

**2006 Revised Handbook: Arbitrating Family
Law Cases Under the North Carolina Family
Law Arbitration Act as Amended in 2005**

Volume II: Documents

Prepared for and Published by the North Carolina Bar Association

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Introduction

Volume II of this 2006 Revised Handbook publishes documents contributed by family law attorneys and used in their practices under the North Carolina Family Law Arbitration Act (FLAA). There are two caveats for using these materials.

First, as warned in Volume I, drafters must consider the facts and circumstances of the client and the particular case in deciding which of the published form(s) or document(s) to use.

Second, and of equal importance, drafters must consider that many forms or documents published in treatises and other collections were used in arbitrations under the old Uniform Arbitration Act. This means two things: (1) the Revised Uniform Arbitration Act, and hence the Family Law Arbitration Act as to some of its provisions, may supersede a form or document in whole or in part; (2) many published forms or documents are useful for commercial arbitrations and the like and may not be suitable, in whole or in part, for family law arbitrations.

Like continuing legal education publications the North Carolina Bar Foundation publishes, the 2006 Revised Handbook and its 1999 predecessor are intended to provide current and accurate information and are designed to assist in maintaining professional competence. The North Carolina Bar Association does not render any legal, accounting or professional services.

The reprinted documents approximate the sequence of use in family law arbitrations. Many were originally published in prior manuscripts of the North Carolina Bar Foundation and of the North Carolina Chapter of the American Academy of Matrimonial Lawyers. The editors have reviewed previously submitted forms and in a few instances have attempted to update the forms for practice under the Act as it was amended in 2005.

All three volumes of the 2006 Revised Handbook can be found on the North Carolina Bar Association website at <http://family.ncbar.org/Legal+Resources/Publications/default.aspx>.

The editors wish to thank Raleigh, North Carolina family law specialist Mark A. Sullivan for his excellent review of and comments on Volume II.

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A. Pre-Dispute Arbitration Clauses

1. Model Arbitration Clauses for Agreements to Arbitrate

A. North Carolina Family Law Arbitration Act. Any controversy or claim arising out of or relating to this contract, or the breach of this contract, shall be settled by arbitration pursuant to N.C.G.S. § 50-41 et seq. (North Carolina Family Law Arbitration Act). The arbitration shall be conducted pursuant to the North Carolina Basic Rules for Arbitrating Family Law Disputes (Basic Rules) in force as of the date of the execution of this agreement, except for the following Basic Rules: *[here list numbered Basic Rules that the parties agree shall not apply]*. In addition, the following North Carolina Optional Rules for Arbitrating Family Law Disputes (Optional Rules) in force as of the date of the execution of this agreement shall apply: *[here list numbered Optional Rules that parties agree shall apply.]* The following additional rules shall govern this arbitration: *[here recite any additional rules]*. The parties further agree that a judgment on the award rendered by the arbitrator[s] may be entered in any court having jurisdiction.

B. Initiation of Arbitration. Arbitration under this provision shall be initiated by the initiating party (the claimant) giving written notice to the other party (the respondent) of claimant's intention to arbitrate and the notice shall contain a statement setting forth this agreement to arbitrate, the nature of the dispute, the amount involved, if any, the remedy or remedies sought, and the place of hearing. A respondent shall file with the claimant an answering statement, including any counterclaim, thirty (30) days after receiving notice from claimant.

C. Counterclaim. If respondent asserts a counterclaim, it shall set forth the nature of the counterclaim, the amount involved, if any, and the remedy or remedies sought. Claimant may make an answering statement to a counterclaim.

D. Failure to Answer. Failure to make an answering statement within thirty (30) days after receiving notice from claimant shall be treated as a denial of the claim. Failure to make an answering statement within thirty (30) days after receiving a counterclaim shall be treated as denial of the counterclaim. Dispositive motions and/or affirmative defenses (e.g., failure to state a claim for which relief can be granted, payment, statute of limitations, breach of fiduciary duty) must be made within 30 days after receiving a demand or a counterclaim and may be included in the answering statement to a notice or counterclaim.

