in any schedule or exhibit attached to it.

1.2. Disclosure and Waiver of Further Disclosure

Each Party acknowledges that before the execution of this Agreement they were given an opportunity to inquire about and conduct discovery of the other Party's assets, liabilities, property, cash flow, income, and other financial resources ("Financial Information") and that each of them has made a fair and reasonable disclosure of his or her Financial Information to the other Party. Each Party further acknowledges that he or she is satisfied that a fair and reasonable disclosure of the other Party's property and financial obligations has been made, enters into this Agreement with full knowledge of the financial affairs of the other Party, and voluntarily and expressly agreed in writing before the execution of this Agreement to waive any right to seek further disclosure of the property and financial obligations of the other Party by executing a Waiver of Further Financial Disclosure.

ARTICLE 2
SEPARATE PROPERTY

2.1. Properties Held by the Parties before Marriage

All assets and property interests of any nature or type, whether real or personal, tangible or intangible, that were owned by either Party or held in trust for the benefit of a Party as of the date of this Agreement and before the Marriage are declared to be and will remain throughout the Marriage the separate assets and property interests of the Party by whom they were owned or for whose benefit they were held in trust.

1. ALLISON's separate property before marriage. The assets and property interests listed in the attached **Schedule A** (along with all mutations, changes, and increases in kind or in value) are and will remain throughout the Marriage the separate assets and property interests of ALLISON.
2. MARK's separate property before marriage. The assets and property interests listed in the attached **Schedule B** (along with all mutations,

changes, and increases in kind or in value) are and will are and will remain throughout the Marriage the separate assets and property interests of MARK.

2.2. Properties Acquired by Gift, Devise, etc.

All assets and property interests that are acquired during the Marriage by a Party by gift, devise, bequest, or inheritance will be and remain throughout the Marriage that Party's separate property.

2.3. Intellectual Property

The intellectual property created by ALLISON shall be ALLISON's separate property. The intellectual property created by MARK shall be MARK's separate property.

2.4. Properties Acquired by Purchase, Exchange, or Credit

All assets and property interests that are acquired during the Marriage with separate property, in exchange for separate property, or on separate credit will be and remain throughout the Marriage the separate property of the Party who provided the separate property or credit for the purchase or exchange.

2.5. Increases and Income from Separate Property

All income, revenue, and increases in kind or in value (whether due to personal effort, market forces, or otherwise) during the Marriage from a Party's separate property (including assets held in trust for the benefit of a Party) (collectively referred to as "Special Separate Property") will be and remain throughout the Marriage that Party's separate property. "Special Separate Property" includes but is not limited to the following:

1. proceeds from the sale of water, oil, gas, and other minerals in and under or attributable to property (whether the property is fee-simple title, royalty interest, overriding royalty interest, or working interest);
2. rents and rental payments, including delay rentals;
3. crops;
4. any assets, earnings, future profits, or benefits associated with, inherent in, or distributed or accruing from a corporation, limited-liability company, partnership, joint venture, sole proprietorship, or other business entity (including but not limited to dividends, stocks, stock options, shares,

membership units, business or contract rights, goodwill, capital account value, or warrants);

5. interest and dividends earned on bank accounts, securities, certificates of deposit, and other obligations;
6. any royalties, profits, or other earnings from any publications, copyrights, patents, or other type of intellectual property;
7. any gambling winnings;
8. any offspring from livestock; and
9. any distribution(s) from any trust.

2.6. Compensation for Services Rendered

All income, assets, and property interests in whatever form received as compensation for personal services performed by either Party during the Marriage will be the separate property of the Party providing the services. The term “compensation for personal services” means commissions, wages, salary, director’s compensation, bonuses, stock options, warrants, or other compensation or benefits of any type earned as a result of a Party’s employment during the Marriage. Any income or property derived from the investment of a Party’s compensation for personal services will likewise be the separate property of the Party providing the services, including all future contributions to an individual retirement account or retirement plan made by or on behalf of a Party with funds received or deferred as compensation for personal services during the Marriage, together with any increase in value of the retirement account or retirement plan.

