

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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**CAROL LIPSON,**

Plaintiff,

v.

**METRO CORP. HOLDINGS, INC.;**  
**THE ESTATE OF D. HERBERT LIPSON;**  
**DAVID H. LIPSON, as co-Executor of the**  
**Estate of D. Herbert Lipson;**  
**SHERRY LITWER, as co-Executor of the**  
**Estate of D. Herbert Lipson;**  
**DEBRA CLAREMON, as co-Executor of the**  
**Estate of D. Herbert Lipson; and**  
**BARTON J. WINOKUR, as co-Executor of**  
**the Estate of D. Herbert Lipson,**

Defendants.

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Civil Action No: \_\_\_\_\_

**NOTICE OF REMOVAL**

ARCHER & GREINER  
A Professional Corporation  
One Centennial Square  
P.O. Box 3000  
Haddonfield, NJ 08033-0968  
(856) 795-2121

Attorneys for Defendant,  
Metro Corp. Holdings, Inc.

By: KERRI E. CHEWNING, ESQUIRE

**TO:** The United States District Court, District of New Jersey

Pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, Defendant Metro Corp. Holdings, Inc. (“Metro Corp.”) respectfully submits this Notice of Removal and states to the Court as follows:

1. Plaintiff Carol Lipson (“Plaintiff” or “Ms. Lipson”) commenced this action by filing a Complaint on or about October 4, 2018 in the Superior Court of New Jersey, Atlantic County. The Complaint is captioned *Carol Lipson v. Metro Corp. Holdings, Inc., et al.*, and was assigned Case Number ATL-L-002471-18. Attached as Exhibit A is a true and correct copy of the Complaint.

2. The above-described state court action is a civil action that is properly removable to this Court by Metro Corp. pursuant to 28 U.S.C. § 1441(b).

**I. The Allegations of the Complaint**

**A. Plaintiff’s Allegations Against Metro Corp. Are Based On Purported Breaches Of The Death Benefit Agreement**

3. Plaintiff married D. Herbert Lipson (“Mr. Lipson”) in 1997. Compl. ¶¶ 2, 21.

4. Around the time of the marriage in 1997, Mr. Lipson entered into a contract with Metro Corp. that provides, in certain circumstances, for Metro Corp. to make certain payments to Plaintiff upon Mr. Lipson’s death. *See* Compl. ¶¶ 23-28. The Complaint refers to this agreement as the “Death Benefit Agreement” or “DBA.” *Id.* ¶ 23.

5. Mr. Lipson died in December 2017. Compl. ¶ 12.

6. Plaintiff alleges that Metro Corp. has breached the DBA by failing to make payments to her following Mr. Lipson’s death. Compl. ¶¶ 33-38. Although Plaintiff is not a party to the DBA between Mr. Lipson and Metro Corp., she asserts that she can sue for breach of that agreement as a third-party beneficiary. Compl. ¶ 55.

7. Based on those allegations, Plaintiff has asserted two claims against Metro Corp.: (i) Count I for breach of the DBA; and (ii) Count II, in the alternative, for unjust enrichment. Compl. ¶¶ 54-62.

8. Metro Corp. is the only defendant named in either of those counts.

9. The other defendants named in the Complaint are not parties to the DBA.

**B. Plaintiff's Allegations Against The Remaining Defendants Are Based On Purported Breaches Of The Prenuptial Agreement**

10. Prior to their marriage, Plaintiff and Mr. Lipson entered into a Prenuptial Agreement. Compl. ¶ 42.

11. In 2008, Plaintiff and Mr. Lipson amended the Prenuptial Agreement via a document that the Complaint refers to as the "Modification." Compl. ¶ 46.

12. Plaintiff alleges that the Prenuptial Agreement, as amended, required Mr. Lipson to name her as the beneficiary of his salary continuation plan with Metro Corp. and, "if such plan is not in effect at his death . . . , [Mr. Lipson's] estate shall pay \$600,000 to [Plaintiff.]" Compl. ¶ 51.

13. According to Plaintiff, there was no salary continuation plan in effect at Mr. Lipson's death, and thus his Estate owes her \$600,000 pursuant to the terms of the Prenuptial Agreement. Compl. ¶ 52.

14. Based on those allegations, Plaintiff brings two counts against only the Estate of D. Herbert Lipson ("Estate"): (i) Count III for breach of the Prenuptial Agreement, and (ii) Count IV, in the alternative, for unjust enrichment. Compl. ¶¶ 63-71.

15. Metro Corp. is not a party to the Prenuptial Agreement and is not named as a defendant in either Counts III or IV.

16. Plaintiff also alleges that the terms of Mr. Lipson's will require the Executors of his Estate to fulfill the terms of his Prenuptial Agreement with Carol. Compl. ¶ 41.

17. According to Plaintiff, the Executors' failure to cause the Estate to pay her \$600,000 based on the terms of the Prenuptial Agreement amounts to a breach of fiduciary duty by the Executors. Compl. ¶¶ 53, 74.

18. Based on those allegations, Plaintiff asserts one claim solely against the Executors (Count V) for breach of fiduciary duty. Compl. ¶¶ 72-75.

19. Once again, however, this claim has nothing to do with Metro Corp. Specifically, Metro Corp. is not an Executor of Mr. Lipson's Estate and is not named as a defendant on the claim for breach of fiduciary duty.

## **II. FEDERAL JURISDICTION PURSUANT TO 28 U.S.C. §§ 1332 AND 1441**

### **A. There Is Diversity Jurisdiction Over Plaintiff's Claims Against Metro Corp.**

20. The diversity jurisdiction statute provides that "the district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000 . . . and is between citizens of different states." 28 U.S.C. § 1332(a)(1).

21. While 28 U.S.C. § 1332 allows a plaintiff to invoke a federal court's diversity jurisdiction, 28 U.S.C. § 1441 provides a defendant with the same opportunity. In this case, the requirements of Sections 1332 and 1441 are met with respect to Plaintiff's claims against Metro Corp.

#### **1. Diversity of Citizenship**

22. There is complete diversity between Plaintiff and Metro Corp.

23. Plaintiff is an individual who permanently resides in Margate City, New Jersey. Compl. ¶ 9. Accordingly, for the purposes of Section 1332, Plaintiff is a citizen of New Jersey.

24. Defendant Metro Corp. is a corporation organized under the laws of the Commonwealth of Pennsylvania that has its principal place of business in Philadelphia, Pennsylvania. Compl. ¶ 10. Accordingly, for the purposes of Section 1332, Metro Corp. is a citizen of Pennsylvania.

25. Because Plaintiff is a citizen of New Jersey and Metro Corp. is a citizen of Pennsylvania, they are diverse.

## **2. Amount In Controversy**

26. If a complaint alleges damages in excess of \$75,000, that amount is controlling for the purposes of the amount in controversy requirement unless it appears to a legal certainty that the plaintiff cannot recover more than \$75,000. *See St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 289 (1938).

27. Here, Plaintiff alleges that Metro Corp.'s purported breach of the DBA accelerates all amounts due to her under it and, therefore, she demands a judgment for \$1 million, plus interest. Compl. ¶ 57.

28. Moreover, Plaintiff alleges that Metro Corp. has failed to pay her \$16,666.67 each month since January 2018. Compl. ¶¶ 27, 33-34. Thus, the ten alleged missed payments to date total over \$166,000. Accordingly, even if the Court considers only the monthly payments that allegedly have not been made to date, the amount in controversy exceeds \$75,000.

29. Because the amount Plaintiff seeks from Metro Corp. far exceeds \$75,000, the amount in controversy requirement is easily met here.

**B. The Citizenship Of The Other Defendants Should Be Disregarded Because The Claims Against Them Have Been Fraudulently Misjoined**

30. To be sure, like the Plaintiff, the Estate and its Executors are deemed to be citizens of New Jersey because Mr. Lipson was a citizen of New Jersey at the time of his death. *See* Compl. ¶ 11; 28 U.S.C. § 1332(c)(2).

31. But the citizenship of the other defendants should be disregarded for diversity purposes because the claims against them have been fraudulently misjoined with the claims against Metro Corp. *See In re Fosamax Prods. Liab. Litig.*, Civil No. 11–3045, 2012 WL 1118780, at \*6 (D.N.J. Apr. 3, 2012) (“Having determined that Plaintiffs’ claims are fraudulently misjoined, the Court may disregard, for purposes of jurisdiction, the citizenship of fraudulently joined parties.”). In addition, if the Court retains jurisdiction over the claims against Metro Corp., then the claims against the fraudulently misjoined defendants should be severed under Rule 21 and remanded to state court. *See id.* (“Upon properly exercising jurisdiction and pursuant to Fed. R. Civ. P. 21, . . . the non-diverse Plaintiffs’ claims will be remanded[.]”).

32. A defendant has been fraudulently misjoined if the factual basis for the claims against it do not meet Rule 20’s test for joinder of parties. *See, e.g., Wright, Miller, et al.*, 14C Fed. Prac. & Proc. § 3723.1 (4th ed.) (fraudulent misjoinder occurs “when the plaintiff joins nondiverse co-parties for whom a factual nexus among the claims asserted by or against those parties is not sufficient to satisfy Federal Civil Rule 20”); *In re Fosamax*, 2012 WL 1118780, at \*3.

**1. The Claims Against Metro Corp. Do Not Arise Out Of The Same Transaction Or Occurrence As The Claims Against The Other Defendants**

33. Under Rule 20, a plaintiff may join multiple defendants in one action only if the following requirements are met: (i) “any right to relief is asserted against them jointly, severally or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences”; and (ii) “any question of law or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 20(a)(2). These requirements are not met here for two independent reasons.<sup>1</sup>

34. *First*, the relief Plaintiff seeks from Metro Corp. is not joint, several or in the alternative to the relief it seeks against the other Defendants. Specifically, Plaintiff seeks \$1 million from Metro Corp. for alleged breaches of the DBA. Compl. ¶¶ 57, 60. Plaintiff does not and cannot allege that any of the other defendants is jointly or severally liable for that \$1 million. On the other hand, Plaintiff seeks \$600,000 from the Estate and its Executors for alleged breaches of the Prenuptial Agreement. Compl. ¶¶ 52-53, 65, 69. Once again, Plaintiff does not allege that Metro Corp. is joint or severally liable for any of that amount.

35. Nor does Plaintiff allege that its claims against the Estate and its Executors are pleaded in the alternative to its claims against Metro Corp. Rather Plaintiff alleges she is entitled to both the \$1 million from Metro Corp. and the \$600,000 from the Estate. Accordingly, the threshold requirement that Plaintiff seek joint, several or alternative relief is not met here.

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<sup>1</sup> Some courts applying the fraudulent misjoinder doctrine look to state joinder rules, rather than Federal Rule 20. The Court need not decide that issue because New Jersey’s joinder rules are “virtually identical” to Rule 20. *In re Paulsboro Derailment Cases*, Civil No. 13–5583, 2014 WL 197818, at \*5 n.3 (D.N.J. Jan. 13, 2014); *see also* N.J. Rule 4:29-1(a).

36. *Second*, Plaintiff's claims against Metro Corp. do not arise out of the same transactions or occurrences as her claims against the other defendants.

37. Plaintiff's claims against Metro Corp. arise entirely out of the DBA, a contract entered into between Mr. Lipson and Metro Corp. in 1997.

38. In contrast, Plaintiff's claims against the other defendants arise entirely out of her purported rights under the 2008 Modification to the Prenuptial Agreement between Plaintiff and Mr. Lipson. As discussed above, Metro Corp. is not a party to either the Prenuptial Agreement or the Modification thereto. Thus, the claims arise out of different contracts between different parties that were entered into 11 years apart.

## **2. Plaintiff's Misjoinder Is Egregious**

39. Some courts applying the fraudulent misjoinder doctrine have also required that the misjoinder be "egregious." *In re Fosamax*, 2012 WL 1118780, at \*5.

40. Although Metro Corp. respectfully submits that the doctrine does not require any additional element, the egregiousness standard is met here.

41. To begin with, as Metro Corp. will explain in its forthcoming motion to dismiss, Metro Corp. is not even subject to personal jurisdiction in New Jersey with respect to Plaintiff's claims for breach of the DBA. That contract is between a Philadelphia-headquartered business and one of its officers who worked out of Philadelphia. In addition, all parties signed the DBA in Philadelphia. Accordingly, any lawsuit related to the DBA must be brought in Pennsylvania, not New Jersey.

42. Plaintiff's complaint is deliberately vague on this point, alleging only generally that "each party is a resident of New Jersey and/or otherwise has sufficient minimum contacts with New Jersey to render the exercise of jurisdiction by this Court consistent with traditional



notions of fair plan and substantial justice.” Compl. ¶ 19. Plaintiff admits, however, that Metro Corp. is a Pennsylvania corporation that is headquartered in Philadelphia (Compl. ¶ 11), and does not identify any event related to the DBA that occurred in New Jersey. Thus, Plaintiff’s vague pleading is deliberately designed to join together defendants that ought not to be joined together in the first place. *See In re Fosamax*, 2012 WL 1118780, at \*5 (explaining that the vagueness of plaintiff’s allegations support finding of egregiousness).

43. Moreover, Plaintiff does not even purport to allege that her claims against Metro Corp. arise out the same facts as her claims against the other defendants nor even allege any connection whatsoever between them. Indeed, as discussed above, the relief Plaintiff seeks from Metro Corp. is entirely distinct from the relief she seeks from the other defendants.

### **3. All Procedural Requirements Have Been Satisfied**

#### **a. The Notice of Removal Is Timely**

44. The 30-day time period for removal does not begin to run until the defendant is properly served or until that defendant waives service. *See Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999).

45. Here, Plaintiff filed her state court complaint on October 4 and purported to serve it on Metro Corp. the same day.

46. Because Metro Corp. is filing this Notice of Removal within 30 days of the date Plaintiff filed her state court Complaint, this Notice of Removal is timely.

