

## COLLABORATIVE PARTICIPATION AGREEMENT

We have chosen to use the principles of the Collaborative Process to settle, in a non-adversarial manner, the issues arising from the dissolution of our marriage. We have retained Collaborative lawyers to assist us in achieving this goal.

### 1. PURPOSE AND GOALS

We acknowledge that the basis of the Collaborative Process is the shared belief that it is in the best interest of our family to commit ourselves to avoid using litigation. We therefore adopt this form of alternative dispute resolution which does not rely on a court-imposed resolution, but relies on a process that encourages honesty, cooperation, integrity and professionalism and is focused on the future well-being of the whole family. Our goal is to minimize, if not eliminate, the negative economic, social and emotional consequences of litigation. We commit ourselves to the Collaborative Process as a better way to resolve our differences. Specifically, we agree as follows:

(a) No Court Intervention: We commit ourselves to settling the issues arising from the dissolution of our marriage without court intervention.

(b) Full Disclosure: We agree to give full, honest and open disclosure of all relevant information, whether requested or not. We agree to promptly provide all relevant information requested. We will not employ formal discovery procedures unless we specifically agree to do so. We acknowledge that by using informal discovery, we are giving up certain investigative procedures and methods that would be available to us in the litigation process. We give up these measures with the understanding that we are dealing with each other in good faith that requires that both us shall make full and fair disclosure of all relevant information that the other party would need to make an informed decision about each issue in dispute.

(c) Participation With Integrity:

i. We will work to protect the privacy and dignity of everyone involved in the Process. Each of us recognizes that our own individual communications in the

Process are not privileged as to the other party's lawyer. Knowing that, each of us shall instruct our lawyer to hold confidential and not to disclose outside the Process any information which he or she may learn about the other party. However, in the event that one or both of our lawyers are involved in a "no-fault" divorce, they will be free to disclose the information necessary to accomplish the divorce.

ii. We will promptly identify, correct and not take advantage of any mistakes made in the Process.

iii. We will commit to meeting regularly and when we do meet, we will be prepared having done any homework assigned. If homework cannot be completed prior to a scheduled meeting, we will inform the group before the meeting so that a decision can be made about whether or not to postpone the meeting.

(d) Communication: We agree to work toward the resolution of the issues arising out of the dissolution of our marriage in informal meetings with our lawyers and any neutral mental health and financial professionals that we may hire.

i. Tone of Communication. Our written and verbal communications will be respectful and constructive. We will try to avoid making accusations or claims which are not based in fact and we will try to avoid taking inflexible positions.

ii. Focus of Communications. Communications during the meetings will be focused on the economic and parenting issues in the dissolution and the constructive resolution of those issues. To the extent possible, we will try not to focus on the issues that may have contributed to the breakdown of the marital relationship.

iii. Interruptions. We will try not to interrupt each other or the lawyers during our discussions.

iv. Acknowledgment of The Other's Point of View. Each of us will respectfully acknowledge and make every effort to understand the other's point of view, even if we do not agree with it.

v. Efficiency. We understand that the costs for our meetings are substantial and require everyone's cooperation to make the best possible use of available resources.

vi. Avoiding Pressure Outside Collaborative Process. To maintain the Process as objective and constructive as possible, we agree not to pressure each other to talk about settlement issues outside of our group meetings. Discussions between us outside of the conference setting should be agreed to in advance.

## 2. MENTAL HEALTH AND FINANCIAL PROFESSIONALS:

We may also use neutral financial experts for valuation purposes, cash flow analysis, parenting issues, valuation of real estate and personal property, and any other issue which requires expert input. When appropriate, we may employ a neutral mental health professional or professionals to serve as the group's divorce coach or coaches or to advise us with regard to the children. We will agree in advance as to how the costs of any third party expert will be paid. If experts are needed, we will retain them jointly unless we agree otherwise. In the event only one of us desires input from neutral experts, we will so inform the other and our lawyers before we take any action to employ one.