E. Changes of Claim; Amendments. After a claim or a counterclaim has been filed, if either party desires to make any new or different claim or counterclaim, to otherwise amend a claim or counterclaim or to amend an answering statement, this claim, counterclaim or answering statement must be in writing and sent to the other party, who shall have 30 days from the date of mailing to file an answer or otherwise respond. If an arbitrator has been chosen, the arbitrator shall be mailed a copy at the same time. After the arbitrator has been appointed, no new or different claim or counterclaim may be submitted without the arbitrator's consent.

B. Forms for Referring Disputes to Arbitration

1. Agreement to Arbitrate

NORTH CAROLINA)
)
_____ COUNTY)

AGREEMENT TO ARBITRATE

THIS AGREEMENT TO ARBITRATE, hereinafter referred to as "agreement," is made on this the ____ day of _____, 20__ by and between _____ and _____;

WITNESSETH:

WHEREAS the parties agree to submit certain matters in controversy to arbitration for a final determination pursuant to N.C.G.S. § 50-41, *et seq*;

NOW THEREFORE said parties, for and in consideration of the acts and things herein, respectively agreed by them and to be done and performed, do mutually agree, each with the other as follows:

I. **North Carolina Family Law Arbitration Act.** The parties agree to submit the issues set forth below to binding arbitration pursuant to the North Carolina Family Law Arbitration Act (N.C.G.S. § 50-41 *et seq.*)

II. **Arbitrator.** The parties appoint _____ as their arbitrator.

III. **Issues:** The following issues shall be submitted to arbitration:

1. _____
2. _____
3. _____
4. _____

IV. **Arbitration Award.** The parties agree to faithfully abide by and perform any arbitration award.

V. **Severability.** In the event that any of the provisions of this agreement are deemed to be invalid or unenforceable, the same shall be severed from the remainder of this agreement and shall not cause invalidity or unenforceability of the remainder of this agreement. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

VI. **Entire Agreement.** This agreement constitutes the entire understanding of the parties. There are no representations, promises, warranties, covenants or undertakings other than those expressly set forth herein.

IN WITNESS WHEREOF, the parties hereunto affix their respective hands and seals of the date subscribed at the top of this page.

_____ (Seal)

_____ (Seal)

NORTH CAROLINA

_____ COUNTY

I, _____, a Notary Public for said County and State, certify that _____, the principal herein, personally appeared before me this day, and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein in the following capacity: _____ and I further certify as follows:

_____ I have personal knowledge of the identity of the principal

_____ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____.

Date: _____

_____, Notary Public
(Print Name)

(Official Seal)

My commission expires: _____

NORTH CAROLINA

_____ COUNTY

I, _____, a Notary Public for said County and State, certify that _____, the principal herein, personally appeared before me this day, and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein in the following capacity: _____ and I further certify as follows:

_____ I have personal knowledge of the identity of the principal

_____ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____.

Date: _____

_____, Notary Public
(Print Name)

(Official Seal)

My commission expires: _____

2. Consent Order Referring Case to Arbitration

NORTH CAROLINA
 _____ COUNTY

IN THE GENERAL COURT OF JUSTICE
 DISTRICT COURT DIVISION
 _____ CVD _____

_____,)
 Plaintiff,)
 v.)
 _____,)
 Defendant.)

**CONSENT ORDER REFERRING CASE
 TO ARBITRATION**

THIS CAUSE came before the undersigned district court judge on the joint request of the parties, as evidenced by the signatures below and it was made to appear to the court that the parties have agreed to enter into arbitration pursuant to N.C.G.S. § 50-41 *et seq.* The court finds and concludes that good cause has been shown for the entry of this order.

IT IS THEREFORE ORDERED THAT:

1. Pursuant to N.C.G.S. § 50-42(a), the following claims are ordered to be resolved by arbitration: (1) _____, (2) _____ and (3) _____.
2. _____ is designated as the arbitrator. The parties may jointly agree to substitute another arbitrator, however, at any time. The parties shall set by agreement within 30 days hereof the rules to apply in this proceeding. If they have not done so, then the arbitrator shall determine these within 45 days hereof.

This the _____ day of _____, 20__.