2.7. Property Owned or Titled in One Name

Notwithstanding anything in this Agreement to the Contrary, the Parties specifically agree that any property acquired solely in the name of ALLISON or MARK during their Marriage, regardless of the source of the consideration paid for the acquired property, will be owned only as the separate property of the Party in whose name the property is purchased or title is taken, and said property will be free of any claim of reimbursement on the part of the other Party. ALLISON shall retain, as her sole and separate property, all property standing solely in ALLISON’s name, whether now owned or hereafter acquired, and ALLISON shall have the absolute and unrestricted right to dispose of such separate property, by sale, gift, devise or in any other manner, free from any claim that may be made by MARK by reason of their marriage or otherwise, and with the same effect as if no marriage had been consummated between ALLISON and MARK. MARK shall retain, as his sole and separate property, all property standing solely in MARK’s name, whether now

owned or hereafter acquired, and MARK shall have the absolute and unrestricted right to dispose of such separate property, by sale, gift, devise or in any other manner, free from any claim that may be made by ALLISON by reason of their marriage or otherwise, and with the same effect as if no marriage had been consummated between ALLISON and MARK.

ARTICLE 3
JOINT ACQUISITION OF ASSETS/ JOINT PROPERTY

3.1. *Ownership of Joint Property*

1. **Current jointly owned property.** As of the date of this Agreement, the Parties do not jointly own any property.
2. **Future jointly owned property.**
 - (1) **Generally.** A Party may convey or transfer his or her separate property into a tenancy in common, joint tenancy, tenancy by the entireties, or any other form of concurrent or undivided estate or ownership with the other Party. To be effective, the conveyance or transfer must be in writing and signed by both Parties. No property will become jointly owned property by performing work or expending labor on or in the furtherance of the property without an express contemporaneous written declaration that such rights be created. Without such a declaration, all labor or work will be deemed gratuitous and will not create an interest in or lien on any property.
3. **Jointly Acquired Property.** The Parties may wish to jointly acquire property in the future. The Parties shall own jointly acquired property pursuant to their proportionate contribution.

ARTICLE 4
LIABILITIES

4.1. *Existing Liabilities*

Any liability or obligation that a Party has as of the date of the Parties' Marriage, whether contractual, tort, or otherwise, will be the separate liability or obligation of that Party, and only that Party's separate property will be subject to satisfying the liability or obligation.

1. **ALLISON's separate liabilities.** The liabilities and obligations listed in the attached **Schedule C** are and will remain throughout the Marriage the separate liabilities and obligations of ALLISON, to be satisfied and paid solely from her separate property.
2. **MARK's separate liabilities.** The liabilities and obligations listed in the attached **Schedule D** are and will remain throughout the Marriage the separate liabilities and obligations of MARK, to be satisfied and paid solely from his separate property.

4.2. Indemnification for Liabilities

Each Party agrees to indemnify and hold the other Party harmless from his or her own liabilities, including any obligations that may be imposed by law against the other Party's separate property.

ARTICLE 5 PROPERTY MANAGEMENT

5.1. Management of Separate Property

1. **Generally.** The Party who owns separate property ("Owning Party") will have the exclusive right to possess, control, and manage the property, including but not limited to the exclusive right to sell, gift, transfer, encumber, devise, bequeath, or otherwise deal with the property without the interference or joinder of the other Party ("Nonowning Party"). With respect to the Owning Party's property, the Owning Party is the attorney in fact of the Nonowning Party. The Owning Party will have full power in the name of the Nonowning Party or in the joint names of both parties to enter into any transactions or execute any documents related to the Owning Party's property, independently and without the consent or privity of the Nonowning Party. This power of attorney is deemed coupled with an interest and will survive the disability or incapacity of the Nonowning Party. The Nonowning Party will not be liable for any transactions involving the management of the Owning Party's property that requires the use of this power of attorney, and the Owning Party agrees to indemnify and hold the Nonowning Party harmless from any such liability.
2. **Procedure for maintaining separate character.** The Parties will establish and maintain accounting procedures, records, and bank accounts sufficient to segregate their respective separate-property interests and preserve the separate character of their property.

5.2. Management of Joint Property

Jointly owned separate property will be independently managed by each Party in accordance with the law of tenants in common in Texas and this Agreement, as applicable.