## 3. CONSEQUENCES OF COURT INTERVENTION:

(a) Disqualification of Lawyers: While our collaborative lawyers may represent us in a no-fault divorce and obtaining entry of Qualified Orders, we understand neither of our lawyers may represent us in an adversarial proceeding against the other party. Our collaborative lawyers will be disqualified as witnesses and their work product will be inadmissible as evidence and not subject to subpoena or discovery except as indicated otherwise herein. Disqualification of a lawyer will also disqualify any other person in his or her firm.

(b) Disqualification of Mental Health and Financial Professionals: In the event that the Collaborative Process terminates prior to reaching a successful conclusion, all mental health and financial professionals employed in the Process will be disqualified as witnesses and their work product will be inadmissible as evidence and not subject to subpoena or discovery unless we and the mental health and financial professional agree otherwise in

writing or except as indicated otherwise herein. Disqualification of a mental health or financial professional will also disqualify any other person in his or her partnership, firm, etc.

(c) Evidence: If the Process is not successful and subsequent litigation occurs, we agree that (1) neither party will introduce as evidence in court information disclosed during the Collaborative Process, including offers or proposals for settlement, or other statements by any of the parties in the Process or to their lawyers, except as provided in 8.b.; (2) neither one of us will offer as evidence the testimony of either collaborative lawyer, nor will we subpoena either of the lawyers to testify, in connection with this matter; and (3) neither of us will subpoena the production at any court proceedings any notes, records, or documents in our lawyers' possession or in the possession of one of the neutral experts.

(d) Cooling Off Period: If one of us decides to withdraw from the Collaborative Process, prompt written notice will be given to the other party and their lawyer. Upon withdrawal from the Collaborative Process, unless there is an emergency, there will be a thirty-day waiting period before either of us can file in court so as to permit the other party to retain another lawyer and make an orderly transition. The intent of the provision is to avoid surprise and prejudice to the rights of the other party and we therefore agree that either of us may bring this provision to the attention of a court in requesting a postponement of a hearing.

#### **4. TERMINATION OF ATTORNEY SERVICES WITHOUT TERMINATION OF THE COLLABORATIVE PROCESS:**

Either of us is free to discharge our lawyer or divorce coach or coaches for any reason, and to retain the services of another collaboratively trained lawyer and another divorce coach or coaches without causing termination of the Collaborative Process. Similarly, if a lawyer, for any reason, terminates representation in this matter, the affected party shall be free to obtain the services of substitute counsel.

#### **5. WRITTEN AGREEMENT:**

(a) Form of a Final Collaborative Agreement: When we have reached an agreement on all issues, our agreement will be reduced to a written document which is an enforceable contract binding both of us to its terms.

(b) Agreements Pending Final Agreement:

(1) During the course of the Collaborative Process if either of us requires a binding agreement for any purpose, as for example, with the sale of real property or liquidation of a marital asset, the agreement will be put in writing and signed by us as part of the Process. If, subsequently, one of us withdraws from the Collaborative Process, the written Agreement may be presented in a litigated matter.

(2) During the course of the Process, we will arrive at "Temporary" Agreements that are not binding contracts, but will be respected and followed by us during the course of the Process.

6. CHILDREN'S ISSUES: We recognize that children frequently suffer during the process of divorce, and we commit to minimizing the trauma to and disruption of our children's lives. To that end, we agree as follows:

(a) Settlement Issues Will Not Be Discussed in the Presence of the Parties' Children: We acknowledge that communication regarding our settlement can be harmful to our children. Communication with the children regarding these issues will occur only if it is appropriate and done by mutual agreement or with the advice of a neutral mental health expert.

(b) The Children Will Not be Interrogated: We will not interrogate the children about the other party or the events occurring in his or her residence.

(c) The Children Will Not Be Put in the Position of Having to Choose Between or Subjected to Hearing Blame About the Other Parent: We agree that our children should not be forced to choose between us and should be encouraged to see and have affection for both of us. We acknowledge that the children need both parents in their lives, and

that they are hurt when one party criticizes or blames the other parent, either to them or in their presence.