 District Court Judge

_____, Plaintiff
 _____, Attorney for Plaintiff
 _____, Defendant
 _____, Attorney for Defendant

Date: _____
 Date: _____
 Date: _____
 Date: _____

[CERTIFICATE OF SERVICE]

C. Forms Establishing Arbitration Procedures

1. Stipulation for Arbitration Procedures

STATE OF NORTH CAROLINA
COUNTY OF _____

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
____ CVD ____

_____,
Plaintiff,

v.
_____,
Defendant.

**STIPULATION FOR ARBITRATION
PROCEDURES**

THIS CAUSE was heard by the undersigned arbitrator, with plaintiff represented by _____ and defendant represented by _____. By consent order entered by Judge _____ on the ___ day of _____, _____, the parties submitted the following issues to arbitration for a final determination pursuant to the North Carolina Family Law Arbitration Act (N.C.G.S. § 50-41 *et seq.*): (1) _____, (2) _____, (3) _____ and (4) _____. As evidenced by the signatures of the parties and of their respective attorneys below, the parties have agreed, and the arbitrator so orders, that the following conditions and provisions shall govern this arbitration:

1. **North Carolina Canons of Ethics for Arbitrators.** The North Carolina Canons of Ethics for Arbitrators shall apply to this arbitration proceeding.

2. **Date, Time and Place of Arbitration Hearing.**

- a. **Date, Time and Place.** The arbitration hearings shall be held at the law offices of _____ located at _____, _____, North Carolina or at any other location as the arbitrator may designate. The arbitrator shall set the date and time for each mediation hearing. The arbitrator shall send a written notice of hearing at least 20 days before the hearing. Attendance at a hearing waives notice of the hearing.
- b. **Change of Location.** If a party requests in writing that an arbitration hearing be held at another specific location because of serious inconvenience of a party or parties or of a witness or witnesses such that justice in the arbitration cannot be had, the arbitrator may, after receiving

the request and a written response from the other party filed within 30 days after receiving the request, determine the other place requested by a party, or a neutral site or sites. The arbitrator's decision shall be final and binding.

3. **Arbitrator.** _____ shall serve as the single arbitrator.

4. **Arbitrator's Fees and Expenses.** The arbitrator's fees and charges have been set out in a separate agreement signed by the parties and the arbitrator.

5. **Initiation of Arbitration.** This arbitration shall be initiated by the filing of this fully executed stipulation with the designated arbitrator.

6. **Interim Relief and Interim Measures.**

- a. Relief from Arbitrator. A party shall seek interim measures as described in subsection (b) of this section from the arbitrator. A party has no right to seek interim relief from a court, except that a party may request from the court enforcement of the arbitrator's order granting interim measures and review or modification of any interim measures governing child support or child custody.
- b. Specific Interim Relief Permitted. The arbitrator may grant, pursuant to subsection (a) of this section, any of the following:
 - i. An order of attachment or garnishment;
 - ii. A temporary restraining order or preliminary injunction;
 - iii. An order for claim and delivery;
 - iv. Appointment of a receiver;
 - v. Delivery of money or other property into court;
 - vi. Notice of lis pendens;
 - vii. Any relief permitted by N.C.G.S. §§ 7B-502, 7B-1902, 50-13.5(d), 50-16.2A, 50-20(h), 50-20(I), or 50-20(i1), or Chapter 50A, Chapter 50B, or Chapter 52C of the General Statutes; or
 - viii. Any other order necessary to ensure preservation or availability of assets or documents, the destruction or absence of which would

likely prejudice the conduct or effectiveness of the arbitration.

- c. Preservation of Subject Matter. The arbitrator may, at a party's request, order any party to take such interim measures of protection as the arbitrator considers necessary in respect of the subject matter of the dispute, including interim measures analogous to interim relief specified in subsection (b) of this section. The arbitrator may require any party to provide appropriate security, including security for costs as provided in N.C.G.S. § 50-51 in connection with interim measures.
- d. Stipulation Controls. A party seeking interim measures or any other proceeding before the arbitrator shall proceed in accordance with this Stipulation for Arbitration Procedures. The arbitrator, after consulting with the parties' attorneys, shall notify the parties of the date, time and place of the hearing.