#### **b. The Other Procedural Requirements Have Been Met**

47. Because the Estate and its Executors have been fraudulently misjoined, their consent to removal is not necessary. *See Wright, Miller, et al.*, 14C Fed. Prac. & Proc. § 3723.1 (4th ed.) (“[N]either fraudulently-joined parties nor fraudulently misjoined parties need join in a

removal notice[.]”). Nevertheless, the Estate and the Executors do consent to removal. *See* Exhibit B.

48. The United States District Court for the District of New Jersey is the district embracing the place where this action is pending. Therefore, the civil action described herein may be removed to this Court pursuant to 28 U.S.C. § 1441.

49. Pursuant to 28 U.S.C. § 1446(d), a Notice of Filing of Removal of Action to Federal Court will be filed with New Jersey Superior Court, Atlantic County, as soon as this Notice of Removal has been filed in this Court.

### **CONCLUSION**

WHEREFORE, Defendant Metro Corp. Holdings, Inc. respectfully requests that the above-described action pending against it in the Superior Court of New Jersey, Atlantic County, be removed therefrom to this Court and proceed in this Court as a properly removed action.

Dated: November 2 , 2018

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*Counsel for Metro Corp. Holdings, Inc.*

# EXHIBIT A

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*Attorneys for Plaintiff*

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|                                  |   |                                 |
|----------------------------------|---|---------------------------------|
| CAROL LIPSON,                    | : | SUPERIOR COURT OF NEW           |
|                                  | : | JERSEY, LAW DIVISION            |
| Plaintiff,                       | : |                                 |
|                                  | : | ATLANTIC COUNTY                 |
| v.                               | : |                                 |
|                                  | : | DOCKET NO. C-_____              |
| METRO CORP. HOLDINGS, INC.;      | : | CIVIL ACTION                    |
| The ESTATE OF D. HERBERT         | : |                                 |
| LIPSON;                          | : | VERIFIED COMPLAINT,             |
| DAVID H. LIPSON, JR., as         | : | DESIGNATION OF TRIAL            |
| Co-Executor of the ESTATE OF D.  | : | COUNSEL, AND CERTIFICATIONS     |
| HERBERT LIPSON, Deceased;        | : | UNDER RULES 1:38-7(b) AND 4:5-1 |
| SHERRY LITWER, as Co-Executor of | : |                                 |
| the ESTATE OF D. HERBERT         | : |                                 |
| LIPSON, Deceased;                | : |                                 |
| DEBRA CLAREMON, as Co-Executor   | : |                                 |
| of the ESTATE OF D. HERBERT      | : |                                 |

|                                 |   |
|---------------------------------|---|
| LIPSON, Deceased; and           | : |
| BARTON J. WINOKUR, as           | : |
| Co-Executor of the ESTATE OF D. | : |
| HERBERT LIPSON, Deceased,       | : |
|                                 | : |
| Defendants.                     | : |

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Plaintiff Carol Lipson, through her attorneys, brings this Complaint against defendants Metro Corp. Holdings, Inc. ("Metro Corp"), the Estate of D. Herbert Lipson (the "Estate"), David H. Lipson, Jr., as Co-Executor of the Estate of D. Herbert Lipson, Sherry Litwer, as Co-Executor of the Estate of D. Herbert Lipson, Debra Claremon, as Co-Executor of the Estate of D. Herbert Lipson, and Barton J. Winokur, as Co-Executor of the Estate of D. Herbert Lipson, and, in support thereof, avers as follows:

**I. PRELIMINARY STATEMENT**

1. Carol Lipson ("Carol"), the widow of D. Herbert Lipson ("Herb"), seeks to recover benefits that Herb expressly provided, in writing, for Carol to receive, but which are being wrongfully withheld by Herb's Estate and his business, Metro Corp.
2. Herb and Carol were married for 20 years.
3. During his lifetime, Herb executed several instruments to ensure that, in the event of his death, Carol would be cared for financially, in the manner stated in these written instruments. Carol is either a direct beneficiary or an express, intended, third-party beneficiary under each of these instruments.

4. Pursuant to a Death Benefit Agreement between Herb and Metro Corp, Metro Corp agreed to pay to Carol, *inter alia*, \$1 million upon Herb's death, payable in 60 equal consecutive monthly installments of \$16,667.00.

5. Metro Corp—which is now controlled by Herb's adult children from a prior marriage—has breached and anticipatorily repudiated its contractual obligations, thereby accelerating its obligations and making the entire amount immediately due and payable.

6. Pursuant to a Prenuptial Agreement between Herb and Carol, Herb provided that his Estate would pay to Carol, *inter alia*, \$600,000 upon his death.

7. Herb's will requires in writing that his Estate perform these obligations to Carol under the Prenuptial Agreement.

8. The Co-Executors of Herb's Estate—the majority of whom are the same children who control Metro Corp—have refused to pay Carol under the Prenuptial Agreement, in material breach thereof.

## II. PARTIES

9. Carol Lipson is an adult individual residing at 112 South Pembroke Avenue, Margate City, New Jersey 08402.

10. Metro Corp is a Pennsylvania corporation with a principal place of business at 601 Walnut Street, Suite 200, Philadelphia, PA 19106.

11. Before his death, Herb resided at 112 South Pembroke Avenue, Margate City, New Jersey 08402.

12. Herb died on December 25, 2017. An estate has been raised, and is being probated in Atlantic County, New Jersey, at Docket No. 122501.

13. This action is brought against Herb's Estate and the Co-Executors of his Estate, David Lipson, Sherry Litwer, Debra Claremon, and Barton Winikur.

14. David Lipson is an adult individual residing at 1110 Beech Road, Rosemont, Pennsylvania 19010. David Lipson is Herb's son.

15. Sherry Litwer is an adult individual residing at 190 Presidential Boulevard #705, Bala Cynwyd, Pennsylvania 19004. Sherry Litwer is Herb's daughter.

16. Debra Claremon is an adult individual residing at 1508 Aidenn Lair Road, Maple Glen, Pennsylvania 19002. Debra Claremon is Herb's daughter.

17. Barton Winokur is an attorney at Dechert LLP, with a principal place of business at Cira Centre, 2929 Arch Street, Philadelphia, Pennsylvania 19104.

### **III. JURISDICTION AND VENUE**

18. This Court has subject matter jurisdiction over this action under Article VI, Section III, Paragraph 2 of the New Jersey Constitution.

19. This Court has personal jurisdiction over all of the parties, as each party is a resident of New Jersey and/or otherwise has sufficient minimum contacts with New Jersey to render the exercise of jurisdiction by this Court consistent with traditional notions of fair play and substantial justice. The Estate is being administered in Atlantic County.

20. Venue is appropriate in this Court under New Jersey Court Rules 4:3-1(a)(4) and 4:3-2(a).

#### IV. FACTUAL BACKGROUND

##### A. Herbert Lipson Provided for His Wife's Support in the Event of His Death

21. Herb and Carol were married for 20 years before his death.

22. During his lifetime, Herb executed several instruments (discussed in greater detail below) to provide financial support to Carol if he predeceased her: a Death Benefit Agreement, a Prenuptial Agreement (as modified), and a Will, as amended by a Codicil.

##### B. Metro Corp Has Anticipatorily Repudiated and Breached Its Obligations under the Death Benefit Agreement

23. Herb and Metro Corp entered into a Death Benefit Agreement (the "DBA") dated June 22, 1997. A true and correct copy of the DBA is attached as Exhibit A.

24. Paragraph 1 of the DBA provides for a death benefit (the "Death Benefit") to be paid to Carol:

**Entitlement to Death Benefit.** In the event of the death of Employee [i.e., Herb] while Employee is employed by Corporation [i.e., Metro Corp], (a) if Employee is survived by Carol Selden [Lipson] ("Carol") or by certain descendants of Employee, then Corporation shall pay a death benefit to Carol (or such descendants) in the amount set forth in Section 2 in the manner and under the conditions set forth in Section 3(a) ("Primary Death Benefit") . . . . For purposes of this Agreement, Employee shall be deemed to be employed by Corporation if he is performing services for Corporation for which he receives any compensation, without regard to the extent of those services or



to the amount of that compensation, or if he is not actively performing services for Corporation due to disability.

25. Paragraph 2 of the DBA provides, in pertinent part:

**Amount of Death Benefits.** The total amount of the Primary Death Benefit shall be One Million Dollars (\$1,000,000).

26. Paragraph 3(a) delineates how the Death Benefit is to be paid to Carol:

**Primary Death Benefit.** The Primary Death Benefit shall be payable to Carol only if Carol survives Employee and either (i) had never been married to Employee at the time of Employee's death; or (ii) had been married to Employee and was not divorced from Employee at the time of his death. If the above requirements are satisfied, the Primary Death Benefit shall be paid to Carol in sixty (60) consecutive equal monthly installments, without interest, commencing on the first day of the calendar month immediately following the month of Employee's death, and continuing on the first day of each calendar month thereafter until fully paid.

27. Paragraph 3(a) further provides that each monthly installment would total \$16,666.67.

28. Paragraph 3(a) of the DBA also provides for Metro Corp to pay for Carol's health insurance: "In addition, so long as the Primary Death Benefit is payable to Carol pursuant to this Section 3(a), Corporation shall, at its sole expense, provide Carol with health insurance coverage to the same extent as is provided to Corporation's executive personnel from time to time."

29. Paragraph 1(b) of the DBA also provides for a separate death benefit to be paid to Irene Mueller, Herb's long-time assistant.

30. That death benefit totals \$25,000, payable in four quarterly installments of \$6,250. *See* DBA, ¶¶ 2, 3(b). On information and belief, Metro Corp has paid or is paying on that obligation to Mueller.

31. Further, Paragraph 8 of the DBA provides that “[t]his Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no modification shall be made hereto except in writing signed by each of the parties.”

32. Herb was still employed by Metro Corp when he died on December 25, 2017, and the prerequisites to payment under Paragraph 3(a) have been satisfied.

33. Metro Corp’s obligation to commence paying the Death Benefit to Carol commenced on January 1, 2018, the first day of the next calendar month.

34. Metro Corp failed to do so and is therefore in breach of the DBA.

35. Metro Corp anticipatorily repudiated the obligation to pay the Death Benefit, thereby accelerating the obligation, and has failed to pay to Carol any portion of the Death Benefit, despite demand therefor.

36. In addition, Metro Corp has failed to provide health insurance coverage to Carol, as required under Paragraph 3(a) of the DBA, and is therefore in breach of the DBA.

37. In fact, Metro Corp has not paid anything towards its obligation to provide Carol with health insurance coverage.

38. As a result of Metro Corp’s failure to honor this obligation, Carol paid for her own COBRA costs in January 2018, totaling \$578, and paid for her own

Medicare premiums from February 2018 through and including June 2018, at a rate of \$636.28 per month. Carol's Medicare costs are ongoing.

C. **The Estate Has Breached Its Obligations under the Prenuptial Agreement and Herb's Will**

1. ***The Estate Is Obligated to Effectuate the Terms of Herb's Will and His Prenuptial Agreement with Carol***

39. Pursuant to the terms of Herb's Will and Codicil, true and correct copies of which are attached as Exhibit B, Barton Winokur and Herb's three children, David Lipson, Sherry Litwer, and Debra Claremon, are named Co-Executors of his Estate (collectively, the "Co-Executors"). See Will at Paragraph XIII.

40. The Codicil delineates how the Co-Executors shall conduct the Estate's affairs:

BARTON J. WINOKUR, or his successor, shall have the sole authority to vote my shares of Metro Corp. and make any other decisions in respect of the Metro Corp. shares in accordance with my will. ***Except as just provided, my executors shall act by majority vote. In the event a dispute arises and there is no agreement by a majority of them, the decision of BARTON J. WINOKUR, or his successor, shall prevail[.]***

Codicil (emphasis added).

41. Paragraph V of the Will directs the Co-Executors "to perform any and all obligations not satisfied by provisions outside my will to which I or my estate is legally bound pursuant to my pre-nuptial agreement with my wife Carol, which agreement was amended by us on October 7, 2008."

42. Carol and Herb entered into a Prenuptial Agreement dated June 17, 1997. A true and correct copy of the Prenuptial Agreement is attached as Exhibit C.

43. Paragraph 2.1 of the Prenuptial Agreement provides that the terms thereof “shall be implemented upon . . . one of the parties’ death . . . .”

44. Further, Paragraph 11.3 of the Prenuptial Agreement provides that the Prenuptial Agreement “cannot be rescinded, revoked or modified without the parties’ consent in writing.”

45. Paragraph 11.8 provides, in part, that the Prenuptial Agreement “contains the entire understanding of the parties, and there are no representations, warranties, promises, or undertakings, oral or otherwise, other than those expressly set forth in this Agreement.”

46. During their marriage, Herb and Carol executed a “Modification of Pre-Nuptial Agreement” (the “Modification”), which amended the testamentary provisions of the Prenuptial Agreement in favor of Carol. A true and correct copy of the Modification is attached as Exhibit D.

47. Paragraph 5.1 of the Modification requires Herb’s Estate to provide certain benefits to Carol upon his death if:

(a) she survives him, (b) they are married to each other at the time of his death, (c) a Notice as defined in Paragraph 2.1 of this Agreement has not been served by her upon him, and (d) if a Notice as defined in Paragraph 2.1 of this Agreement has been served by him upon her, it has been served within 9 months of his death[.]

48. Each of the requirements of Paragraph 5.1(a)-(d) of the Modification has been satisfied.

49. Further, Paragraph 5.2 of the Modification conditions performance by the Estate under Paragraph 5.1 on performance by Carol of certain obligations:

Carol shall within 90 days after Herbert's death transfer her entire interest in the parties' residence at 112 South Pembroke Avenue, Margate City, New Jersey (or any substitute residence purchased hereafter) to the Trust [i.e., the Revocable Trust of D. Herbert Lipson<sup>1</sup>], and the Trust shall assume any mortgage and liens on the residence outstanding at Herbert's death. Herbert's estate shall pay any and all gift taxes and real estate transfer taxes attributable to Carol's transfer of the residence to the Trust. If Carol does not transfer her entire interest in the residence to the Trust within 90 days after Herbert's death, then Herbert's estate shall have no obligations under Paragraph 5.1 (and Carol will remain bound by Paragraph 7.1).