ARTICLE 6 CLAIMS RELATING TO THE PARTIES

6.1. Waiver of Rights and Claims to Separate Property

Except as otherwise provided in this Agreement, each Party waives any right, claim, or interest that he or she may have now or in the future to the other Party's separate property, whether the right, claim, or interest arises under statute, common law, or otherwise, including but not limited to claims for reimbursement, contribution, waste, fraud, or constructive fraud. To the extent that the separate property or the time, toil, talent, or effort of a Party ("Contributing Party") was or is used to pay one or more debts, liabilities, or obligations of the other Party ("Benefited Party"), or was or is used to improve, enhance, benefit, or otherwise increase the value of the Benefited Party's separate property, the Contributing Party's separate property or time, toil, talent, or effort is or will be deemed and construed for all purposes as a gift to the Benefited Party.

6.2. Waiver of All Reimbursement Claims

The Parties agree that if either Party uses his or her own separate funds to make any payment or financial contribution toward the purchase of the other Party's separate property or any improvement on the other Party's separate property, or either Party uses community property to make a payment or financial contribution toward the purchase of the other Party's separate property or any improvement on the other Party's separate property, the property so paid for or improved will remain entirely the separate property of the owner-spouse. Furthermore, the Party making such payment, financial contribution, or improvement using his or her separate property shall not be entitled to reimbursement from the owner-spouse's separate property in the amount of the enhanced value of the separate property, nor shall the Party have a claim for reimbursement against the other spouse. The Parties intend to override the provisions of Texas Family Code Sections 3.401 through 3.410 (or any successor statutes) which might otherwise give one of the Parties a claim for reimbursement (or similar claim) against the separate estate of the other Party or the community estate, if any, of the Parties. Further, the Parties specifically agree that if the marriage of the Parties terminates in divorce, neither Party will be entitled to acquire or be awarded an equitable lien on the separate property of the other party or on the community property of the Parties, if any, to secure a claim arising by reason of a claim for reimbursement as provided in Sections 3.401 through 3.410 of the Texas Family Code (or any successor statutes).

ALLISON waives the right to assert any claim for reimbursement that she might have in the future on behalf of or against the community estate, if any. ALLISON further waives the right to assert any claim for reimbursement that she might have in the future against the separate estate of MARK.

MARK waives the right to assert any claim for reimbursement that he might have in the future on behalf of or against the community estate, if any. MARK further waives the right to assert any claim for reimbursement that he might have in the future against the separate estate of ALLISON.

6.3. Waiver of Rights to Husband's Retirement Assets

ALLISON waives all right, title, and interest that she may have in MARK's existing and future Individual Retirement Accounts ("IRA") and other retirement benefits and deferred-compensation plans, whether lump-sum or installment, arising from MARK's employment before or during the Marriage, all of which are partitioned and exchanged to MARK as his separate property. ALLISON acknowledges that this waiver includes all rights that she has or may have to receive any benefits or payments from MARK's IRA and other retirement benefits and deferred-compensation plans that exist before or during the Marriage. ALLISON further waives all rights she may have to participate in any decisions about the designation of beneficiaries, election of benefits, or any other types of decisions to be made by MARK under his existing or future IRA plans and other retirement benefits and deferred-compensation plans, including but not limited to any right to a qualified joint and survivor annuity or a qualified preretirement survivor annuity. ALLISON further acknowledges that it is her intent that MARK will have the sole and absolute discretion under his existing or future IRA plans and other retirement benefits and deferred-compensation plans to designate beneficiaries, elect benefits, and make any other decisions. Thus, ALLISON agrees that if she receives any part of or benefits from MARK's IRA plans or other retirement benefits and deferred-compensation plans, other than under MARK's express designation of her as a named beneficiary, ALLISON will promptly return such benefits to MARK or to his estate if he is no longer living. ALLISON agrees that within ninety days after the Marriage, she will execute all forms necessary to effectuate the waivers contained in this Section, including but not limited to (1) a beneficiary designation naming someone other than ALLISON as beneficiary, (2) an election to waive any preretirement survivor annuity, (3) an election to waive any joint and survivor annuity, and (4) an election to designate a benefit payment option.

