

COLLABORATIVE LAW PROCESS PARTICIPATION AGREEMENT

THIS AGREEMENT is made on this the 1st day of January, 2004.

BETWEEN:

JOHN DOE of
123 King Street in Burnaby, British Columbia

and

JANE DOE of
123 Queen Street in Vancouver, British Columbia

(together the “Parties”, separately the “Party”)

AND:

ALICE SMITH

and

SYLVIA BLACK

(together the “Lawyers”, separately the “Lawyer”)

WHEREAS the Parties and the Lawyers have chosen to enter into this Agreement to use the principles of the Collaborative Law Process to settle the issues arising from the dissolution of their relationship,

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the promises and the mutual covenants, terms and conditions hereinafter set forth, the Parties and the Lawyers covenant and agree each with the other as follows:

1. Purpose

The primary goal of the Collaborative Law Process is to settle the outstanding issues between the Parties in a non-adversarial manner. The Parties aim to minimize the negative economic, social and emotional consequences of protracted litigation to themselves and their family. The Parties have retained collaborative law lawyers to assist them in reaching this goal.

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IT MAY NOT CONTAIN INFORMATION RELEVANT TO YOUR SITUATION.
IT SHOULD NOT BE USED AS A PRECEDENT FOR DRAFTING YOUR OWN DOCUMENT.**

2. Communication

2.1 The Parties intend to effectively communicate with each other to efficiently and economically settle the dissolution of their relationship. Written and verbal communications will be respectful and constructive, and shall not make accusations or claims not based in fact.

2.2 Communication during settlement meetings will be focused on the economic and parenting issues in the dissolution of the Parties' relationship and the constructive resolution of those issues.

2.3 The Parties are encouraged to discuss the interests they have in achieving a mutually agreeable settlement, and each is encouraged to speak freely and express his or her needs, desires, and opinions without criticism or judgment by the other. Although the Parties should be informed by their respective Lawyers about, and may discuss with each other, the litigation alternatives and the outcomes they might attain, neither Party nor their Lawyers will use the threat to withdraw from the process or to go to court as a means of achieving a desired outcome or forcing a settlement.

3. Participation in Good Faith

The Parties and the Lawyers shall uphold a high standard of integrity, and shall not take advantage of inconsistencies or miscalculations of the other, but shall disclose them and seek to have them corrected.

4. Negotiation in Good Faith

4.1 The Parties and the Lawyers shall deal with each other in good faith and shall promptly provide all necessary and reasonable information requested. No formal discovery procedures will be used unless specifically agreed to in advance by the Parties and the Lawyers.

4.2 The Parties acknowledge that by using informal discovery, they are giving up certain rights, for the duration of the Collaborative Law Process, including the rights to formal discovery, formal court hearings, restraining orders and other procedures available through litigation. They give up these measures with the express understanding that both Parties shall make full and fair disclosure of all assets, income, debts and other information. The Parties acknowledge that participation in the Collaborative Law Process, and the settlement reached, is based upon the assumption that both Parties have acted in good faith and have provided complete and accurate information to the best of their ability.

4.3 The Parties agree to provide sworn statements making full and fair disclosure of their income, assets and debts.

5. Cautions and Limitations

5.1 In electing to utilize the Collaborative Law Process, the Parties understand that there is no guarantee that the process will be successful in resolving their case. They understand that the process cannot eliminate concerns about any disharmony, distrust or irreconcilable

differences which have led to the current conflict. The Parties understand that they are still expected to assert their respective interests and their respective Lawyers shall help each of them do so.

5.2 The Parties further understand that while the Lawyers share a commitment to the process described in this document each of them has a professional duty to represent his or her own client diligently, and does not act as counsel for the other party.

6. Experts and Consultants

When appropriate and necessary, the Parties may use experts. The experts shall be neutral and favour neither Party. The Parties shall agree in advance as to the retaining of the experts and as to how the costs of the experts shall be paid.

7. Divorce Coaches and Financial Planners

When appropriate and as may be necessary, the Parties may use the services of one or more of the following professionals: Divorce Coaches, Children's Advocates and Financial Planners (collectively referred to as "the Collaborative Professionals"). When the Collaborative Professionals are engaged, the Parties agree that the Collaborative Professionals and the Lawyers may engage in such discussions as may be necessary to achieve the resolution of the issues. In the event that the Collaborative Law Process comes to an end, the confidentiality provisions as set out in Paragraph 15 of this Agreement shall apply to the Collaborative Professionals.

8. No Court Intervention

Unless otherwise agreed, prior to reaching final agreement on all issues no Writ of Summons and Statement of Claim shall be filed or served, nor shall any other motion or document be prepared or filed which would initiate or necessitate court intervention.

9. Disqualification by Court Intervention

The Parties understand that their Lawyers' representation is limited to providing services within the Collaborative Law Process. While each lawyer is the advisor of his or her client and serves as the client's representative and negotiator, the Parties mutually agree and acknowledge that the Lawyers will be disqualified from representing them in a contested court proceeding.