50. Carol has performed her obligations under Paragraph 5.2 of the Modification and otherwise.

**2. The Estate Has Breached Its Obligations to Carol Respecting Herb's Salary Continuation Plan**

51. Paragraph 5.1.5 of the Modification provides for Carol to be the beneficiary of Herb's salary continuation plan with Metro Corp. That Paragraph provides, in pertinent part:

Herbert shall designate Carol as the beneficiary of his benefits under MetroCorp. Inc.'s salary continuation plan; ***provided that if such plan is not in effect at his death*** (or if the benefits payable thereunder are less than the current benefits), ***Herbert's estate shall pay \$600,000 to Carol if such plan is not in effect at his death . . . .***

(Emphasis added.)

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<sup>1</sup> A true and correct copy of the Amendment and Restatement of Revocable Agreement of Trust of D. Herbert Lipson is attached as Exhibit E.

52. At the time of Herb's death, he did not have a salary continuation plan in effect with Metro Corp. Under Paragraph 5.1.5 of the Modification, the Estate is therefore required to pay \$600,000 to Carol.

53. Despite demand for payment, however, the Estate, by its Co-Executors, has refused to pay Carol under Paragraph 5.1.5, thereby materially breaching its obligations under the Prenuptial Agreement and Herb's Will and Codicil.

**COUNT I**  
**BREACH OF CONTRACT (AGAINST METRO CORP)**

54. Plaintiff incorporates by reference all prior paragraphs as if fully set forth herein.

55. Carol is an express, intended, third-party beneficiary under the DBA.

56. By failing to pay to Carol all amounts due and owing under the DBA, including the Death Benefit and health insurance coverage, despite demand therefor, Metro Corp has materially breached its obligations under the DBA. Further Metro Corp has anticipatorily repudiated its obligations under the DBA.

57. Metro Corp's breach and anticipatory repudiation accelerates its obligation to pay to Carol the entire Death Benefit.

58. Carol has incurred, and will continue to incur, damages as a direct and proximate result of Metro Corp's material breach of the DBA.

WHEREFORE, plaintiff Carol Lipson demands judgment in her favor and against Metro Corp, and requests that the Court enter an order accelerating payment of the Death Benefit and awarding: (1) compensatory damages, including direct and/or consequential damages, in an amount to be determined at trial;

(2) prejudgment interest; and (3) such other and further relief as the Court may deem equitable, just, and proper, including the award of costs and expenses incurred by plaintiff in this action.

**COUNT II**  
**(IN THE ALTERNATIVE)**  
**UNJUST ENRICHMENT (AGAINST METRO CORP)**

59. Plaintiff incorporates by reference all prior paragraphs as if fully set forth herein.

60. Herb entered into the DBA and rendered services to Metro Corp with the expectation that, following his death, Metro Corp would compensate Carol for such services.

61. Metro Corp accepted these services but has refused to compensate Carol.

62. Metro Corp has been unjustly enriched at Carol's expense.

WHEREFORE, plaintiff Carol Lipson demands judgment in her favor and against Metro Corp, and requests that the Court enter an order awarding:

(1) compensatory damages, including direct and/or consequential damages, in an amount to be determined at trial; (2) prejudgment interest; and (3) such other and further relief as the Court may deem equitable, just, and proper, including the award of costs and expenses incurred by plaintiff in this action.

**COUNT III**  
**BREACH OF CONTRACT (AGAINST THE ESTATE)**

63. Plaintiff incorporates by reference all prior paragraphs as if fully set forth herein.

64. Carol is an express, intended, third-party beneficiary under Paragraph V of Herb's Will.

65. The Prenuptial Agreement, as modified by the Modification, is a valid contract that requires the Estate, as Herb's successor, to pay to Carol \$600,000 since no salary continuation plan between Herb and Metro Corp was in place at the time of Herb's death.

66. By failing to satisfy this obligation, despite demand therefor, the Estate has materially breached the Prenuptial Agreement.

67. Carol has incurred, and will continue to incur, damages as a direct and proximate result of the Estate's material breach of the Prenuptial Agreement.

WHEREFORE, plaintiff Carol Lipson demands judgment in her favor and against the Estate, and requests that the Court enter an order awarding compensatory damages, including direct and/or consequential damages, in an amount to be determined at trial, prejudgment interest, and such other and further relief as the Court may deem equitable, just, and proper, including the award of costs and expenses incurred by plaintiff in this action.



**COUNT IV**  
**(IN THE ALTERNATIVE)**  
**UNJUST ENRICHMENT (AGAINST THE ESTATE)**

68. Plaintiff incorporates by reference all prior paragraphs as if fully set forth herein.

69. Carol conferred a benefit upon Herb by entering into the Prenuptial Agreement, as modified by the Modification, and expected to receive compensation as specified therein.

70. Herb accepted the benefit Carol conferred, but his Estate, as his successor, has failed to compensate Carol.

71. The Estate has been unjustly enriched at Carol's expense.

WHEREFORE, plaintiff Carol Lipson demands judgment in her favor and against the Estate, and requests that the Court enter an order awarding:

(1) compensatory damages, including direct and/or consequential damages, in an amount to be determined at trial; (2) prejudgment interest; and (3) such other and further relief as the Court may deem equitable, just, and proper, including the award of costs and expenses incurred by plaintiff in this action.

**COUNT V**  
**BREACH OF FIDUCIARY DUTY (AGAINST THE CO-EXECUTORS)**

72. Plaintiff incorporates by reference all prior paragraphs as if fully set forth herein.

73. Carol is a beneficiary under Herb's Will. As such, she is owed fiduciary duties, including the duty of loyalty, by the Co-Executors.

74. In doing the things herein alleged, the Co-Executors have breached their fiduciary duties to Carol.

75. Carol has incurred, and will continue to incur, damages as a direct and proximate result of the Co-Executors' breaches of their fiduciary duties.

WHEREFORE, plaintiff Carol Lipson demands judgment in her favor and against the Co-Executors, and requests that the Court enter an order:

(1) compelling the Co-Executors to distribute to Carol property of the Estate as to which she is a beneficiary under Herb's Will, and (2) awarding compensatory damages, including direct and/or consequential damages, and punitive damages, in an amount to be determined at trial, prejudgment interest, and such other and further relief as the Court may deem equitable, just, and proper, including the award of costs and expenses incurred by plaintiff in this action.

#### **DESIGNATION OF TRIAL COUNSEL**

Pursuant to New Jersey Court Rule 4:25-4, plaintiff hereby designates David L. Braverman, Esq. as trial counsel in this matter.

#### **CERTIFICATIONS PURSUANT TO NEW JERSEY COURT RULE 4:5-1**

Undersigned counsel hereby certifies, pursuant to New Jersey Court Rule 4:5-1(b)(2), that to the best of counsel's knowledge and belief, (i) the matter in controversy is not the subject of any other existing or contemplated action or

arbitration proceeding and (ii) there are no known non-parties subject to joinder under New Jersey Court Rules 4:28 or 4:29-1(b).

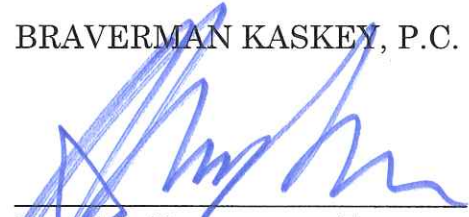
Undersigned counsel hereby certifies the following, pursuant to New Jersey Court Rule 4:5-1(c): I hereby certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with New Jersey Court Rule 1:38-7(b).

Respectfully submitted,

DATED: October 3, 2018

BRAVERMAN KASKEY, P.C.

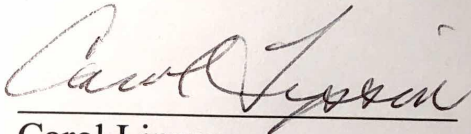
By:

  
David L. Braverman, Esq.  
*Attorneys for Plaintiff*

### VERIFICATION

I, Carol Lipson, have read the allegations contained in this Complaint, and they are true based upon my personal knowledge, except as to those alleged upon information and belief. As to the latter allegations, I believe them to be true based on information available to me.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
Carol Lipson

Dated: October 3, 2018

# EXHIBIT A

DEATH BENEFIT AGREEMENT

THIS DEATH BENEFIT AGREEMENT ("Agreement") is made this 2nd day of June, 1997 by and between D. HERBERT LIPSON ("Employee") and METRO CORP. HOLDINGS, INC., a Pennsylvania corporation ("Corporation").

W I T N E S S E T H:

WHEREAS, Employee is a key employee of Corporation and has contributed materially to its financial success; and

WHEREAS, Corporation desires by this Agreement to provide death benefits to certain beneficiaries of Employee in the event of his death while employed by Corporation.

NOW, THEREFORE, in consideration of the premises, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Entitlement to Death Benefit. In the event of the death of Employee while Employee is employed by Corporation, (a) if Employee is survived by Carol Selden ("Carol") or by certain descendants of Employee, then Corporation shall pay a death benefit to Carol (or such descendants) in the amount set forth in Section 2 in the manner and under the conditions set forth in Section 3(a) ("Primary Death Benefit"); and (b) if Employee is survived by Irene Mueller ("Irene"), then Corporation shall pay a separate death benefit to Irene in the amount set forth in Section 2 in the manner and under the conditions set forth in Section 3(b) ("Irene's Death

Benefit. For purposes of this Agreement, Employee shall be deemed to be employed by Corporation if he is performing services for Corporation for which he receives any compensation, without regard to the extent of those services or to the amount of that compensation, or if he is not actively performing services for Corporation due to disability.


2. Amount of Death Benefits. The total amount of the Primary Death Benefit shall be One Million Dollars (\$1,000,000). The total amount of the Irene's Death Benefit shall be Twenty Five Thousand Dollars (\$25,000).

3. Payment of Death Benefits.

(a) Primary Death Benefit. The Primary Death Benefit shall be payable to Carol only if Carol survives Employee and either (i) had never been married to Employee at the time of Employee's death; or (ii) had been married to Employee and was not divorced from Employee at the time of his death. If the above requirements are satisfied, the Primary Death Benefit shall be paid to Carol in sixty (60) consecutive equal monthly Installments, without interest, commencing on the first day of the calendar month immediately following the month of Employee's death, and continuing on the first day of each calendar month thereafter until fully paid. Thus, each Installment of the Primary Death Benefit as it becomes due shall be paid to Carol as follows:

| <u>Beneficiary</u> | <u>Monthly Installment</u> | <u>Total Benefit</u> |
|--------------------|----------------------------|----------------------|
| Carol              | \$16,666.67                | \$1,000,000          |



 If the Primary Death Benefit is not payable to Carol as provided above, or if Carol is not living at the time an Installment is due, then Installments shall be paid in equal portions to Employee's daughters, Sherri Litwer and Debbi Claremon, or their respective issue *per stirpes*. In addition, so long as the Primary Death Benefit is payable to Carol pursuant to this Section 3(a), Corporation shall, at its sole expense, provide Carol with health insurance coverage to the same extent as is provided to Corporation's executive personnel from time to time.

(b) Irene's Death Benefit. Irene's Death Benefit shall be payable only if Irene survives Employee. If the above requirement is satisfied, Irene's Death Benefit shall be paid in four (4) consecutive equal quarterly Installments, without interest, commencing on the first day of the calendar quarter immediately following the calendar quarter of Employee's death, and continuing on the first day of each calendar quarter thereafter until fully paid. Thus, each Installment of Irene's Death Benefit as it becomes due shall be paid to Irene as follows:

| <u>Beneficiary</u> | <u>Quarterly Installment</u> | <u>Total Benefit</u> |
|--------------------|------------------------------|----------------------|
| Irene              | \$6,250                      | \$25,000             |

If Irene is not living at the time an Installment is otherwise due, no further Installments hereunder shall be paid to any person or entity on account of Irene's Death Benefit.



4. No Anticipation, Etc. Neither the Death Benefits provided for herein nor any Installments thereof shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void; and no Installment of the Death Benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of Employee, Carol or Irene, nor shall it be subject to attachment or legal process for or against them, except to such extent as may be required by law.

5. Prepayment of Death Benefit. Corporation shall have the right to prepay all or any portion of either or both Death Benefits at any time or from time to time, without penalty or premium. Any prepayment made by Corporation shall discharge Corporation from all obligations to the recipient thereof, remote or contingent, to the extent of the payment so made.

6. Life Insurance. Corporation shall have the right at any time, and from time to time, to fund its obligations pursuant to this Agreement through the purchase of life insurance policies or otherwise. Employee shall have no rights of any kind, nature, or description in any such policy or fund. Corporation shall have all rights with respect to any insurance policy including the right to change the beneficiary, to surrender the policy for cash, to borrow against the policy and in all other ways to exercise complete dominion over the policy. Nothing contained in

This Agreement shall be construed to require Corporation to obtain an insurance policy on the life of Employee or to otherwise fund Corporation's obligations under this Agreement. Employee agrees that in the event that Corporation desires to obtain such insurance policy or policies, he shall make himself available for medical examinations, truthfully answer all questions on any such application for insurance, and generally cooperate with Corporation and any insurance company issuing any insurance policy.

7. Notices. All notices, correspondence or written consents required with respect to this Agreement shall be sent by regular mail or delivered in person to the following addresses:

If to Employee: D. HERBERT LIPSON  
112 S. Pembroke  
Margate, NJ

If to Corporation: METRO CORP. HOLDINGS, INC.  
c/o Philadelphia Magazine  
1818 Market Street  
Philadelphia, PA 19103  
Attn: D. Herbert Lipson

or to any such other address as either party shall designate in writing.