6.4. Waiver of Rights to Wife's Retirement Assets

MARK waives all right, title, and interest that he may have in ALLISON's existing and future Individual Retirement Accounts ("IRA") and other retirement benefits and deferred-compensation plans, whether lump-sum or installment, arising from ALLISON's employment before or during the Marriage, all of which are partitioned and exchanged to ALLISON as her separate property. MARK acknowledges that this waiver includes all rights that he has or may have to receive any benefits or payments from ALLISON's IRA and other retirement benefits and deferred-compensation plans that exist before or during the Marriage. MARK further waives all rights he may have to participate in any decisions about the designation of beneficiaries, election of benefits, or any other types of decisions to be made by ALLISON under her existing or future IRA plans and other retirement benefits and deferred-compensation plans, including but not limited to any right to a qualified joint and survivor annuity or a qualified preretirement survivor annuity. MARK further acknowledges that it is his intent that ALLISON will have the sole and absolute discretion under her existing and future IRA plans and other retirement benefits and deferred-compensation plans to designate beneficiaries, elect benefits, and make any other decisions. Thus, MARK agrees that if he receives any part of or benefits from ALLISON's IRA plans or other retirement benefits and deferred-compensation plans, other than under ALLISON's express designation of him as a named beneficiary, MARK will promptly return such benefits to ALLISON or to her estate if she is no longer living. MARK agrees that within ninety days after the Marriage, he will execute all forms necessary to effectuate the waivers contained in this Section, including but not limited to (1) a beneficiary designation naming someone other than MARK as beneficiary, (2) an election to waive any preretirement survivor annuity, (3) an election to waive any joint and survivor annuity, and (4) an election to designate a benefit payment option.

ARTICLE 7

DISSOLUTION OF MARRIAGE BY COURT ORDER

7.1. Division of Property Upon Dissolution

If the Parties' Marriage is dissolved by divorce, each Party will receive all separate property and liabilities belonging to that Party, including all property described in this Agreement as being the separate property of that Party.

7.2. Waiver of Rights upon Dissolution

The Parties agree to waive the following rights and claims upon the filing of a suit to dissolve the Marriage:

1. **No right to support.** The Parties agree that upon the filing of a suit to dissolve the Marriage, neither Party will seek from the other Party, nor be required to pay to the other Party, any form of temporary or final spousal support, alimony, or spousal maintenance, and the Parties waive and relinquish all such claims for all purposes. If either Party is required to pay temporary or final spousal support, alimony, or spousal maintenance to the other Party or to a third party on behalf of the other Party, the Party receiving the temporary or final spousal support, alimony, or spousal maintenance agrees to return the payment to the paying Party within forty-eight (48) hours after receiving it.

2. **No right to interim fees.** The Parties agree that upon the filing of a suit to dissolve the Marriage, neither Party will seek from the other Party, nor be required to pay to the other Party, any form of interim attorney or expert fees, and the Parties waive and relinquish all such claims for all purposes. If either Party is required to pay interim attorney or expert fees to the other Party or to a third party on behalf of the other Party, the Party receiving the interim attorney or expert fees agrees to return the payment to the paying Party within forty-eight (48) hours after receiving it.

3. **No right to reside in other party's separate property.** The Parties agree that upon the filing of a suit to dissolve the Marriage, if one Party resides in a separate-property residence owned entirely by the other Party, the nonowning Party agrees to waive any right he or she may have to reside there during the period of separation, while the suit is pending, or after the Marriage is dissolved. Within thirty (30) days after receiving a demand for possession of the residence from the owning Party, the nonowning Party further agrees to vacate the property or become a tenant at sufferance subject to an action in forcible detainer.

7.3. *Cash Payment to ALLISON Upon Divorce*

The Parties agree that MARK will pay to ALLISON, within thirty days of dissolution of the Marriage, the following amount of cash based upon the duration of marriage, as set forth below:

<u>Date Dissolution Proceeding Filed</u>	<u>Amount to ALLISON</u>
Before 1 st Anniversary of Marriage	\$0.00
After 1 st , but before 3 rd Anniversary of Marriage	\$500,000.00

After 3 rd , but before 7 th Anniversary of Marriage	\$1,000,000.00
After 7 th , but before 15 th Anniversary of Marriage	\$3,000,000.00
After 15 th Anniversary of Marriage	\$5,000,000.00

7.4. *Attorney’s Fees and Costs*

The Parties agree that each Party will be responsible for his or her own attorney fees and costs in a suit to dissolve the Marriage.

7.5. *Waiver and Indemnity*

Each Party waives, relinquishes, and disclaims any rights that he or she may have to seek a division of property other than in accordance with this Article, and further agrees to indemnify the other Party for the value of any assets or property interests that may be awarded by a court in excess of the value that would result if division were made in accordance with this Article.

