

STATE OF NORTH CAROLINA

**MEDIATION AGREEMENT**

COUNTY OF \_\_\_\_\_

\_\_\_\_\_ and \_\_\_\_\_ agree as follows:

1. Difficulties have arisen between the parties and they desire to attempt to mediate the matters in dispute.
2. The parties agree to enter into the mediation in good faith, with each party making disclosure of all information necessary to facilitate the negotiation and mediation of an agreement to resolve differences between them. [The parties agree to mediate several issues pertaining to their divorce] OR [The parties agree to mediate issues pertaining to their dispute]. They agree to listen to the comments of each other and the mediator. They agree to approach the issues with an open mind, and they agree to attempt to reach a settlement without having to litigate their dispute in court. They understand that participating in good faith in mediation does not necessarily mean that a settlement will be reached.
3. The parties agree that \_\_\_\_\_, of the law firm of \_\_\_\_\_, shall be their mediator. His/Her fee for serving as mediator is \$\_\_\_\_\_ per hour. By affixing their signatures to this Agreement, the parties agree that each will pay one-half of the mediator's fee for all time expended in preparation for the mediation, in mediation session(s), an administrative fee of \$\_\_\_\_\_, [travel time of \$\_\_\_\_\_ per hour, travel mileage and expense to and from the mediation site] and any necessary post-mediation matters. An advance partial payment of the mediation is required. Your signature on this Agreement is your agreement to make this payment no later than 10 days prior to the mediation. The advance payment for your mediation is \$\_\_\_\_\_ from each party for the mediation and the administrative fee. This amount will be placed in the trust account at \_\_\_\_\_ and will be billed against as the mediation progresses. Any amount remaining at the conclusion of the mediation will be refunded, with one-half being refunded to each party, unless otherwise arranged.
4. The purpose of the mediation is to assist the parties in reaching a voluntary settlement of issues in their separation and divorce. The parties understand that their mediator cannot bind them or require them to reach a result regarding their dispute. The parties acknowledge that they have reviewed the material accompanying this Agreement. ["Mediated Settlement Conferences in Equitable Distribution & Other Family Financial Cases," North Carolina Dispute Resolution Commission brochure, January 1999.] The parties agree that the mediator must remain impartial throughout and after the mediation processes. The parties agree that the mediator may discuss the parties' mediation process with any attorney that either party may retain as individual counsel or who may

accompany the parties to the mediation. The parties recognize that they have a right to seek individual legal representation before, during and after mediation.

5. In order to create the climate of open and honest communications necessary for a successful mediation, the parties agree that all written and oral communications made in the course of mediation are confidential. The parties agree that all offers to compromise and all statements made with regard to an offer to compromise by either party or their attorneys or by the mediator during mediation shall be deemed inadmissible as evidence pursuant to Rule 408 of the North Carolina Rules of Evidence. Neither party will call the mediator to testify concerning any mediation or any statements or admissions including, but not limited to, the notes, records and work product of the mediator. In the event either party contravenes this provision, the mediator will move to quash the subpoena or summons and the party in breach will pay all of the mediator's fees and expenses for doing so.
  - a. Limitations to Confidentiality. Notwithstanding the above provisions of Paragraph 4:
    - (i) The mediator may discuss the mediation and any information disclosed by the parties in mediation on an "off-the-record" basis with the parties' attorneys and any third-party advisors or experts engaged by the parties or either of them for the purpose of resolving the matters in issue.
    - (ii) The mediator may disclose to others information regarding the mediation with the written consent of both parties.
    - (iii) The mediator will disclose otherwise confidential information where required by law (*e.g.*, where the mediator suspects child abuse or neglect or where the information suggests an actual or potential threat to life or safety) or where the mediator is ordered to do so by judicial authority.
    - (iv) Facts that are otherwise discoverable are not made confidential because they are discussed during this mediation.
6. The mediator will help both parties attempt to resolve their disputes. The mediator does not act as an attorney for either party individually. The mediator (since s/he is an attorney) may provide the parties with legal information. The mediator, however, is not an advocate for either party individually. In addition, the mediator is not an attorney for any corporations or other entities that the parties may own.
7. The mediation will last as long as the parties and the mediator desire. The parties acknowledge that either party has the right to terminate the mediation before an agreement is reached. In addition, the mediator may terminate mediation under certain circumstances. Those circumstances include: (1) the failure of a party to provide honest answers regarding assets, liabilities, income and expenses; (2) the belief by the mediator that one party is taking unfair advantage of the other party; (3) the belief by the mediator

that one party or both parties cannot adequately represent his or her interests; and (4) the mediator's belief that further mediation sessions would not be productive or would not be worth the time and expense.

8. Both parties release, waive and forever discharge \_\_\_\_\_ and the law firm of \_\_\_\_\_ from any liability to either of them as a result of his/her actions or lack of action with regard to the mediation process being undertaken in this Agreement by the parties. There are no verbal agreements between the parties and the mediator modifying or expanding the terms of this Agreement.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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\_\_\_\_\_

\_\_\_\_\_, Mediator