(d) Access to the Children Will Not be Withheld: We will not attempt to impede access of the children to the other party. The children shall have reasonable telephone access to both of us, and we shall have reasonable telephone access to them. We shall promptly inform the other parent of any serious accident, illness, or other mishap involving the children. We shall have equal access to records regarding the children's education, health, activities, and general welfare. Access to the children shall not be denied to the children's extended family, such as grandparents, uncles, aunts, cousins and other relatives, unless we specifically agree otherwise.

e. Issue Resolution: In resolving issues about our children, the parties, their lawyers, and mental health professional, if one is employed, shall make every effort to reach solutions that promote the children's best interests.

(f) Parenting Programs: We agree to attend a parenting class or meet with a mental health professional if doing so would be in the children's best interest.

(g) Custody Evaluation: We agree not to seek a custody evaluation absent a written agreement. We may, however, request the assistance of a mental health professional regarding how to help and support our children through this Process.

(h) Removal from State: We agree not to remove, or threaten to remove, the children from the state, absent the explicit written consent of the other parent. However, we further agree that consent to such removal for vacations or other legitimate activities will not be unreasonably withheld.

(i) Abuse: We will not abuse the children in any way.

7. RIGHTS AND OBLIGATIONS PENDING SETTLEMENT: We agree to the following commitments and understand that if we do not abide by these commitments our lawyers may be forced to withdraw and cause the Process to terminate:

(a) We will not sell, transfer, encumber, conceal, assign, remove, or in any way dispose of any property, individually or jointly held by us, except in the usual course of business consistent with past practice or for payment of usual and customary household expenses or for reasonable lawyer's fees in connection with this Process.

(b) We shall not incur debts after the signing of this Agreement, including, but not limited to, further borrowing against any credit lines secured by the family residence, further encumbering of any assets, or using credit cards or cash advances against credit cards, except in the usual course of business, consistent with the past practice or for payment of usual and customary household expenses or for reasonable lawyer's fees in connection with this Process.

(c) We will not have each other or our children removed from an existing health insurance coverage, including, but not limited to, medical, hospitalization, dental, vision, prescription, or optical coverage, and shall maintain the existing health insurance coverage in full force and effect.

(d) We shall not change the beneficiaries of any of the existing life insurance policies and we shall maintain the existing life insurance, automobile, homeowner's, renter's or any other existing insurance policies that were in full force and effect at the start of this Process.

(e) We will not withhold or misrepresent any information and will disclose the true value of assets and debts.

(f) We will promptly provide all documents requested by the other party.

(g) We will abide by all temporary agreements made during the Process.

(h) We will participate in the spirit of the Collaborative Process in good faith.

## 8. CONFIDENTIALITY OF THE PROCESS:

a. The parties agree, and instruct their lawyers and mental health or financial professionals, not to disclose to anyone outside the Process any communication, e-mailed or otherwise made, or information generated (such as the minutes of the meetings) within the Process by either of us, by our lawyers, or by the mental health or financial professionals, except as follows:

(1) If such information or document is not provided or prepared specifically for the Process (such as, for example, bank records, tax documents, credit card statements, insurance policies, etc.).

(2) If a threat of bodily injury is made to one of us by the other.

(3) If a threat is made to destroy an asset or to deplete the marital estate which, if carried out, would result in significant reduction of the property available to divide.

(4) If any communication indicates a plan, attempt, or threat to commit a crime or to conceal an ongoing crime.

(5) If a threat is made involving either harm to one of the children or removal of the children from the place where they live.

(6) While the parties may disclose information about the Collaborative Process to their respective family members, financial advisors or individual counselors, they agree to instruct those individuals that they are not to further disclose such information and that such information is confidential and governed by the terms of this Agreement.

b. The parties agree that any and all work product relating to the Process will not be subject to discovery or admissible in evidence in any subsequent judicial and administrative proceeding between the clients, except as follows:

(1) All exceptions set out in 8.a.(1)-(6) above.

(2) If an ethics complaint is filed against either of our collaborative lawyers or against any mental health or financial professional who is assisting us with the Process.