**ARTICLE 8
DISSOLUTION OF MARRIAGE BY DEATH**

8.1 *Rights upon Death*

If a Party dies (“Decedent Party”) leaving the other Party (“Surviving Party”) as the Decedent Party’s surviving spouse, except for the Surviving Party’s fifty percent (50%) interest in any community property found to exist and in accordance with the Agreement, any property in which the Surviving Party is specifically named as the beneficiary, and any property the Surviving Party owns with the Decedent Party as tenants in common or with rights of survivorship, the Surviving Party waives and relinquishes all rights he or she could assert as the Decedent Party’s heir at law, survivor, or otherwise, including but not limited to the following:

1. any right in the Decedent Party’s separate property;
2. any right to act as executor or administrator of the Decedent Party’s estate unless the Decedent Party appoints the Surviving Party as the executor under the Decedent Party’s will;
3. any rights of intestate succession, including but not limited to the right to receive a distributive share of the Decedent Party’s property upon intestacy;
4. any right to take an elective share;

5. any right to a family allowance; and
6. any right to receive exempt property or any allowance in lieu of exempt property.

8.2 Acceptance of Each Party's Last Will and Testament

MARK agrees to accept the provisions of any last will and testament and codicils that may be in effect at the time of ALLISON's death in full discharge, settlement, and satisfaction of any and all right, title, and interest that he, as ALLISON's spouse, might otherwise acquire in her estate and property.

Unless designated as a named beneficiary under a written instrument, MARK waives and releases to ALLISON, her executors, administrators, or assigns, any and all rights of election given to him as the spouse of ALLISON, or through him to his heirs, to take against her last will and testament under any statutes, now or hereafter in force, in Texas or any other state or foreign nation in which ALLISON may have property at the time of her death.

If the marriage of the parties is dissolved by the death of ALLISON, MARK agrees and hereby binds his personal representatives and heirs to agree to release and convey to ALLISON's estate any interest he may then have or claim to have in the separate property of ALLISON, including any property described in this Agreement as being the separate property of ALLISON or as belonging to ALLISON's separate estate, other than any benefit conferred on MARK in this Agreement. MARK agrees to execute on request all instruments of release or conveyance that are necessary to give effect to this Agreement. ALLISON hereby binds her personal representatives and heirs to release and convey to MARK all of the interest, if any, that ALLISON or her estate may have in the then separate property of MARK and in all the property described in this Agreement as being the separate property of MARK or as belonging to MARK's separate estate unless otherwise provided for in this Agreement.

ALLISON agrees to accept the provisions of any last will and testament and codicils that may be in effect at the time of MARK's death in full discharge, settlement, and satisfaction of any and all right, title, and interest that she, as MARK's spouse, might otherwise acquire in his estate and property.

Unless designated as a named beneficiary under a written instrument, ALLISON waives and releases to MARK, his executors, administrators, or assigns, any and all rights of election given to her as the spouse of MARK, or through her to her heirs, to take against his last will and testament under any statutes, now or hereafter in force, in Texas or any other state or foreign nation in which MARK may have property at the time of his death.

If the marriage of the parties is dissolved by the death of MARK, ALLISON agrees and hereby binds her personal representatives and heirs to agree to release and convey to MARK's estate any interest she may then have or claim to have in the separate property of MARK, including any property described in this Agreement as being the separate property of MARK or as belonging to MARK's separate estate, other than any benefit conferred on ALLISON in this Agreement. ALLISON agrees to execute on request all instruments of release or conveyance that are necessary to give effect to this Agreement. MARK hereby binds his personal representatives and heirs to release and convey to ALLISON all of the interest, if any, that MARK or his estate may have in the then separate property of ALLISON and in all the property described in this Agreement as being the separate property of ALLISON or as belonging to ALLISON's separate estate unless otherwise provided for in this Agreement.

ARTICLE 9 GENERAL PROVISIONS

9.1 Applicability

To the maximum extent allowed by law, this Agreement will be valid and enforceable regardless of where the Parties are domiciled.

9.2 Governing Law

This Agreement will be governed by and interpreted under the laws of the State of Texas, regardless of any conflict-of-law rules. To the maximum extent allowed by law, the Parties waive any right to remove this case to federal court or have this case determined by a federal court. The state courts of Texas will be the exclusive judicial forum to resolve any disputes relating to this Agreement.

9.3 Entire Agreement and Amendments

This Agreement (including the attached Schedules, which are incorporated by reference) contains the entire agreement of the Parties. All understandings, discussions, and agreements previously made between the Parties, written or oral, are superseded by this Agreement, and neither Party is relying on any statement, representation, or warranty not contained in this Agreement. This Agreement and any of its provisions may not be amended, revoked, or otherwise altered except by a written agreement that is signed by both Parties.