7. Administrative Conference; Preliminary Hearing; Mediation Conference.

- a. Administrative Conference. An administrative conference with the arbitrator and the parties and counsel may be scheduled to expedite arbitration proceedings. This conference may be held by conference telephone call or similar means.
- b. Preliminary Hearing. The arbitrator may schedule a preliminary hearing with parties and their counsel to specify issues to be resolved, to stipulate as to uncontested facts, or to consider other matters to expedite the arbitration proceedings. A preliminary hearing may be conducted by conference telephone call or similar means.
- c. Scheduling. Consistent with the expedited nature of arbitration, at an administrative conference or preliminary hearing the arbitrator may establish (i) the extent of and schedule for production of relevant documents and other information, (ii) the scheduling of depositions, (iii) the scheduling of third party discovery, (iv) the scheduling of other discovery, (v) the identification of witnesses to be called, and (vi) a schedule for further hearings to resolve the dispute.
- d. Financial Disclosures. In the arbitrator's discretion each party shall exchange and file with the arbitrator, before the administrative conference or other hearing as the arbitrator directs, a full and complete financial statement on forms specified by the arbitrator. Each party shall update these statements as necessary, unless the parties otherwise agree and the arbitrator approves. The arbitrator may set the schedule for the filing and

exchange of these statements and may require production and exchange of any other such information as the arbitrator deems necessary. Corruption, fraud, misconduct or submission of false or misleading financial information, documents or evidence by a party shall be grounds for imposing sanctions by the arbitrator or the court, and for vacating an award by the arbitrator.

- e. Mediation. The arbitrator may arrange a mediation conference under principles stated in the North Carolina District Court and Superior Court mediation statutes and rules. Unless the parties otherwise agree, the mediator may not be an arbitrator in the present case.

8. **Record of Arbitration.** _____ shall make arrangements with a court reporting service to have all of the arbitration proceedings transcribed. The parties shall equally share the costs for the services of the court reporting service and for obtaining copies of the stenographic record. This transcription shall constitute the official record of these proceedings and shall be made available to the arbitrator and to each of the parties.

9. **Attendance at Hearings.** The arbitrator, the parties and their counsel shall maintain the privacy of the hearings and other proceedings, (e.g., discovery incident to the arbitration) unless the law provides otherwise or unless the parties agree in writing. Any person having a direct material interest in the arbitration may attend hearings. The arbitrator shall otherwise have the power to require exclusion of any witness, other than a party or other essential person, during any other witness's testimony. The arbitrator has discretion to determine the propriety of attendance of any other person.

10. **Oaths.** Before proceeding with the first hearing, the arbitrator may take an oath or affirmation of office. The arbitrator may require witnesses to testify under oath or affirmation administered by the arbitrator. The arbitrator's oath or affirmation shall state names of parties to the arbitration agreement and shall be substantially in this form:

"[Name], being [duly sworn] affirmed, hereby accepts this appointment, attests that the biography or other information submitted by the arbitrator to the parties [and the court] is accurate and complete; will faithfully and fairly hear and decide matters in controversy between the above-named parties in accordance with their arbitration agreement and the North Carolina Canons of Ethics for Arbitrators and the rules incorporated into the parties' arbitration agreement; and will make an award according to the best of the arbitrator's understanding."

The oath or affirmation shall be signed and dated by the arbitrator, who shall send copies to the parties and the court.

- 11. **Postponements.** For good cause shown, the arbitrator may postpone any hearing

upon a party's written request or upon the arbitrator's own initiative. The arbitrator shall grant a postponement upon written request of all parties. The arbitrator may impose costs incurred by parties or the arbitrator in connection with a postponement.