8. Entire Agreement. This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no modification shall be made hereto except in writing signed by each of the parties.


9. Binding Agreement. This Agreement shall be binding upon the parties hereto and their respective successors and assigns

of executors, administrators, heirs and assigns, as the case may  
be.

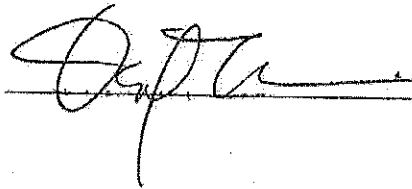
IN WITNESS WHEREOF, the parties hereto have set their  
hands and seals the day and year first above written.

ATTEST:

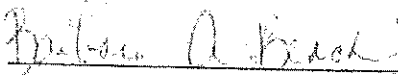
METRO CORP. HOLDINGS, INC.

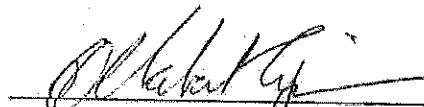
  
F. B. WACHTEL Secretary

By:



WITNESS:

  
D. Herbert Lipson

  
D. Herbert Lipson

# EXHIBIT B

WILL OF D. HERBERT LIPSON

I, D. HERBERT LIPSON, of Margate, New Jersey, revoke my prior wills and codicils and declare this to be my will:

GIFTS

I. Personal and Household Effects. I give:

- A. All my articles of personal use to such of my children who survive me, to be divided among them as they may agree.
- B. All my articles of household use, including automobiles, together with all insurance relating thereto, to my wife, CAROL SELDEN LIPSON, if she survives me.

II. Naples Home. I give all my right, title and interest in my home in Naples, Florida to the trustee or trustees under my deed of trust dated August 4, 1997, which I amended and restated in its entirety on October 7, 2008 and further amended earlier today, and under which I am named as the original trustee, IN TRUST to treat it as an addition to the principal subject to that deed as it exists at my death.

III. Metro Corp. I give any shares of Metro Corp. I may personally own at my death to the trustee or trustees under my revocable deed of trust signed earlier today, under which myself and BARTON J. WINOKUR are named as the trustees (my "2010 Revocable Trust"), IN TRUST to treat it as an addition to the principal subject to that deed as it exists at my death.

IV. Residuary Estate. I give the residue of my estate, real and personal, to such of my children, DAVID H. LIPSON, JR., SHERRY LITWER and DEBRA CLAREMON, who survive me, in equal shares; provided that if a child does not survive me but has descendants who survive me, such descendants shall receive, per stirpes, the share that child would have received had he or she survived me.

V. Marital Agreement. I direct my executor to perform any and all obligations not satisfied by provisions outside my will to which I or my estate is legally bound pursuant to my pre-nuptial agreement with my wife Carol, which agreement was amended by us on October 7, 2008.

VI. Powers of Appointment. No provision of this will shall exercise any power of appointment I may have.

### TAX PROVISIONS

VII. Tax Options. My executor shall exercise any options available in determining and paying death taxes and generation-skipping transfer taxes and in allocating generation-skipping transfer tax exemptions in my estate in such a way as reasonably may be expected to achieve the greatest overall tax savings for my family. These decisions shall be made without regard to any effect upon the size of the residue and without requiring adjustments between income and principal.

VIII. Death Taxes. All federal, state, and other death taxes payable because of my death on property passing under my will shall be paid as provided for in my 2010 Revocable Trust, as it exists at my death.

### ADMINISTRATIVE PROVISIONS

IX. Protective Provision. No beneficiary may sell, give, or otherwise transfer his or her interest in income or principal hereunder. No person having a claim against a beneficiary may reach any such interest before actual payment to the beneficiary.

X. Minor Beneficiaries. Any property payable hereunder to a minor shall be paid to a custodian for the minor under the Uniform Transfers to Minors Act selected by my executor.

XI. Survivorship. A beneficiary shall not be deemed to have survived me unless he or she survives me by thirty days.

XII. Management Provisions. My executor may:

- A. Retain assets received from me, without being required to diversify;
- B. Invest in all forms of real and personal property;
- C. Compromise claims, abandon or decline to administer any property that, in my executor's opinion, is of little or no value, and decline to accept title to or to administer any property that, in my executor's opinion, has or may have environmental or other liability attached to it;
- D. Sell at public or private sale, exchange, or lease for any period of time, any real or personal property, and give options for sales or leases;
- E. Partition, subdivide, or improve real estate and enter into agreements concerning the partition, subdivision, improvement, zoning, or

management of any real estate in which my estate hereunder has an interest and impose or extinguish restrictions on any such real estate;

- F. Join in any merger, reorganization, voting-trust plan, or other concerted action of security holders, and delegate discretionary duties with respect thereto;
- G. Borrow from, and sell property to, the trustee or trustees under my above-mentioned deed of trust or others, and pledge property as security for repayment of any funds borrowed;
- H. Resolve a dispute regarding the interpretation of this will or the administration of my estate by mediation, arbitration, or other alternative dispute resolution procedures;
- I. Disclaim all or a portion of any retirement plan benefits payable to my estate and any part or all of any other property passing to or for me; and
- J. Distribute in cash or in kind or partly in each.

All powers, authorities, and discretion granted by this will shall be in addition to those granted by law and shall be exercisable without court authorization.

#### EXECUTORS


XIII. Executors. I appoint my children, DAVID H. LIPSON, JR., SHERRY LITWER and DEBRA CLAREMON, and BARTON J. WINOKUR executors of this will. I direct that:

- A. If BARTON J. WINOKUR for any reason fails to qualify or ceases to act as an executor, I appoint DEREK M. WINOKUR as an executor in his place;
- B. My executors shall act by majority vote. In the event a dispute arises and there is no agreement by a majority of them, the decision of BARTON J. WINOKUR, or his successor, shall prevail;
- C. A dissenting executor who joins in carrying out the decision of a majority of the executors (or if there is no majority, a decision of BARTON J. WINOKUR or his successor) shall not be liable for the consequences of such decision as long as the dissenting executor notifies the other executors of his or her dissent promptly in writing;

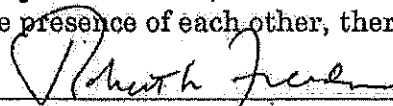
- D. My executors shall receive reasonable compensation for their services as executors (I recognize that in the absence of this provision my executors would be entitled to commissions at the statutory rates provided in N.J.S. 3B:18-12 et. seq.);
- E. The words "my executor" shall refer to all those from time to time acting as such;
- F. Any executor may resign at any time without court approval; and
- G. No executor shall be required to give bond in any jurisdiction.

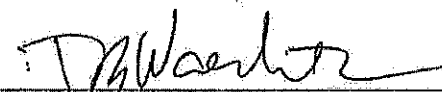
XIV. Attorney as Executor. The fact that an executor is a practicing attorney shall not be deemed to be a conflict of interest. Legal advice may be obtained from the law firm with which an executor is affiliated. My executor may pay such firm's usual charges for legal services and advice in addition to any reasonable compensation payable to my attorney-executor.

IN WITNESS WHEREOF, I have signed this Will on this 29th day of November, Two Thousand and Ten.

  
D. Herbert Lipson

The foregoing instrument was at the date thereof signed, published and declared by the above-named testator, D. HERBERT LIPSON, as and for said testator's will, in the presence of us, who at said testator's request, in said testator's presence and in the presence of each other, thereafter signed our names as witnesses thereto.

 residing at Old. R.

 residing at Boston, MA

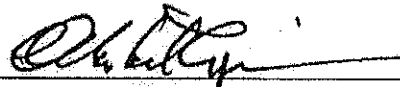


STATE OF PENNSYLVANIA )

: ss.:

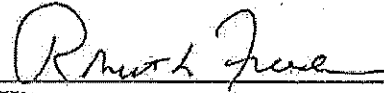
COUNTY OF PHILADELPHIA )

I, D. HERBERT LIPSON, the testator, sign my name to this instrument this 29<sup>th</sup> day of November, 2010, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as my last will and testament, and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

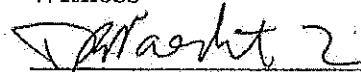


D. Herbert Lipson

Robert L. Freedman and Frederick B. Waichter, Jr., the witnesses, being first duly sworn, do each hereby declare to the undersigned authority that the testator signs and executes this instrument as the testator's last will and testament, and that the testator signs it willingly, and that each witness states that in the presence and hearing of the testator, such witness hereby signs this last will and testament as witness to the testator's signing, and that to the best of such witness' knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

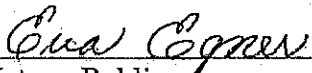


Witness

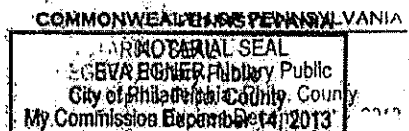


Witness

Subscribed, sworn to and acknowledged before me by D. HERBERT LIPSON, the Testator, and subscribed and sworn to before me by Robert L. Freedman and Frederick B. Waichter, Jr., the witnesses, this 29<sup>th</sup> day of November 2010.



Notary Public



CODICIL

I, D. HERBERT LIPSON, of Margate, New Jersey, declare this to be the first codicil to my will dated November 29, 2010:

FIRST: I hereby revoke paragraph B of article XIII, and substitute the following in its place:

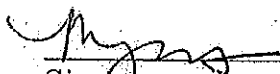
"B. BARTON J. WINOKUR, or his successor, shall have the sole authority to vote my shares of Metro Corp. and make any other decisions in respect of the Metro Corp. shares in accordance with my will. Except as just provided, my executors shall act by majority vote. In the event a dispute arises and there is no agreement by a majority of them, the decision of BARTON J. WINOKUR, or his successor, shall prevail;"

SECOND: As so amended, I ratify, confirm and republish my will dated November 29, 2010.

Executed August 31, 2015.

  
D. Herbert Lipson

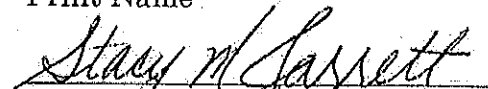
The foregoing instrument was at the date thereof signed, published and declared by the above-named testator, D. HERBERT LIPSON, as and for said testator's will, in the presence of us, who at said testator's request, in said testator's presence and in the presence of each other, thereafter signed our names as witnesses thereto:

  
Signature

residing at

Haddonfield, NJ

Megan Horwitz  
Print Name

  
Signature

residing at

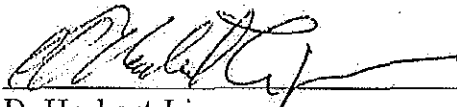
Philadelphia, PA

Stacy M. Garrett  
Print Name

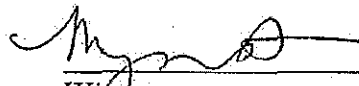
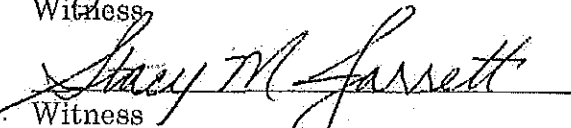
COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF Philadelphia : ss.  
:

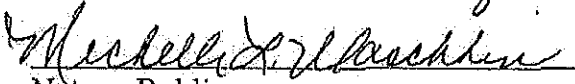
I, D. HERBERT LIPSON, the testator, sign my name to this instrument this 31 day of August, 2015, and being first duly sworn, do hereby declare to the undersigned authority that I sign and execute this instrument as a codicil to my last will, and that I sign it willingly, that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

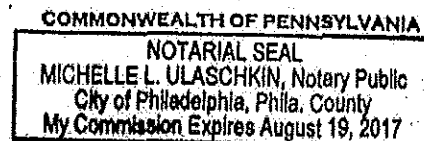
  
D. Herbert Lipson

We, Megan Horvath and Stacy M. Jarrett, the witnesses, sign our names to this instrument, and, being first duly sworn, do hereby declare to the undersigned authority that the testator signs and executes this instrument as a codicil to the testator's last will and that the testator signs it willingly, and that each of us, in the presence and hearing of the testator, hereby signs this codicil as witness to the testator's signing, and that to the best of our knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

  
Witness  
  
Witness

Subscribed, sworn to and acknowledged before me by D. HERBERT LIPSON, the testator, and subscribed and sworn to before me by Megan Horvath and Stacy M. Jarrett, the witnesses, this 31<sup>st</sup> day of August, 2015.

  
Notary Public



# EXHIBIT C

*PRENUPTIAL AGREEMENT*

*BY AND BETWEEN*

*HERBERT LIPSON*

*AND*

*CAROL SELDEN*

AGREEMENT

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THIS AGREEMENT is made by and between Herbert Lipson  
("Herbert") and Carol Selden ("Carol"),

W I T N E S S E T H :

WHEREAS, the parties to this Agreement contemplate  
marriage to each other; and

WHEREAS, the parties wish to set forth in this  
Agreement all of their respective financial and property rights  
and obligations as between each other arising out of their  
marriage, whether during their marriage or after their death or  
divorce.

NOW, THEREFORE, the parties, in consideration of their  
forthcoming marriage and the covenants contained in this  
Agreement, and intending to be legally bound hereby, agree as  
follows:

1. Advice of Counsel.

1.1 The provisions of this Agreement have been fully  
explained to the parties by their respective counsel, David N.  
Hofstein, Esquire, of Hofstein & Widman, P.C., and Selwyn A.  
Horvitz of Reed, Smith & McClay for Herbert and Morey Rosenbloom,


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Esquire and Mary Vidas, Esquire, of Blank, Rome, Comisky & McCauley, for Carol.