9.4 Binding Agreement

This Agreement will apply to, be binding on, and inure to the benefit of the Parties and their respective heirs, beneficiaries, devisees, personal representatives, successors, and assigns.

9.5 Interpretation

No provision of this Agreement will be interpreted for or against any Party because that Party or that Party's legal representative drafted the provision. Headings, captions, and titles used in this Agreement are included only for convenience and reference and do not in any way define, limit, expand, or describe the actual scope or intent of this Agreement or any of its provisions.

9.6 Severability

If any provision of this Agreement is deemed invalid, illegal, or unenforceable, the provision is severable from the rest of this Agreement, and the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired. If one Party receives or retains more property than that Party would otherwise be entitled to receive or retain under this Agreement ("Excess Property") because a provision is deemed invalid, illegal, or unenforceable, the Party receiving the Excess Property will indemnify, reimburse, pay, assign, partition, and transfer the Excess Property to the other Party.

9.7 Counterparts

This Agreement may be executed in two or more counterparts, each of which will be deemed an original and all of which together will constitute one agreement.

9.8 No Waiver

A Party's consent to or waiver of a breach of a provision of this Agreement will not constitute a consent to or waiver of a breach of that provision or any other provision in this Agreement in the future, and neither Party will acquire any vested rights or be subject to any continuing obligations arising from such a breach. A Party's delay in enforcing a provision of this Agreement will not estop the Party from enforcing that provision in the future.

9.10 Execution of Documents

The Parties will cooperate fully in performing the acts and deeds and in executing, acknowledging, and delivering any instruments or documents required to accomplish the intent of this Agreement.

9.11 No Third-Party Beneficiary

This Agreement is for the sole and exclusive benefit of the Parties, and nothing in this Agreement, expressed or implied, is intended or will be construed as having been made or entered into for the benefit of any third party.

9.12 Ratification of Agreement

Within thirty (30) days after the Parties' Marriage, each Party will execute a Ratification of Premarital Agreement and Property Agreement Between Spouses ("Ratification and Property Agreement") that will be substantially similar in form and content to the Ratification and Property Agreement attached as **Exhibit 1** and incorporated by reference. The Parties agree that their failure to execute the Ratification and Property Agreement will not in any way invalidate this Agreement or affect any of its terms or provisions.

9.17 Enforcement of Agreement and Forfeiture

In the event ALLISON or MARK (or any third party acting at the request of either of them, or on behalf of either of them) initiates or prosecutes any legal action or seeks any ancillary remedy in any action seeking to invalidate any provision of this Agreement or obtain property, property rights or benefits contrary to, in excess of, or otherwise at variance with this Agreement (the "Contesting Party"), then the Contesting Party shall be liable to the other Party for all reasonable and necessary attorney's fees and costs incurred by such other Party in defending his or her rights under this Agreement. Additionally, if ALLISON initiates or prosecutes any legal action or seeks any ancillary remedy in any action seeking to invalidate any provision of this Agreement or obtain property, property rights or benefits contrary to, in excess of, or otherwise at variance with this Agreement, then ALLISON shall forfeit the cash payment otherwise payable to her under Section 7.3 herein.

ARTICLE 10
REPRESENTATIONS AND WARRANTIES

WARNING

Representations and Warranties of ALLISON GELBE

“My name is ALLISON GELBE, and I represent and warrant that:

1. “I have carefully read each and every provision of this Agreement and all schedules attached or referred to in the Agreement.
2. “I am fully informed by my attorney about the law relating to the subject matter covered in this Agreement, the Ratification and Property Agreement, and the spousal rights and liabilities of both parties upon entering into the Marriage.
3. “I am entering into this Agreement voluntarily after receiving the advice of the attorney of my choosing.
4. “I have given careful and mature thought to the making of this Agreement.
5. “I fully understand the subject matter and effect of each provision of this Agreement.
6. “I have investigated the assets and property interests and financial obligations of MARK PINKUS sufficiently to satisfy any questions that I have, and I expressly waive any right to disclosure of the assets and property interests and financial obligations of MARK PINKUS beyond the disclosures already provided.
7. “I am not relying on any fiduciary obligation owed by one party to the other party or on any duty of disclosure founded on a confidential or other relationship between the parties. Furthermore, I am not relying on any legal or accounting advice or representation of fact or law provided by MARK PINKUS or anyone acting on his behalf.
8. “I fully understand that by entering into this Agreement I will be estopped from making any claim of any kind at any time to any of the separate property or separate estate of MARK PINKUS, except as expressly provided for in this Agreement.