(3) If a claim of malpractice or misconduct is made against either of our collaborative lawyers or against an Allied Professional who is assisting us with this Process.

(4) If any communication, information, or document is needed to prove or disprove the validity of a written Agreement signed as part of the Process.

(5) If the communication, information, or document is used to assist in obtaining a “no-fault” divorce or other court-ordered resolution of the matters subject to and resolved with in the Collaborative Process.

(6) As otherwise required by law or subsequently agreed to by all parties.

#### 9. CAUTIONARY ACKNOWLEDGMENTS AND COMMITMENTS:

(a) Independent Representation: We understand that, while our collaborative lawyers share a commitment to the Process, each has a professional duty to represent his or her own client diligently and is not the lawyer for the other party. We understand that our lawyers have a duty to advise us regarding the choices we make during this Process, including the law as it exists in this state and as it is typically applied in the jurisdiction where this case may arise. We instruct our respective lawyers to provide this advice in the presence of the other lawyer and ourselves so we may have a full explanation of all possible outcomes before we arrive at a decision. We each have instructed each of our lawyers to give advice and experience to us in a straightforward candid and honest manner without regard as to whether the advice or experience is favorable or not to us, and acknowledge that having the lawyers provide legal advice with both parties present can be helpful to resolving our differences.

(b) Vigorous Discussion: We understand the Process will involve vigorous good faith discussions.

(c) Compromise as Option: Each of us will be expected to take a reasoned position in all disputes. Where such positions differ, each of us will be encouraged to use our best efforts to create options that meet the fundamental needs of both of us and, if necessary, to make the compromises needed to reach a settlement on all issues.

(d) Threats to Force Settlement: Although each of us may discuss the likely outcome of a litigated result, none of us will use threats of litigation as a way of forcing settlement.

(e) No Guaranty of Success: We understand there is no guarantee that the Process will be successful in resolving our case.

(f) Not a Panacea: We understand that the Collaborative Process may not eliminate concerns about the distrust and differences which have existed between us.

(g) Need to Assert Interests: We understand that we are expected to assert our respective interests and that our respective lawyers will help each of us to do so.

(h) Expectations Should be Realistic: We understand that we should not lapse into a false sense of security that the Process will protect each of us if we choose to make decisions our lawyers have advised against.

(i) Transparency of Process: We agree to instruct our respective lawyers to give his or her advice in a straightforward manner without regard as to whether the advice is favorable to us or not. Such advice should be given in a four-way meeting or, if given in an individual session, the advice, if substantive in nature, must be shared in the next joint session. If we meet with our lawyers outside of a joint meeting regarding issues that do not pertain to the substantive issues being worked on in the joint meetings, as for instance, for emotional or supportive needs, the substance of that meeting need not be shared.

10. LAWYER'S FEES AND COSTS: We agree that our respective lawyers are entitled to be paid for their services. Each of us will pay our own lawyer unless as part of this Process we agree otherwise.

11. INCENTIVE TO WORK TOWARD A SUCCESSFUL RESOLUTION: We realize that the Collaborative Process requires a considerable investment of time and effort, and that the possibility of having to give up not only our lawyers but also the work product of neutral health or financial professionals used in this process, is intended to serve as a substantial disincentive to withdraw from the Collaborative Process. We recognize that the investigation and preparation necessary for a successful Collaborative Process differs substantially from the preparation required for an adversarial court proceeding, and firmly believe that the efforts of ourselves, our lawyers, and any mental health or financial professionals would be better and more efficiently directed toward collaborative resolution of our differences rather than toward magnifying those differences in court.

12. INSTRUCTIONS TO OUR LAWYERS: Each of us will provide a copy of this Agreement to our own individual lawyer and instruct them to assist us in honoring the promises we make in this Collaborative Participation Agreement. In addition, we each hereby instruct our individual lawyer not to act in any way inconsistent with the promises we make herein.

We agree to follow this Contract and to promote both the spirit and the written word of this Contract.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, in Charlottesville, Virginia.

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