1.2 Based upon consultation with their respective attorneys, each party understands that, in the absence of this Agreement, if they are married: (i) he or she might, as a matter of law, be entitled as the surviving spouse of the other party to receive on the other party's death a share of the decedent's real and personal estate and that the share to which one party would be entitled might be more or less than the amount provided for under this Agreement; and (ii) if they subsequently become separated or divorced or an action for divorce is instituted by either of them, one party's obligations to make payments to the other party for his or her support, maintenance or as alimony (including alimony pendente lite) might exceed the amount provided for under this Agreement and he or she might, as a matter of law, be entitled to an equitable distribution or other division of the property of the other of them. Notwithstanding the foregoing, each party accepts and shall be bound by the provisions of this Agreement in lieu of any right he or she might have against the other arising out of their marital relationship or otherwise.

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1.3 Each of the parties acknowledges that he or she has read and understands the nature and importance of this Agreement, that each considers the provisions of this Agreement to be fair, just and reasonable, that each enters into it freely and voluntarily, and that each does not desire to have or become possessed of any property of the other party or any interest therein which the other party now owns or hereafter may own, except as expressly provided for in this Agreement.

2. Definitions. For purposes of this Agreement:

2.1 The terms of this Agreement shall be implemented upon the earlier of one of the parties' death or ten (10) days after the delivery of written notice by one of the parties that he or she intends to invoke the provisions of this Agreement ("the Notice"), without the written withdrawal of the Notice. The Notice shall be in the form set forth in Exhibit "A" to this Agreement.

2.2 A divorce shall be deemed to have occurred at such time as there is in effect a final decree of divorce with respect to which any appeals period has expired without an appeal having been taken or from which no further appeal may be taken.

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2.3 The determination of the number of complete years of marriage shall be made based on the number of anniversaries of the date of the parties' marriage which have been attained as of the date on which a determination is required to be made.

2.4 The term "Herbert's Excluded Property", as used in this Agreement, shall mean any or all assets, of any nature whatsoever including real, personal or intangible, now titled in Herbert's name or in Herbert's possession, or titled in Herbert's name or in Herbert's possession at the time of the parties' marriage or which may thereafter be acquired by Herbert, alone, or with a third party other than Carol, including, without limitation: (i) any interest in such assets, whether held outright or in trust, present or future, vested or contingent, legal or equitable, including those disclosed in David N. Hofstein, Esquire's June 13, 1997 letter to Morey Rosenbloom, Esquire; (ii) any assets acquired in exchange therefor or received as a result of such assets (including income, distributions and dividends) whether in cash or not; (iii) any appreciation or increments in value which may occur in such assets after the date of the parties' marriage or after the date of the acquisition of such property, as the case may be; (iv) any and all accrued and future interests in any asset, including

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✓ retirement plans; (v) any gifts or inheritances; and (vi) all income, dividends, interest, earnings or other distributions, whether in cash or not and whether earned before or after the marriage. By way of example, Herbert's Excluded Property shall include all of his holdings in MetroCorp Holdings, Inc., the increase and distributions (except as otherwise included in the calculations in Paragraph 6 of this Agreement) after marriage in any form and the proceeds of any sale of some or all of Herbert's interest and it shall exclude Herbert's residence at 112 South Pembroke Avenue, Margate, NJ 08402 as well as its increase in value or any substitute residence or proceeds.

2.5 The term "Carol's Excluded Property", as used in this Agreement, shall mean any or all assets and/or property, of any nature whatsoever including real, personal or intangible, now titled in Carol's name or in Carol's possession, or titled in Carol's name or in Carol's possession at the time of the parties' marriage or which may thereafter be acquired by Carol, alone, or with a third party, other than Herbert, including, without limitation: (i) any interest in such property, whether held outright or in trust, present or future, vested or contingent, legal or equitable including those disclosed in Morey Rosenbloom Esquire's June 16 letter to David N. Hofstein, Esquire; (ii) any

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property acquired in exchange therefore or received as a result of such property (including income, distributions and dividends); (iii) any appreciation or increments in value which may occur in such property after the date of the parties' marriage or after the date of the acquisition of such property, as the case may be; (iv) any and all accrued and future interests in any asset, including retirement plans; (v) any gifts or inheritances; and (vi) all income, dividends, interest, earnings or other distributions.



2.6 Each reference to the Internal Revenue Code shall be deemed to refer to the Internal Revenue Code of 1986, and any successor provisions thereto.

2.7 For purposes of this Agreement, if Herbert and Carol die under such circumstances that the order of their deaths cannot be established, Herbert shall be deemed to be the survivor (unless and to the extent he directs otherwise in his Will).

3. Full Disclosure.

3.1 Herbert has made a full and fair disclosure to Carol of his financial worth as of the date of execution of this Agreement, as set forth in David N. Hofstein, Esquire's June 13, 1997 letter to Morey Rosenbloom, Esquire, and, consists of:

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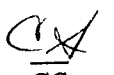
(i) Herbert's U.S. individual income tax return for 1996, as filed; and

(ii) A statement of Herbert's financial condition as of June 3, 1997; and

(iii) Herbert's assets include a one hundred percent (100%) interest in a closely-held business, MetroCorp Holdings, Inc., which, inter alia, publishes Philadelphia Magazine. Included in the disclosure is MetroCorp's Financial Statement dated December 31, 1996, and two opinions as to valuations submitted in the context of Herbert's divorce from Carol Lipson. Herbert believes that, as of the date of execution of this Agreement, the company is worth substantially in excess of the amount set forth in the Fishman appraisal but since there is no recent appraisal, he does not know how much more.

Carol acknowledges that she has been given an opportunity to conduct such additional investigation of Herbert's assets as she wishes, including formal appraisals, but does not wish to conduct such additional investigation or to receive any additional information concerning Herbert's present or future income and financial condition (and has so advised her lawyer and Herbert) and she waives any right which she may have to receive such additional information or to challenge the validity of this

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Agreement on the grounds that she did not pursue such additional disclosure.

3.2 Carol has made a full and fair disclosure to Herbert of her financial worth as of the date of execution of this Agreement as set forth in Morey Rosenbloom, Esquire's June 16, 1997 letter to David N. Hofstein, Esquire.

Herbert acknowledges that he has been given an opportunity to conduct such additional investigation of Carol's assets as he wishes, including formal appraisals, but he does not wish to conduct such appraisals or to receive any additional information concerning Carol's present or future income and/or financial condition (and has so advised his lawyer and Carol) and he waives any right which he may have to receive such additional information or to challenge the validity of this Agreement on the grounds that he did not pursue such additional disclosure.

3.3 The parties shall not disclose the terms and conditions of this Agreement to any third parties other than counsel, except to the Court, to governmental agencies such as the Internal Revenue Service, to their immediate families or to the extent necessary for their financial planning (e.g., to counsel or to accountants). Except with respect to the Court and governmental agencies, disclosure shall only be permitted if the

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third parties agree in writing to the confidentiality terms of this Agreement. Either party breaching this provision further agrees to exonerate and indemnify the other party against and hold the other party harmless from any damages resulting from this breach. Each party acknowledges that the other party has advised him/her that, in the opinion of the other party, unauthorized disclosure of the terms and conditions of this Agreement to unauthorized third parties may result in irreparable harm to the nondisclosing party.

3.4 Applicable Law. Carol pays taxes from Pennsylvania, Carol has a Pennsylvania driver's license, Herbert is employed in Pennsylvania and Herbert has significant financial interests in Pennsylvania. Regardless of where the marriage ceremony occurs, where the parties may reside or be domiciled in the future and regardless of the situs of any of their real or personal property, their property rights after marriage, their rights under this Agreement, and the interpretation of this Agreement shall be construed under the laws of the Commonwealth of Pennsylvania in effect as of the date of this Agreement, as interpreted by the Pennsylvania Supreme Court in Simeone v. Simeone, 525 Pa. 392, 581 A.2d 162 (1990). The parties acknowledge that the law of the Commonwealth of Pennsylvania

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might change, particularly in light of the Uniform Premarital Agreement Act, but, nevertheless, desire that any court interpreting this Agreement interpret it according to the laws of the Commonwealth of Pennsylvania in effect as of the date of execution of this Agreement.

4. Separate Property.

4.1 Carol's Separate Property.

4.1.1 Except as otherwise specifically set forth in this Agreement, Carol shall keep and retain the sole ownership, control and enjoyment of all of Carol's Excluded Property as defined in Paragraph 2.4 of this Agreement free and clear of any claim by Herbert including, without limitation, any claim of curtesy or distribution of property, and she shall have the exclusive right to dispose (during her lifetime or by Will) of such property without interference or restraint by Herbert in like manner as if the marriage had not taken place and she had remained unmarried. Herbert shall at any time and from time to time execute and acknowledge or join as a party in executing and acknowledging any instrument which may be requested by Carol for the purpose of transferring any such property, or divesting any claim of <sup>Courtesy</sup> ~~dower~~ or otherwise in such property.

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4.2 Herbert's Separate Property. Except as otherwise specifically provided in this Agreement, Herbert shall retain the sole ownership, control and enjoyment of all of Herbert's Excluded Property as defined in Paragraph <sup>2.1</sup> 2 of this Agreement clear of any claim by Carol (including, without limitation, any claim of dower or distribution of property), and he shall have the exclusive right to dispose (during his lifetime and, subject to the provisions to be made in accordance with Paragraph 5 of this Agreement, by Will) of such property without interference or restraint by Carol in like manner as if the marriage had not taken place and he had remained unmarried. Carol shall at any time and from time to time execute and acknowledge or join as a party in executing and acknowledging any instrument which may be requested by Herbert for the purpose of transferring any such property, or divesting any claim of dower or otherwise in such property.

5. Testamentary Provision for Carol.

5.1 If Carol survives Herbert as his widow and if, at Herbert's death, a Notice as defined in Paragraph 2.1 of this Agreement has not been served, Herbert shall provide for Carol, outright, by Will, or otherwise:

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5.1.1 Three Million One Hundred Thousand Dollars (\$3,100,000). At the discretion of Herbert or the representative of Herbert's estate, it can include (but need not be limited to the following):

5.1.1.1 Proceeds of life insurance policies insuring Herbert's life;

5.1.1.2 Salary continuation benefits or retirement benefit payable upon Herbert's death after reduction for anticipated income tax consequences (but without regard to present value).

5.1.1.3 Proceeds from the sale of stock in MetroCorp Holdings, Inc. or its successor, payable to Carol or to a trust. Upon the receipt of stock, Carol or the trust shall promptly sell the stock to David Lipson or whomever else Herbert shall have designated (in his will, buy-sell agreement or otherwise), at the price designated by Herbert (in his will, buy-sell agreement, or otherwise). Carol shall receive outright the proceeds from the sale of the foregoing stock in one lump sum no later than six (6) months after Herbert's death.

5.2 To the extent that Carol does not receive the value of Three Million One Hundred Thousand Dollars (\$3,100,000) as a result of Herbert's death described in Paragraph 5.1.1., Carol

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shall also receive from Herbert's estate the difference between Three Million One Hundred Thousand Dollars (\$3,100,000) and the amount she receives pursuant to Paragraph 5.1.1 above.

5.3 In addition, the parties' principal residence, if owned by one or both of the parties, shall be transferred to Carol, subject to all liens and mortgages existing at the date of death, and said residence shall include all furniture and personalty.

5.4 In the event that Herbert fails to make any provisions required to be included under this Agreement, the personal representatives of his estate shall be obligated to implement such provision and, upon doing so, Herbert shall be deemed to have complied fully with the provisions of this Agreement.

5.5 So long as this Paragraph 5 is applicable, Herbert shall not reduce his estate by way of gifts or otherwise to below the Three Million One Hundred Thousand Dollars (\$3,100,000) referred to in Paragraph 5.1.1.

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6. Provisions in the Event of the Service of the Notice.

6.1 Alimony Amount. If the event that either party serves a Notice as defined in Paragraph 2.1 of this Agreement, Herbert shall have the obligation to make alimony payments to Carol subject to the following terms and conditions:

6.1.1 Herbert's Compensation for the preceding twelve (12) months shall be calculated (so his monthly compensation shall be one-twelfth (1/12th) of that amount).

For purposes of this Agreement, Herbert's compensation shall be defined as any gross wages or other income reported on Herbert's W-2, consulting fees, cash distributions, dividends, and interest (whether taxable or not), and capital gains, but it is limited to cash actually received by Herbert or for that which Herbert can require payment. For purposes of this Agreement, the following shall be excluded from Herbert's compensation: (1) passive or subchapter S income to the extent it did not produce cash or entitle Herbert to receive cash, assuming Herbert took all reasonable action to request and/or receive any such cash distribution; (2) perquisites to the extent they are tax deductible to the Company; and (3) taxable income to Herbert for life insurance premiums paid for by the Company.

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6.1.2 After the calculation set forth in Paragraph 6.1.1 is made, any payment that Herbert was required to make to Carol Lipson for the preceding twelve (12) month period as set forth in the "Property Settlement Agreement by and between Herbert Lipson and Carol Lipson" shall be deducted.

6.1.3 After the calculations set forth in Paragraph 6.1.1 and 6.1.2 are made: (i) Herbert's actual income tax consequences on all of his taxable income shall be deducted; and (ii) any payments made by Herbert or MetroCorp Holdings, Inc. for premiums for the life insurance on Herbert's life of which Carol is the owner and/or beneficiary and provided the premiums are paid for by Herbert personally or for which Herbert realizes income for the previous twelve month (12) period shall be deducted. The net result shall be Herbert's Net Compensation.

6.1.4 The calculation of Herbert's Net Compensation shall be made on an annual basis, as of the date of the Notice set forth in Paragraph 2.1 of this Agreement, and, therefore, on the anniversary of the date of Notice (for so many years as alimony is to be paid). The parties shall cooperate in a timely fashion with all reasonable requests for relevant financial information to perform the foregoing calculations, and shall

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reasonably cooperate in making reasonable estimates pending receipt of actual figures.