9. “I fully understand that by entering into this Agreement I may be adversely affecting my inheritance rights and homestead rights and that I am permanently surrendering rights to income and property and homestead rights that I otherwise would be entitled to under Texas law.
10. “I am executing this Agreement with the intent of being fully bound by all of its terms.

Representations and Warranties of MARK PINKUS

“My name is MARK PINKUS, and I represent and warrant that:

1. “I have carefully read each and every provision of this Agreement and all schedules attached or referred to in the Agreement.
2. “I am fully informed by my attorney about the law relating to the subject matter covered in this Agreement, the Ratification and Property Agreement, and the spousal rights and liabilities of both parties upon entering into the Marriage.
3. “I am entering into this Agreement voluntarily after receiving the advice of the attorney of my choosing.
4. “I have given careful and mature thought to the making of this Agreement.
5. “I fully understand the subject matter and effect of each provision of this Agreement.
6. “I have investigated the assets and property interests and financial obligations of ALLISON GELBE sufficiently to satisfy any questions that I have, and I expressly waive any right to disclosure of the assets and property interests and financial obligations of ALLISON GELBE beyond the disclosures already provided.
7. “I am not relying on any fiduciary obligation owed by one party to the other party or on any duty of disclosure founded on a confidential or other relationship between the parties. Furthermore, I am not relying on any legal or accounting advice or representation of fact or law provided by ALLISON GELBE or anyone acting on his behalf.
8. “I fully understand that by entering into this Agreement I will be estopped from making any claim of any kind at any time to any of the separate

property or separate estate of ALLISON GELBE, except as expressly provided for in this Agreement.

9. "I fully understand that by entering into this Agreement I may be adversely affecting my inheritance and homestead rights and that I am permanently surrendering rights to income, property, and homestead rights that I otherwise would be entitled to under Texas law.
10. "I am executing this Agreement with the intent of being fully bound by all of its terms."

This Agreement has been executed in duplicate original counterparts at the date and time indicated in the acknowledgments below.

Agreed to as to Form and Substance in the Entirety

By: /s/ _____
MARK PINKUS

By: /s/ _____
ALLISON GELBE

STATE OF TEXAS)

COUNTY OF DENTON)

This instrument was acknowledged before me at 10:35 A.M. on November 14, 2008 by ALLISON GELBE.

Notary Public, State of Texas

I, the notary public whose signature appears above, certify that I am not an attorney representing either party to this Agreement.

STATE OF TEXAS)

COUNTY OF DENTON)

This instrument was acknowledged before me at 10:39 A.M. on November 14, 2008 by MARK PINKUS

Notary Public, State of Texas

I, the notary public whose signature appears above, certify that I am not an attorney representing either party to this Agreement.

SCHEDULE A

To *Premarital Agreement* between **ALLISON GELBE** and **MARK PINKUS**

Property of ALLISON GELBE

1. All furniture, fixtures, fine art, appliances, jewelry, clothing, personal belongings, personal effects owned by ALLISON GELBE, in ALLISON GELBE's possession and under her control, including the following items:
 - a. The 6 carat diamond engagement ring from MARK;
 - b. Pink and Orange painting by Rothko (6'x9" x 4'x8");
 - c. The 8 "bunny" paintings by Hunt Slonem;
 - d. All floor coverings previously within ALLISON GELBE's New York apartment.
2. The 2008 black Range Rover motor vehicle.
3. 100% of the funds on deposit in all checking, savings, money market, certificate of deposit, and any other financial accounts standing in the name of ALLISON GELBE, including but not limited to the following accounts:
 - a. Bank of America checking account ending in the last four digits #2219, with an approximate balance of \$39,500.00 as of 11/14/2008;
 - b. Bank of America savings account ending in the last four digits #2466, with an approximate balance of \$108,200.00 as of 11/14/2008;
4. 100% of the funds, stocks, bonds and other assets on deposit in any investment, brokerage, money market, stock and retirement accounts standing in the name of ALLISON GELBE, including but not limited to the following accounts:
 - a. Fidelity IRA account standing in the name of ALLISON GELBE, with an approximate balance of \$62,800.00 as of 11/14/2008;
 - b. The Hachet Media Company 401k Plan standing in the name of ALLISON GELBE, with an approximate balance of \$446,922.00.