10. Termination of the Collaborative Law Process by a Party

10.1 If a party elects to terminate the Collaborative Law Process, prompt written notice shall be given to the other Party through his or her Lawyer. Upon termination of the Collaborative Law Process by a Party or a Lawyer as provided for below, neither Party shall take any step to initiate or advance litigation for a period of 45 days (the "Waiting Period") in order that the Parties may retain new counsel.

10.2 All temporary agreements made in the course of the Collaborative Law Process shall remain in full force and effect during the Waiting Period. The intent of this provision is to avoid surprise and prejudice to the rights of the other Party.

10.3 The Parties agree that either Party may bring this clause to the attention of the Court should proceedings be initiated or an application advanced during the Waiting Period.

11. Withdrawal of a Lawyer from the Collaborative Law Process

11.1 If either Lawyer withdraws from the Collaborative Law Process for any reason, they shall promptly provide written notice to the other Party through his or her Lawyer. This may be done without terminating the status of the proceedings as a Collaborative Law case.

11.2 The Party whose Lawyer has withdrawn may elect to continue in the Collaborative Law Process and shall give prompt written notice of this intention to the other Party, and shall retain new counsel. In the event that this party elects to continue in the Collaborative Law Process, the Parties and the Lawyer and the new counsel shall execute a new Collaborative Law Participation Agreement within 45 days of the Lawyer first giving notice. If a new agreement is not executed within 45 days, the other Party shall be entitled to proceed as if the Collaborative Law Process were terminated as of the date the first written notice was given.

12. Termination of Collaborative Law Process by Lawyer

A Lawyer must withdraw from the Collaborative Law Process in the event he or she learns that their client has withheld or misrepresented information, and continues to withhold and misrepresent such information, or has otherwise acted so as to undermine or take unfair advantage of the Collaborative Law Process. The Lawyer withdrawing shall advise the other Lawyer that he or she is withdrawing, and the Collaborative Law Process shall terminate.

13. Rights and Obligations Pending Settlement

Although the Parties have agreed to work outside the court system to resolve the issues arising from the dissolution of their relationship, the Parties agree that:

- i) neither Party shall dispose of any assets except in the ordinary course of business, unless adequate notice is provided to the other Party and the agreement of the other Party is provided in writing;
- ii) neither Party shall harass the other Party; and
- iii) all insurance coverage existing at the execution of this Agreement shall be maintained and continued for the duration of the Collaborative Law Process, unless the Parties otherwise agree in writing.

14. Enforceability of Agreements

14.1 In the event that the Parties require a temporary agreement during the Collaborative Law Process, the agreement shall be put in writing and signed by the Parties and the Lawyers (the “Interim Agreement”). If either Party withdraws from the Collaborative Law Process, the Interim Agreement shall be enforceable and may be presented to the Court as a basis for an Order, which the Court may make retroactive to the date of the Interim Agreement.

14.2 If a final agreement is signed by the Parties and the Lawyers at the conclusion of the Collaborative Law Process (the “Final Agreement”) and a Party refuse to honour it, the Final Agreement may be presented to the Court in any subsequent litigation.

15. Confidentiality

15.1 All communication exchanged within the Collaborative Law Process shall be on a “without prejudice” basis and shall be kept strictly confidential and not be disclosed or discussed by the Parties with anyone other than the Lawyers or the Collaborative Professionals. It is understood and acknowledged by the Parties that the information being discussed and the documents being produced are of a sensitive nature and the disclosure of such information outside the Collaborative Law Process could cause damage to either or both of the Parties, financially and/or emotionally. The parties agree that his confidentiality agreement shall inure following the termination of the Collaborative Law Process, and agree that a breach of this confidentiality provision shall be actionable by either Party.

15.2 If subsequent litigation occurs, the Parties mutually agree that neither Party shall:

- i) introduce as evidence in Court information disclosed during the Collaborative Law Process for the purpose of reaching a settlement, except documents otherwise compellable by law, including any sworn statements as to financial status made by the Parties;
- ii) introduce as evidence in Court information disclosed during the Collaborative Law Process with respect to either Party’s behaviour or legal position with respect to settlement;
- iii) subpoena the either Lawyer or any of the Collaborative Professionals to Court to testify in any subsequent litigation or seek to discover either Lawyer or any of the Collaborative Professionals with regard to matters disclosed during the Collaborative Law Process; or,
- iv) require the production at any Court proceedings of any notes, records, or documents in the possession of either Lawyers or any of the Collaborative Professionals.

15.3 The Parties agree that this confidentiality agreement shall apply to any subsequent litigation, arbitration, or any other process intended to resolve the issues arising between them on the dissolution of their relationship.

16. Acknowledgment

The Parties and the Lawyers acknowledge that they have read this Agreement, understand its terms and conditions, and agree to abide by them.

The Parties

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JANE DOE

John Doe

JOHN DOE

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