6.1.5 Of Herbert's Net Compensation, as calculated in Paragraphs 6.1.1 through 6.1.4 above, Carol shall receive a specified percentage of Herbert's Net Compensation as taxable alimony, depending upon the number of years that the parties have been married at the time the Notice as set forth in Paragraph 2.1 of this Agreement is served and subject to the terms of this Paragraph 6:

| <u>FULL YEARS OF MARRIAGE</u> | <u>PERCENTAGE<br/>OF<br/>HERBERT'S<br/>NET<br/>COMPENSATION</u> | <u>NUMBER OF YEARS OF<br/>ALIMONY</u> |
|-------------------------------|---|---------------------------------------|
| 1                             | 20%   | 2                                     |
| 2                             | 20%   | 2                                     |
| 3                             | 20%   | 3                                     |
| 4                             | 20%   | 4                                     |
| 5                             | 20%   | 5                                     |
| 6                             | 25%   | 6                                     |
| 7                             | 25%   | 7                                     |
| 8                             | 25%   | 8                                     |
| 9                             | 25%   | 9                                     |
| 10                            | 25%   | 10                                    |
| 11 or more                    | 35%   | 15                                    |

The amount of alimony which Carol shall receive in each twelve (12) month period as calculated by applying the formula set forth in Paragraphs 6.1.5 shall not exceed One Hundred Twenty-Five Thousand Dollars (\$125,000) (net of income tax

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consequences to Carol) and shall not exceed more than one half of Herbert's Net Compensation, as defined in this Agreement (i.e. after deducting payments to Carol Lipson, specified insurance premiums, and income tax consequences to Herb). (Reasonable adjustments shall be made at the end of each twelve (12) month period for any underpayment or overpayment.)

6.1.6 For a period of five years after the date of marriage, the total amount of taxable alimony which Carol shall receive shall be adjusted downward if, following, the calculations performed pursuant to Paragraphs 6.1.1 through 6.1.4 above, the total amount for each twelve (12) month period of the Net Compensation as defined in this Agreement that Herbert would otherwise retain is less than Eighty Thousand Dollars (\$80,000). In such event, Carol's alimony amount would be reduced so that Herbert retains Eighty Thousand Dollars (\$80,000) Net Compensation. For example, if Herbert's Net Compensation (after subtracting his obligation to Carol Lipson and payments for the specified insurance premiums and his applicable income taxes) was Ninety Thousand Dollars (\$90,000) during a twelve (12) month period, and the divorce occurred in year number 3, Carol would be entitled, according to Paragraph 6.1.5, to Eighteen Thousand Dollars (\$18,000). However, since under this example Herbert

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would not receive at least Eighty Thousand Dollars (\$80,000), Carol's payment would be reduced to Ten Thousand Dollars (\$10,000). After the expiration of five years after the date of the parties' marriage, there shall be no minimum amount of income guaranteed to Herbert.

6.1.7 The alimony payments to Carol pursuant to Paragraph 6.1.3 shall commence on the seventh (7th) day of the month following either party's serving of a Notice set forth in Paragraph 2.1 of this Agreement, and shall be payable on a monthly basis thereafter.

6.1.8 No interest shall be paid by Herbert on any payment which shall be due.

6.1.9 Notwithstanding the formula set forth in Paragraph 6.1.5, any alimony amount due to Carol shall terminate upon the first to occur of (i) Carol's remarriage; (ii) Carol's death (in which such event neither Herbert nor his estate shall have any obligation to make further alimony payment to Carol or her estate); or (iii) at Herbert's option if Carol cohabits with someone in a sexual relationship for a period of in excess of ninety (90) days during any calendar year. In the event of Herbert's death while he is obligated to make any alimony payments, within six (6) months of his death, his estate shall

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pay a lump sum amount equal to the then present value of the remaining payments which would have been due to Carol, including as the yearly amount to be due the amount Herbert paid for the year proceeding his death (prorated for less than a year) reduced by Carol's average tax rate for such preceding year.

6.1.10 It is the intention, understanding and agreement of the parties that the alimony payments described in this paragraph 6.1.3 shall constitute alimony as defined in Section 71 of the Internal Revenue Code and, accordingly, that all such payments shall be includible in Carol's gross income and deductible by Herbert for federal income tax purposes pursuant to Sections 71 and 215 of the Internal Revenue Code, respectively.

6.1.11 Notwithstanding the formula set forth above, the parties shall take all steps necessary to restructure the payout such that there is no recapture as set forth in I.R.C. §71(f).

6.1.12 If pursuant to any final ruling, decision or decree of the Internal Revenue Service or any court or as a result of any legislation, regulations or tax examination or audit, all or any part of the amounts paid under this Paragraph 6 shall not be deductible by Herbert for the purpose of computing his federal income tax liability, and not includible in Carol's gross income for the purpose of computing her federal

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income tax liability, the alimony payments to be made pursuant to this Paragraph 6 shall be readjusted so that so the amount of adjusted alimony payable to Carol pursuant to the terms of this Agreement shall be reduced by one-half (1/2) of the difference between (i) the amount of federal income tax payable by Herbert which is attributable to the non-deductibility of such alimony payments from his gross income; and (ii) the amount of federal income tax which Carol saves as a result of not having to include such alimony payments in her gross income.

6.1.13 At any time prior to the date upon which the first payment of alimony under this subparagraph is due, Herbert shall have the right to have an election made under Section 71 of the Internal Revenue Code to make the payments to Carol non-deductible to Herbert and non-includible in the income of Carol; and that if this election is made, the alimony payments to be made pursuant to this Paragraph 6 shall be reduced so as to achieve as nearly as possible the same after-tax cost of the alimony payments which would have been obtained if (i) the alimony payments had not been reduced and (ii) the entire amount of the alimony payments would have been deductible by Herbert against his income which would have otherwise been subject to a federal income tax at the maximum marginal income tax rate which

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is then in effect. Carol hereby agrees to file such election and to take such other action as may be requested by Herbert in order to treat the payments as non-deductible by Herbert and non-includible in the income of Carol.

6.1.14 In the event of the parties divorce or separation, as defined in this Agreement, this Agreement shall constitute and serve as a "written separation agreement" within the meaning of Section 71(b)(2)(B) of the Internal Revenue Code.

6.1.15 The amount of the alimony to be paid shall not be affected by Carol's income, income potential and/or separate assets.

6.2 Herbert's Residence. In the event of the service of the Notice as defined in Paragraph 2.1 of this Agreement, Herbert shall retain as his separate property the residence at 112 South Pembroke Avenue, Margate, NJ 08402 and any other residence titled in Herbert's name alone or in Herbert's name with another person other than Carol. Unless otherwise agreed to by Herbert in writing, Carol shall vacate those residence(s) within ninety (90) days of the service of the Notice.

6.3 Lump Sum Payment. Herbert, in the event of the service of a Notice as defined in this Agreement, shall pay to Carol a lump sum tax free to Carol equal to one-half (1/2) of the

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equity in the parties' principal residence at the time of the service of the Notice of Intention to Separate is served by either party in the manner as set forth in this Agreement. Currently that residence is Herbert's residence in Margate. If the parties cannot agree upon the value, then the appraisal and arbitration process set forth in Paragraph 10 of this Agreement shall be utilized.

6.3.1 Herbert shall pay to Carol 20% of the amount calculated in paragraph 6.3 within ninety days of the service of the Notice. The remaining 80% of the payments shall be payable no later than one (1) year from the date Carol vacates the residence.

6.4 Life Insurance. In the event of the service of the Notice as set forth in Paragraph 2.1(1) of this Agreement:

6.4.1 Herbert shall continue to pay until his death the premium due for the currently existing life insurance policies in the combined face amount of Five Hundred Thousand Dollars (\$500,000) insuring Herbert's life and owned by Carol. Herbert shall have the right to require Carol to utilize the cash value of the policies to fund the premiums to the extent that they do not reduce the death benefit payable to Carol to below Five Hundred Thousand Dollars (\$500,000).

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6.4.2 Depending upon the number of complete years of marriage as of the date of the service of the Notice as set forth in Paragraph 2.1, Herbert shall transfer ownership to Carol, and, shall pay all applicable premiums until his death for the following face amounts for life insurance in addition to the policies identified in Paragraph 6.4.1 of this Agreement:

| <u>Full Years of Marriage</u> | <u>Face Value of Life Insurance</u> |
|-------------------------------|-------------------------------------|
| 3                             | \$500,000                           |
| 4                             | \$750,000                           |
| 5 or more                     | \$1,000,000                         |

Herbert shall be permitted to utilize the cash value of the policies to pay the premium or require Carol to do so, as the case may be, to the extent that they do not reduce the death benefits payable to Carol to below the amount specified in the foregoing chart.

6.4.3 Payments by Herbert to Carol for life insurance premiums are not to be included as taxable income for Carol nor deductible as alimony by Herbert.

6.4.4 Herbert shall be permitted to substitute other assets of comparable value for the life insurance policies, with Carol's consent, which consent shall not be unreasonably withheld.

6.5 Personalty. In the event of the service of the Notice as set forth in Paragraph 2.1 of this Agreement:

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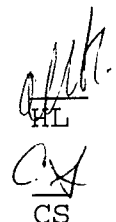
6.5.1 Each party shall retain all jewelry and clothing personal to that party (e.g. whether acquired by that party or gifted by the other party or a third party);

6.5.2 Except as set forth in Paragraph 6.5.1 above, each party shall retain all personalty which he or she owned or possessed prior to the marriage; and

6.5.3 Except as set forth in Paragraphs 6.5.1 and 6.5.2 above, the parties shall split equally the personalty acquired after the marriage (including automobiles). If the parties cannot agree upon the division, then the appraisal and arbitration process set forth in Paragraph 10 of this Agreement shall be utilized.

6.6 Other Jointly Titled Property. Except as set forth in this Agreement, in the event of the service of the Notice as set forth in Paragraph 2.1 of this Agreement, the parties shall split equally (by value) any jointly titled assets. If the parties cannot agree upon the division, then the appraisal and arbitration process set forth in Paragraph 10 of this Agreement shall be utilized.



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7. Releases.

7.1 Except as is expressly provided in this Agreement, each party does hereby expressly waive, discharge and release any and all right, title and interest or any claim which he or she may have or may acquire by reason of the contemplated marriage in any property of the other party or otherwise (including the Excluded Property referred to in Paragraphs 2.4 and 2.5 of this Agreement), and including, without limitation, any claim or right of dower or curtesy or in the nature thereof, any claim or right to a distributive share, widow's or widower's allowance, family exemption, any claim or right to a share of the benefits payable with respect to any retirement plans in which the other party had an interest and any right to elect to take against the other party's Will or to elect to take a share of any property in which the other party may at any time have had an interest, past, present or future support or maintenance, alimony, alimony pendente lite, property division, counsel fees, costs and expenses, and any other right in any estate of, property of, or income of the other party to which she or he might otherwise be or become entitled as the other party's spouse, as a result of the separation or divorce of the parties, the death of one of the parties, or otherwise (e.g. as a result of cohabitation).

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Furthermore, except as may be provided in this Agreement, each party does hereby expressly waive, discharge and release any and all right, title and interest or any claim in or against any property of the other party by reason of any former acts, contracts, engagements or liabilities of the other party, and including, without limitation, any act which might constitute cohabitation and/or which might give rise to an allegation that an implied and/or express contract existed.

7.2 The parties acknowledge that none of the property titled in the name of the other of them shall be deemed to be "marital property" as that term is defined in the Pennsylvania Divorce Code, or any successor provision thereto.

7.3 Carol acknowledges that she has considered the increase in her economic standard of living which will occur following her marriage to Herbert and that she has also considered the possibility of increases in Herbert's income and assets. Each of Herbert and Carol acknowledges that he or she will not seek modification of the terms and conditions of this Agreement based upon changes occurring after the date of this Agreement, including (without limitation) any changes in her or his or the other party's own increased economic standard of living, her or his or the other party's income or property or any

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other change in her or his or the other party's own circumstances or economic need (including, without limitations, any inheritances received by either party).

8. Additional Testamentary Provisions Permitted.

Notwithstanding the foregoing provisions of this Agreement:

8.1 If the Will of either party should provide greater benefits for the other party than are required by this Agreement, such other party shall have the right to such benefits so bequeathed or devised, subject, however, to any conditions which may be specified in the Will of the party making such additional provision.

8.2 If either party should provide that at his or her death or thereafter the other party shall receive the benefits of any property passing outside of his or her Will (including, without limitation, life insurance proceeds, pension or profit-sharing plan benefits and assets held as tenants by the entirety), such other party shall have the right to such property. This shall be in addition to the limitations set forth in Paragraph 5 of this Agreement.

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9. Notice.

9.1 Notice to Herbert provided for in this Agreement shall be sent by certified mail, return receipt requested, or shall be hand-delivered, addressed to Herbert at Philadelphia Magazine, 1818 Market Street, Philadelphia, Pennsylvania 19103, and to David N. Hofstein, Esquire, of Hofstein & Widman, P.C., 1601 Market Street, Suite 700, Philadelphia, Pennsylvania 19103 or to such other addresses as Herbert from time to time may designate in writing.

9.2 Notice to Carol provided for in this Agreement shall be sent by certified mail, return receipt requested, to Carol, or shall be hand-delivered, addressed to Carol in care of her parents at 8460 Limekiln Pike, Wyncote, Pennsylvania 19095 and to Morey Rosenbloom, Esquire, of Blank, Rome, Comisky & McCauley, Four Penn Center Plaza, 12th Floor, Philadelphia, Pennsylvania, 19103 or to such other address as Carol from time to time may designate in writing.

9.3 For purposes of this Agreement, the date on which notice shall be deemed to be given shall be the date of mailing in the case of any notice sent by certified mail, return receipt requested, or the date of delivery, in the case of any notice which is hand-delivered. An affidavit signed by the person

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
depositing such notice to the U.S. mails or hand-delivering such notice shall be sufficient to establish the date on which such notice was deemed to be given.

9.4 Except as may otherwise be expressly provided in this Agreement to the contrary, this Agreement shall inure to the benefit of, and shall be binding upon, the parties, their heirs, executors, administrators and assigns.