5. All life insurance policies in the name of/insuring the life of ALLISON GELBE, including all cash value.
6. All intellectual property of ALLISON GELBE.

ALLISON GELBE

SCHEDULE B

To *Premarital Agreement* between
ALLISON GELBE and **MARK PINKUS**

Property of MARK PINKUS

1. The real property known as the Pinkus Ranch, located at 5400 Hwy 455, Little Elm, Denton County, Texas 76258.
2. All furniture, fixtures, fine art, appliances, jewelry, clothing, personal belongings, personal effects owned by MARK PINKUS, in MARK PINKUS's possession and under his control, including all contents of the residence located at The Pinkus Ranch, 5400 Hwy 455, Little Elm, Denton County, Texas 76258.
3. All motor vehicles owned by MARK PINKUS (whether individually or jointly with any other person) and/or in which MARK PINKUS has an interest, directly or indirectly, together with all rights and privileges in connection with them.
4. 100% of the funds on deposit in all checking, savings, money market, certificate of deposit, and any other financial accounts standing in the name of MARK PINKUS, including but not limited to the following accounts:
 - a. Wells Fargo checking account ending in the last four digits #8741, with an approximate balance of \$1,970,701.00 as of 11/14/2008;
 - b. Bank of America checking account ending in the last four digits #2466, with an approximate balance of \$99,784.00 as of 11/14/2008;
 - c. Merrill Lynch CMA account ending in the last four digits #3139, with an approximate balance of \$3,410,381.00 as of 11/14/2008.
5. 100% of the funds, stocks, bonds and other assets on deposit in any investment, brokerage, money market, stock and retirement accounts standing in the name of MARK PINKUS, including but not limited to the following accounts:
 - a. California Capital IRA account standing in the name of MARK PINKUS, with an approximate balance of \$288,892.00 as of 11/14/2008;

- b. California Capital Wealth Management portfolio standing in the name of MARK PINKUS, with an approximate balance of \$9,638,975.00 as of 11/14/2008;
 - c. US Trust Wealth Management portfolio standing in the name of MARK PINKUS, with an approximate balance of \$4,722,603.00 as of 11/14/2008;
 - d. Goldman Sachs account standing in the name of MARK PINKUS, with an approximate balance of \$2,100,260.00 as of 11/14/2008;
6. All stocks and business interests held in MARK PINKUS's name and/or in which MARK PINKUS has an interest, directly or indirectly, together with all rights and privileges in connection with them, and including but not limited to the following:
- a. 100% of MARK PINKUS' interest in the business known as TheFacebook, Inc. a Delaware Corporation - 86,500 shares of stock.
 - b. 100% of MARK PINKUS' interest in the business known as Twitter, Inc. a Delaware Corporation - 44,900 shares of stock.
 - c. 100% of MARK PINKUS' member interest in 125 Pacific Heights, LLC.
 - d. 100% of MARK PINKUS' interest in the sole proprietorship named Xynga.
7. All life insurance policies in the name of/insuring the life of MARK PINKUS, including all cash value.
8. All intellectual property of MARK PINKUS.

MARK PINKUS

SCHEDULE C

To *Premarital Agreement* between
ALLISON GELBE and **MARK PINKUS**

Liabilities of ALLISON GELBE

1. All credit card liabilities standing in the name of **ALLISON GELBE**.
2. All other debts, charges, taxes, liabilities, and other obligations in the name of **ALLISON GELBE**.

ALLISON GELBE

SCHEDULE D

To *Premarital Agreement* between
ALLISON GELBE and **MARK PINKUS**

Liabilities of MARK PINKUS

1. All credit card liabilities standing in the name of MARK PINKUS.
2. The outstanding balance on the mortgage payable to Chase Mortgage and secured by the Pinkus Ranch, in the amount of \$960,052 as of 11/14/2008.
3. All other debts, charges, taxes, liabilities, and other obligations in the name of MARK PINKUS, including but not limited to the following:
 - a. Bank of America personal line of credit (available credit of \$800,000.00) with an approximate balance of \$160,052.00 as of 11/14/2008.

MARK PINKUS