12. **Order of Proceedings; Communication with Arbitrator.**

- a. Opening of Hearing. The initial hearing shall be opened by the filing of the oath of the arbitrator, where required; by recording the date, time and place of the hearing, and the presence of the arbitrator, the parties, and their counsel, if any; and by the arbitrator's receipt of statement of the claim and answering statement, including any counterclaim, if any.
- b. Opening Statements. At the beginning of the hearing the arbitrator may ask for statements clarifying the issues involved. In some cases, part or all of these statements may have been submitted at the preliminary hearing conducted by the arbitrator.
- c. Sequence of Presentation of Evidence. The complaining party shall then present evidence to support that party's claim. The defending party shall then present evidence supporting its defense and counterclaim, if any, after which the complaining party may present evidence supporting its response to the counterclaim. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for presentation of material and relevant evidence.
- d. Exhibits. The arbitrator may receive exhibits in evidence when offered by a party.
- e. Witnesses and Exhibits Into Record. All witnesses' names and addresses and a description of exhibits in the order received shall be made a part of the record.
- f. No Ex Parte Communications. There shall be no direct communication between parties and a neutral arbitrator other than at oral hearings, unless the parties and the arbitrator agree otherwise in writing.

13. **Witnesses; subpoenas; depositions; court assistance.**

- a. Subpoenas. The arbitrator shall have the power to administer oaths and may issue subpoenas for attendance of witnesses and for production of books, records, documents and other evidence. Subpoenas issued by the arbitrator shall be served and, upon application to the court by a party or

the arbitrator, enforced in the manner provided by law for service and enforcement of subpoenas in a civil action.

- b. Depositions. On the application of a party and for use as evidence, the arbitrator may permit depositions to be taken, in the manner and upon the terms the arbitrator designates.
- c. Authority to Compel. All provisions of law compelling a person under subpoena to testify are applicable.
- d. Court Assistance. The arbitrator or a party with the approval of the arbitrator may request assistance from the court in obtaining discovery and taking evidence, in which event the Rules of Civil Procedure under Chapter 1A of the General Statutes and Chapters 50, 50A, 52B and 52C of the General Statutes apply. The court may execute the request within its competence and according to its rules on discovery and evidence and may impose sanctions for failure to comply with its orders.
- e. Witness Compensation. A subpoena may be issued as provided by N.C.G.S. § 8-59, in which case the witness compensation provisions of N.C.G.S. §§ 6-51, 6-53 and 7A-314 shall apply.

14. **Arbitration in the Absence of a Party or Counsel for a Party.** Unless the law provides to the contrary, the arbitration may proceed in the absence of a party or counsel who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

15. **Evidence and Procedure.**

- a. Relevant and Material Evidence. The parties may offer such evidence as is relevant and material to the dispute and shall produce evidence that the arbitrator deem necessary to an understanding and determination of the dispute.
- b. Subpoena Procedure. The arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon a party's request or independently.
- c. Determination of Relevance and Materiality. The arbitrator shall be the judge of the relevance and materiality of evidence offered.
- d. Rules of Evidence and of Civil Procedure. The rules of evidence and civil

procedure shall be general guides in conducting the hearing. The arbitrator has the discretion to waive or modify these rules to permit efficient and expeditious presentation of the case. The rules of privilege shall apply as in civil actions.

- e. Evidence in Open Proceeding. Evidence shall be taken in the presence of all arbitrators and all parties, except where a party is absent in default or has waived the right to be present.

16. Evidence by Affidavits; Post-Hearing Filing of Documents or Other Evidence.

- a. Affidavits. The arbitrator may receive and consider evidence of witnesses by affidavit but shall give this evidence only such weight as the arbitrator deems it entitled after considering objections to its admission.
- b. Documents Produced Subsequent to Hearing. If the parties agree or the arbitrator directs that documents or other evidence be submitted to him or her after the hearing, the documents or other evidence shall be filed with him or her. All parties shall be afforded an opportunity to examine such documents or other evidence.

17. Inspection or Investigation. If the arbitrator finds it necessary to make an inspection or investigation in connection with the arbitration, he or she shall advise the parties. The arbitrator shall set the date, time and place and shall notify the parties. Any party desiring to do so may be present at such an inspection or investigation. If one or all parties are not present at the inspection or investigation, the arbitrator shall make a written report to the parties unless the parties agree otherwise and afford them an opportunity to comment.