10. Arbitration and Appraisals.

10.1 In the event that either party challenges the enforceability of this Agreement, if one of the parties fails to comply with the terms of the Agreement, or if any claim or controversy arises from the Agreement, the parties shall submit to binding arbitration. Any such arbitration shall take place in the county in which the last marital residence was located and shall then proceed in accordance with the then current rules of the American Arbitration Association. The then effective rules of the Uniform Arbitration Act shall be applicable (whether or not such Act has been enacted in the relevant jurisdiction). Judgment upon the written award rendered by a majority of the arbitrators may be entered in the Court having jurisdiction of the arbitration or in any jurisdiction in which assets of a party


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are located; subject to the provisions of the Uniform Arbitration Act. Such judgment shall be valid, binding and final, and shall be a condition precedent to any legal action that any party may contemplate against the other (except to compel arbitration). The arbitrators shall have the authority to assess counsel fees and/or costs against either party.

10.2 If an appraisal is necessary for the purposes of this Agreement, the parties shall select a mutually acceptable appraiser, whose decision shall be binding upon the parties. The costs of the appraisal shall be paid equally by the parties. If the parties cannot agree upon a mutually acceptable appraiser, they shall each select an appraiser to value the properties in dispute. Each party shall pay the costs of the appraiser selected by her or him. If the appraisals by the two appraisers selected by the parties are less than ten percent (10%) apart, the fair market value shall be the average of the two appraisals. (The percent will be determined by a fraction, the numerator of which is the higher appraisal and the denominator of which is the lower appraisal.) If these appraisals are more than ten percent (10%) apart, the two appraisals shall select a third appraiser, whose determination shall be final. The costs of the third appraiser shall be apportioned by the arbitrator(s).

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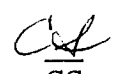
  
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11. Additional Provisions.

11.1 Prior to a final divorce of the parties, Carol shall make, execute and file, upon the request of Herbert or the personal representatives of Herbert's estate, joint federal and state income tax returns covering any taxable period during which the parties are married, and shall pay her share of said income tax as determined by a ratio, the numerator of which will be Carol's gross income for the relevant year and the denominator of which shall be the parties' total gross income for the relevant year, with each party to give the other party an appropriate indemnification.

11.2 Each of Herbert and Carol shall, upon the request of either of them or his or her personal representatives, consent to have gifts made by the other treated as made one-half by him or her for gift tax purposes, provided that any such gift is made during their marriage, and provided further that the total fair market value of such gifts to each donee in any calendar year consists of property having the maximum value allowable under Section 2503(b) of the Internal Revenue Code for the gift tax annual exclusion. The parties shall make, execute and file, upon the request of either of them or their respective personal representatives, whatever documents are necessary (including,

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without limitation, gift tax returns) in order to evidence such consent.

11.3 This Agreement cannot be rescinded, revoked or modified without the parties' consent in writing.

11.4 For the purpose of contract interpretation and for the purpose of resolving any ambiguity in this Agreement, the parties agree that the Agreement was prepared jointly by their respective attorneys.

11.5 This Agreement shall become effective only in the event that a marriage occurs, either by civil law or common law.

11.6 The headings preceding the text of the paragraphs of this Agreement are inserted solely for convenience of reference and shall not constitute part of this Agreement.

11.7 This Agreement may be executed in counterparts, each of which will be an original and which together shall constitute one and the same instrument.

11.8 This Agreement contains the entire understanding of the parties, and there are no representations, warranties, promises, or undertakings, oral or otherwise, other than those expressly set forth in this Agreement. The invalidity or unenforceability of any provision, term, or condition of this

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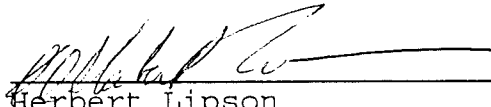
  
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Agreement shall not affect the validity or enforceability of any of the other provisions, terms, and conditions of this Agreement.

11.9 The parties shall take whatever steps are necessary to effectuate the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals.

\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Herbert Lipson

\_\_\_\_\_  
Date

6/17/97

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Carol Selden

\_\_\_\_\_  
Date

6/17/97

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EXHIBIT "A"


NOTICE OF INTENTION TO INVOKE AGREEMENT

I, hereby notify you that this shall serve as the  
Notice of Intention to Invoke the Terms of the Paragraph as  
specified under Paragraph 2.1.1 of our Agreement dated \_\_\_\_\_  
\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
Sworn and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 199 .

\_\_\_\_\_  
Notary Public

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# EXHIBIT D

*Original in  
Blank Rome LLP Vault*

Modification of Pre-Nuptial Agreement

We, HERBERT LIPSON (also known as D. Herbert Lipson) and CAROL SELDEN LIPSON, hereby modify our Pre-Nuptial Agreement dated June 17, 1997 and modified on September 28, 1999 (together the "Agreement") as follows:

We revoke Paragraph 5, Testamentary Provision for Carol, of the Agreement in its entirety and substitute in its place the following:

"5. Testamentary Provisions.

5.1 Herbert shall provide the following upon his death for Carol, if: (a) she survives him, (b) they are married to each other at the time of his death, (c) a Notice as defined in Paragraph 2.1 of this Agreement has not been served by her upon him, and (d) if a Notice as defined in Paragraph 2.1 of this Agreement has been served by him upon her, it has been served within 9 months of his death:

5.1.1 Herbert shall bequeath to Carol his artwork, furniture, furnishings and all other articles of household use, including automobiles, if she survives him by thirty days. ✓

5.1.2 Herbert shall simultaneously with the execution of this Modification restate his revocable trust dated August 4, 1997 (as restated the "Trust") in the form attached as Exhibit A, and shall not thereafter change any provision of the Trust affecting Carol without Carol's written consent.

5.1.3 Herbert shall designate the Trust as the beneficiary of the \$4 million SunLife policy (# [REDACTED] 44) which he owns on his life and shall pay all premiums needed to support that death benefit, so that at his death the Trust will receive a death benefit of no less than \$4 million. Herbert shall not change that beneficiary designation without Carol's written consent. Herbert shall notify the insurance company of this provision and shall give to Carol the insurance company's written acknowledgement of receipt of this notification. To

the extent the Trust does not receive such \$4 million death benefit, Herbert's estate shall pay to the Trust the amount of any deficiency at the earliest reasonable time following Herbert's death.

5.1.4 Herbert shall transfer to the Trust upon his death or earlier all his interest in his apartment 141 at 4500 Gulf Shore Blvd. - North, Naples, Florida, subject to any mortgage thereon, or the net proceeds of any sale of such property. ✓

5.1.5 Herbert shall designate Carol as the beneficiary of his benefits under MetroCorp, Inc.'s salary continuation plan; provided that if such plan is not in effect at his death (or if the benefits payable thereunder are less than the current benefits), Herbert's estate shall pay \$600,000 to Carol if such plan is not in effect at his death (or if the benefits payable under that plan are less than the current benefits, Herbert's estate shall pay to Carol the shortfall, calculated and payable as a lump sum equal to 60% of the sum of the shortfalls in periodic payments).

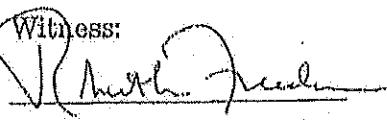
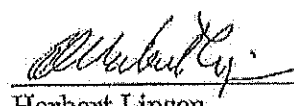
5.1.6 Herbert's estate shall pay any and all estate and inheritance taxes attributable to any property passing to or for Carol under this Paragraph 5.1.

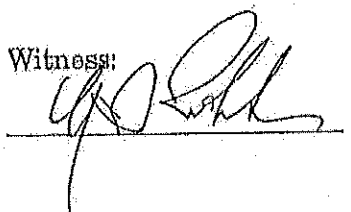
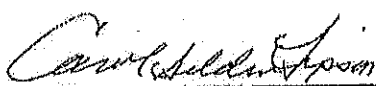
5.2 Carol shall within 90 days after Herbert's death transfer her entire interest in the parties' residence at 112 South Pembroke Avenue, Margate City, New Jersey (or any substitute residence purchased hereafter) to the Trust, and the Trust shall assume any mortgage and liens on the residence outstanding at Herbert's death. Herbert's estate shall pay any and all gift taxes and real estate transfer taxes attributable to Carol's transfer of the residence to the Trust. If Carol does not transfer her entire interest in the residence to the Trust within 90 days after Herbert's death, then Herbert's estate shall have no obligations under Paragraph 5.1 (and Carol will remain bound by Paragraph 7.1). ✓

- 5.3 Any promise made by either party in this Agreement to be performed after that party's death shall be deemed fulfilled if that party's personal representative or other fiduciary carries out such promise, even if that party's will or estate plan does not direct such personal representative or fiduciary to do so or does not contain language incorporating the terms of that party's obligations under this Agreement.
- 5.4 Carol shall not be entitled to receive any of the benefits provided for in Paragraph 5 of this Agreement if Herbert is obligated to provide Carol any of the benefits provided for in Paragraph 6 of this Agreement."
- 5.5 Herbert shall not reduce his personally owned estate below \$5 million without Carol's written consent.

Each of the parties represents that he or she has had ample opportunity to obtain and review financial information about the other party and is fully aware of the financial situation of the other party.

In the discussions leading up to this Modification, Herbert has been represented by Robert L. Freedman, Esq., and Carol has been represented by Morey Rosenbloom, Esq., and each is fully satisfied with the advice he or she has received from his or her counsel.

Witness:   Dated: October 7, 2008  
Herbert Lipson

Witness:   Dated: Oct. 7, 2008  
Carol Selden Lipson

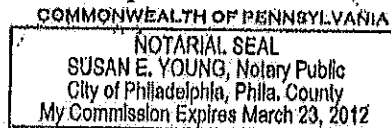
STATE OF Pennsylvania :  
COUNTY OF Philadelphia : ss.

On October 7, 2008, before me, the undersigned officer,  
personally appeared HERBERT LIPSON and in due form of law acknowledged the  
foregoing instrument to be his act and deed and desired the same to be recorded as  
such.

Witness my hand and notarial seal the day and year aforesaid.

Susan E. Young  
Notary Public

My Commission Expires:



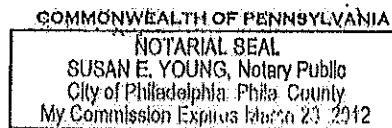
STATE OF Pennsylvania :  
COUNTY OF Philadelphia : ss.

On October 7, 2008, before me, the undersigned officer,  
personally appeared CAROL SELDEN LIPSON and in due form of law  
acknowledged the foregoing instrument to be her act and deed and desired the same  
to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

Susan E. Young  
Notary Public

My Commission Expires:



# EXHIBIT E

Original in  
Blank Rome LLP Vault

AMENDMENT AND RESTATEMENT OF  
REVOCABLE AGREEMENT OF TRUST OF  
D. HERBERT LIPSON

I, D. HERBERT LIPSON, of Margate, New Jersey, hereby amend and completely restate my agreement of trust dated August 4, 1997, which was most recently amended and completely restated in its entirety on June 11, 2007, and further amended on June 5, 2008, under which I am named as the original trustee, by revoking all articles of that agreement and all amendments thereto and substituting the following:

"LIVING TRUST"

I. Lifetime Trust. During my lifetime, my trustee shall keep the principal invested and shall distribute the net income and the principal as follows:

- A. As much - even if all - of the net income and the principal as I may from time to time direct in writing shall be paid to me;
- B. As much of the net income and the principal as my trustee may from time to time think desirable for my welfare, comfort, or support shall be applied directly for those purposes if I am, in my trustee's opinion, disabled in any way; and
- C. Any remaining net income shall from time to time be accumulated and added to the principal.

POST-DEATH DISPOSITIVE PROVISIONS

II. Obligations to Carol Zitin. After my death, my trustee shall promptly pay to my former wife, Carol Zitin, if she survives me, the minimum amount or minimum property necessary to satisfy any obligations I owe her under our Property Settlement Agreement dated March 22, 1997; provided that payments to Carol Zitin from this trust shall be made only to the extent the payments from other sources (including my estate) are insufficient to satisfy my obligation.

III. Distribution to Daughters if Carol Does Not Transfer Residence to Trust. If my wife, CAROL SELDEN LIPSON, survives me and does not within 90 days after my death transfer her entire interest in our residence at 112 South Pembroke Avenue, Margate City, New Jersey (or any substitute residence purchased after the date of this amendment) (subject to any mortgage and liens thereon) to this trust, then after my death the then-remaining principal shall be paid:

- A. To such of my daughters, SHERRY LITWER and DEBRA CLAREMON, as survive me by ninety days in equal shares; provided that if a daughter does not so survive me but has descendants who so survive me, such descendants shall receive, per stirpes, the share that daughter would have received had she so survived me; or, in default of such daughters and descendants so surviving me,
- B. To my son, DAVID H. LIPSON, JR., if he so survives me; or, if he does not so survive me, to such of his descendants who so survive me, per stirpes.

IV. Trust for Carol. After my death if my wife, CAROL SELDEN LIPSON, survives me and within 90 days after my death transfers her entire interest in our residence at 112 South Pembroke Avenue, Margate City, New Jersey (or any substitute residence purchased after the date of this amendment) (subject to any mortgage and liens thereon) to this trust (or after my death if my wife does not survive me), the balance of the principal shall be held by my trustee as a separate trust and thereafter:

- A. During the lifetime of my wife, CAROL SELDEN LIPSON:
  - 1. The net income shall be paid to her, at least quarterly; and
  - 2. As much of the principal as my trustee may from time to time think desirable for her health, support or comfort consistent with the standard of living that she and I enjoyed shall be paid to her.

My intent is that this trust be primarily for the benefit of my wife, CAROL SELDEN LIPSON. The power to invade principal in this paragraph A-2 shall be very liberally interpreted. I recognize that the entire principal may very well be exhausted by the exercise of this power. I envisage that my wife, CAROL SELDEN LIPSON, will receive from this trust at a minimum after payment of her income taxes thereon \$165,000 annually, such amount to be adjusted for inflation or deflation by multiplying such stated amount by a fraction, the numerator of which equals the Consumer Price Index for the first month of that year and the denominator of which equals the Consumer Price Index for September 2008.

The "Consumer Price Index" shall mean the Consumer Price Index for All Urban Consumers Area: Northeast Urban United States - All Items, 1982-84 = 100 (currently published by the U.S. Department of



Labor) or, if such series is no longer published by any source, such similar series of statistics as my trustee shall select.

B. Upon CAROL SELDEN LIPSON'S death (or my death if I survive her):

1. Any increase in death taxes or administration expenses in her estate caused by the inclusion of this trust in her estate for tax purposes shall be paid out of the principal of this trust.
2. \$300,000 of the then-remaining principal shall be paid to or in trust for such one or more persons or organizations and on such terms as she may appoint by a will specifically referring to this power of appointment.
3. The balance of the then-remaining principal shall be paid:
  - a. To such of my daughters, SHERRY LITWER and DEBRA CLAREMON who are then-living, in equal shares; provided that if a daughter is not then living but has then-living descendants, such descendants shall receive, per stirpes, the share that daughter would have received had she been then living; or, in default of such daughters and descendants,
  - b. To my son, DAVID H. LIPSON, JR., if he is then living; or, if he is not then living, to such of his descendants who are then living, per stirpes.

Provided that any property added to this trust by my wife, or funds attributable to such addition, shall be paid upon my wife's death to such one or more of my descendants on such terms as my wife may appoint by a will specifically referring to the power of appointment; provided that Robert L. Freedman or such person as he may appoint consents to the exercise of her appointment.

V. Adopted Persons. Persons adopted during minority shall be considered as children of their adoptive parents, and they and their descendants shall be considered as descendants of their adoptive parents.

#### TAX PROVISIONS

VI. Statement of Intent Regarding Marital Deduction. Every provision of this trust shall be interpreted, and all powers, authorities, and discretion granted by this trust shall be exercised, in accordance with my primary intent that the Trust

for Carol shall be eligible to qualify for the federal estate tax marital deduction. In all events, notwithstanding anything in this trust to the contrary, my wife shall have the right to require my trustee to make all property held by the Trust for Carol productive of a reasonable amount of income.

VII. Death Taxes. No federal, state, or other death taxes payable because of my death shall be charged against the trust for Carol under Article IV. All such taxes on property held by this trust at my death or payable to this trust at my death shall be paid as provided for in my will signed earlier today.

#### ADMINISTRATIVE PROVISIONS

VIII. Youthful or Disabled Beneficiaries. Any income or principal payable to a person under twenty-five years of age or to any person (except my wife) who is, in my trustee's opinion, disabled by illness or other cause and unable properly to manage the funds shall be retained by my trustee in a separate trust for that beneficiary and thereafter:

- A. As much of the income and principal of that trust as my trustee may from time to time think desirable for the beneficiary either shall be paid to him or her or shall be applied for his or her benefit;
- B. Any income not so distributed shall be added to principal; and
- C. When the youthful beneficiary attains twenty-five years of age or when the disabled person becomes, in my trustee's opinion, free of disability or able properly to manage the funds, the then-remaining principal shall be paid to him or her. If the beneficiary dies before that time, the then-remaining principal shall be paid to his or her estate.

Any funds to be applied under this article either shall be applied directly by my trustee or shall be paid to a parent or guardian of the beneficiary or to any person or organization taking care of the beneficiary, and my trustee shall have no further responsibility for any funds so paid.

IX. Protective Provision. No beneficiary may sell, give, or otherwise transfer his or her interest in income or principal hereunder. No person having a claim against a beneficiary may reach any such interest before actual payment to the beneficiary.

X. Management Provisions. My trustee shall have all investment and management powers given to trustees by Pennsylvania law. In addition, my trustee may:

- A. Sell at public or private sale, exchange, or lease for any period of time, any real property, and give options for sales or leases, to anyone, including a trustee of another trust created by me;
- B. Purchase a replacement residence (if a residence owned by this trust is sold) at public or private sale from anyone, including a trustee of another trust created by me, and obtain financing for the purchase of any such residence; and
- C. Pay from this trust's principal homeowners and flood insurance, real estate taxes, assessments and similar charges, amounts due under a mortgage, capital improvements and major repairs on any residence owned by this trust.

XI. Additions. I, my wife, and, with my trustee's approval, anyone else may add to the principal of any of the trusts hereunder by deed or by will or otherwise.

XII. Insurance Policies. My trustee shall have no duty to pay premiums on any insurance policies payable to my trustee, and the companies issuing such policies shall have no responsibility for the application of the proceeds or the fulfillment of the trusts hereunder.

XIII. Rights Reserved. I reserve the following rights, each of which may be exercised whenever and as often as I may wish:

- A. All rights I may have as the owner of any insurance policies payable to my trustee; and
- B. The right by an instrument in writing - other than a will - to revoke or amend this trust in part or in whole.

Provided that: (i) I may not change the beneficiary of the \$4 million Sun Life insurance policy # [REDACTED] 44 presently payable to this trust without the written consent of my wife, CAROL SELDEN LIPSON, and have so notified the life insurance company; and (ii) I may not revoke or amend any provision of this trust affecting my wife, CAROL SELDEN LIPSON, without her written consent. This proviso shall not apply if I have served upon my wife the Notice described in Paragraph 2.1 of our Pre-Nuptial Agreement dated June 17, 1997 as amended and more than 9 months have elapsed from the date of such service.

XIV. Situs and Governing Law. The situs of all trusts hereunder shall be in the Commonwealth of Pennsylvania, and all questions regarding the validity, effect, or

interpretation of this agreement or the administration of the trusts hereunder shall be governed by the law of Pennsylvania.


### TRUSTEES

XV. Provisions Regarding My Trustees. I shall be the initial trustee of this trust. I direct that:

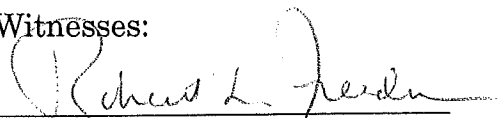
- A. If I for any reason cease to act as a trustee, I appoint my wife, CAROL SELDEN LIPSON, as trustee in my place.
- B. If my wife fails to qualify or ceases to act as a trustee for any reason other than her death, I appoint my daughter, DEBRA CLAREMON, and my step-son, ALEXANDER SELDEN, trustees in her place, to serve during her lifetime. My step-son, ALEXANDER SELDEN, may by written instrument appoint a successor trustee, and each such successor trustee shall have a similar power.
- C. Upon my wife's death (or upon my death, if my wife does not survive me), I appoint my children, DAVID H. LIPSON, JR., SHERRY LITWER and DEBRA CLAREMON, trustees in place of all trustees then serving.
- D. Notwithstanding the provisions of paragraphs A and B, my wife shall not become a trustee (or if already a trustee shall cease to be a trustee) if within ninety days of my death she does not transfer her entire interest in our residence at 112 South Pembroke Avenue, Margate City, New Jersey (or any substitute residence purchased after the date of this agreement), subject to any mortgage and liens thereon, to this trust.
- E. The words "my trustee" shall, in their application to each trust, refer to all those from time to time acting as trustees of that trust.
- F. Any trustee may resign at any time without court approval.
- G. No trustee shall be responsible for or chargeable with any of the acts or omissions of any predecessor trustee; and each trustee shall be fully protected in assuming that the accounts and acts of each predecessor trustee are correct.
- H. No trustee shall be required to give bond in any jurisdiction.

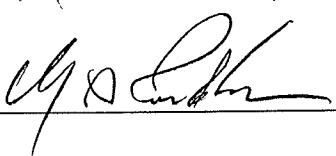
XVI. Compensation of Trustees. No trustee shall receive compensation for his or her services as a trustee."

Executed: October 7, 2008

  
D. Herbert Lipson

Witnesses:





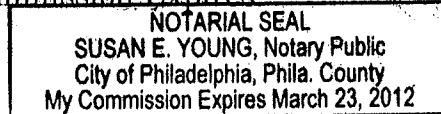
STATE OF Pennsylvania  
COUNTY OF Philadelphia : ss.

On October 7, 2008 before me, the undersigned officer, personally appeared D. HERBERT LIPSON and in due form of law acknowledged the foregoing instrument to be his act and deed and desired the same to be recorded as such.

Witness my hand and notarial seal the day and year aforesaid.

Susan E. Young  
Notary Public

My Commission Expires





The foregoing amendment and restatement of a revocable agreement of trust was delivered in Philadelphia, Pennsylvania, and is hereby accepted, on

October 7, 2008.

D. Herbert Lipson  
D. Herbert Lipson, Trustee

**Appendix XII-B1**

|   |   |  |   |                             |
|---|---|--|---|-----------------------------|
|    | <b>CIVIL CASE INFORMATION STATEMENT<br/>(CIS)</b>   |  | <b>FOR USE BY CLERK'S OFFICE ONLY</b>   |                             |
|   | Use for initial Law Division<br>Civil Part pleadings (not motions) under <i>Rule</i> 4:5-1<br><b>Pleading will be rejected for filing, under <i>Rule</i> 1:5-6(c),<br/>                 if information above the black bar is not completed<br/>                 or attorney's signature is not affixed</b> |  | PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA |                             |
|   |   |  | CHG/CK NO.  |                             |
|   |   |  | AMOUNT:   |                             |
|   |   |  | OVERPAYMENT:  |                             |
|   |   | BATCH NUMBER:  |   |                             |
| ATTORNEY / PRO SE NAME<br>David L. Braverman  |   | TELEPHONE NUMBER<br>(215) 575-3800   |   | COUNTY OF VENUE<br>Atlantic |
| FIRM NAME (if applicable)<br>Braverman Kaskey, P.C.   |   |  | DOCKET NUMBER (when available)  |                             |
| OFFICE ADDRESS<br>One Liberty Place, 1650 Market Street, 56th Floor<br>Philadelphia, PA 19103   |   |  | DOCUMENT TYPE<br>Complaint  |                             |
|   |   |  | JURY DEMAND <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                   |                             |
| NAME OF PARTY (e.g., John Doe, Plaintiff)<br>Carol Lipson, Plaintiff  |   | CAPTION<br>Carol Lipson v. Metro Corp. Holdings, Inc.; The Estate of D. Herbert Lipson et al.  |   |                             |
| CASE TYPE NUMBER<br>(See reverse side for listing)<br>999   | HURRICANE SANDY RELATED?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO   | IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO<br>IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.       |   |                             |
| RELATED CASES PENDING?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |   | IF YES, LIST DOCKET NUMBERS  |   |                             |
| DO YOU ANTICIPATE ADDING ANY PARTIES<br>(arising out of same transaction or occurrence)?<br><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO   |   | NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known)<br><input type="checkbox"/> NONE <input checked="" type="checkbox"/> UNKNOWN  |   |                             |
| <b>THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.</b>  |   |  |   |                             |
| CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION   |   |  |   |                             |
| DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP?<br><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No   |   | IF YES, IS THAT RELATIONSHIP:<br><input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input checked="" type="checkbox"/> OTHER (explain)<br><input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS See Below. |   |                             |
| DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |   |  |   |                             |
| USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION<br>PARTIES' RELATIONSHIP - Defendants are 1) the estate of plaintiff's late husband; 2) co-executors of the estate; and 3) business operated by plaintiff's late husband. |   |  |   |                             |
|  DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  |   | IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION  |   |                             |
| WILL AN INTERPRETER BE NEEDED?<br><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No   |   | IF YES, FOR WHAT LANGUAGE?   |   |                             |
| <b>I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule</i> 1:38-7(b).</b>   |   |  |   |                             |
| ATTORNEY SIGNATURE: /S/ David L. Braverman  |   |  |   |                             |



Side 2



# CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under *Rule* 4:5-1

**CASE TYPES** (Choose one and enter number of case type in appropriate space on the reverse side.)

**Track I - 150 days' discovery**

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Breach of contract action based on defendants' failure to pay death benefits. Case is appropriate for Track I.

**Track II - 300 days' discovery**

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE – PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE – PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE – PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT – OTHER

**Track III - 450 days' discovery**

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

**Track IV - Active Case Management by Individual Judge / 450 days' discovery**

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

**Multicounty Litigation (Track IV)**

- |  |   |
|--|---|
| 271 ACCUTANE/ISOTRETINOIN                  | 292 PELVIC MESH/BARD                                      |
| 274 RISPERDAL/SEROQUEL/ZYPREXA             | 293 DEPUY ASR HIP IMPLANT LITIGATION                      |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL     | 295 ALLODERM REGENERATIVE TISSUE MATRIX                   |
| 282 FOSAMAX                                | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 285 STRYKER TRIDENT HIP IMPLANTS           | 297 MIRENA CONTRACEPTIVE DEVICE                           |
| 286 LEVAQUIN                               | 299 OLMESARTAN MEDOXOMIL MEDICATIONS/BENICAR              |
| 287 YAZ/YASMIN/OCELLA                      | 300 TALC-BASED BODY POWDERS                               |
| 289 REGLAN                                 | 601 ASBESTOS  |
| 290 POMPTON LAKES ENVIRONMENTAL LITIGATION | 623 PROPECIA  |
| 291 PELVIC MESH/GYNECARE                   | 624 STRYKER LFIT CoCr V40 FEMORAL HEADS                   |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category

☐

Putative Class Action

☐

Title 59



# EXHIBIT B

**CONSENT TO REMOVAL**

I represent the Estate of D. Herbert Lipson (“Estate”) and its Co-Executors, David H. Lipson, Jr., Debra Claremon, Sherry Litwer, and Barton Winokur (collectively, the “Co-Executors”). The Estate and the Co-Executors consent to the removal of this action.



Peter J. Kreher, Esq.