18. Closing of Hearing.

- a. Further Proofs Inquiry. The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer, witnesses to be heard, or whether they wish to be heard in final argument. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.
- b. Briefs. If briefs are to be filed, the hearing will be declared closed as of the final date the arbitrator sets for receipt of briefs. If documents are to be filed as provided above ("Evidence by Affidavits...") and the date set for their receipt is later than that set for receipt of briefs, the later date shall be the date of closing the hearing.

- c. **Running of Time Limit for Award.** The time limit within which the arbitrator must make the award shall begin to run upon the closing of the hearing.

19. **Reopening Hearing.** At anytime before the award is made, the hearing may be reopened on the arbitrator's initiative or upon any party's application. The arbitrator may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to make the award.

20. **Waiver of Oral Hearing.** The parties may agree in writing to waive oral hearings.

21. **Waiver of Rules.** A party who proceeds with the arbitration knowing that a provision or requirement of this stipulation has not been complied with and who fails to object in writing shall be deemed to have waived the right to object. An objection must be timely filed with the arbitrator with a copy sent to other party.

22. **Extensions of Time.** The parties may agree to modify any period of time. The arbitrator may for good cause extend any period of time established by this stipulation, except the time for making the award. The arbitrator shall notify the parties of any extension.

23. **Serving Notice.**

- a. **Mail or Personal Service.** The parties shall be deemed to have consented that any papers, notices or process necessary for initiation or continuation of an arbitration under this stipulation; for any court action in connection therewith; or for entry of judgment on any award made under this consent stipulation may be served on a party by mail addressed to the party or the party's counsel at the last known address or by personal service in or outside the State where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.
- b. **Electronic Communications.** The arbitrator and the parties may also use facsimile transmission, telex, telegram, electronic communication (e-mail), or other written forms of electronic communication to give notices permitted or required by this stipulation.

24. **Time of Award.** The arbitrator shall make the award promptly and no later than 30 days from the date of closing the hearing.

25. **Form and Scope of Award.**

- a. Contents of Award. The award shall be in writing and dated and shall be signed by the arbitrator with a statement of the place where the arbitration was conducted and where the award was made. It shall be executed in the manner required by law.
- b. Remedies. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the parties' stipulation, including, but not limited to, specific performance.

26. **Award, costs.**

- a. Delivery of Award. The arbitrator shall deliver or send by registered or certified mail, return receipt requested, a copy of the award to each party's counsel (or directly to each party if he or she is without counsel). Time of delivery shall be computed from the date of personal delivery or date of mailing.
- b. Findings of Fact and Conclusions of Law. The award shall state the reasons upon which it is based and shall enter findings of fact and conclusions of law.
- c. Interest. The arbitrator may award interest as provided by law.
- d. Costs.
 - i. Awarding of costs of an arbitration shall be in the arbitrator's discretion.
 - ii. In making an award of costs, the arbitrator may include any or all of the following as costs:
 - (1) Fees and expenses of the arbitrator and expert witnesses;
 - (2) Fees and expenses of counsel;
 - (3) Any other expenses incurred in connection with the arbitration proceedings;
 - (4) Sanctions awarded by the arbitrators or the court, including those provided by Rules 11 and 37 of the North Carolina Rules of Civil Procedure; and

(5) Costs allowed by N.C.G.S. Chapters 6 and 7A.

iii. In making an award of costs, the arbitrators shall specify each of the following:

(1) The party who is entitled to costs;

(2) The party who shall pay costs;

(3) The amount of costs or method of determining that amount; and

(4) The manner in which costs shall be paid.

e. Time Limits. The award shall be made within the time the court orders on a party's application. The parties may extend the time in writing either before or after the expiration of this time. A party waives objection that an award was not made within the time required unless that party notifies the arbitrator[s] of his or her objection prior to delivery of the award to that party.

27. **Judicial Review and Appeal.** No judicial review of errors of law in the award is permitted .

28. **Award upon Settlement.** If the parties settle their dispute during the arbitration, the arbitrator shall set forth the settlement terms in an award, termed a consent award.

29. **Delivery of Award to Parties.** The parties shall accept the placing of the award or a true copy of the award in first-class mail and addressed to a party or a party's counsel at the party's or counsel's last known address, personal service of the award, or filing of the award in any other manner permitted by law as legal and timely delivery.

30. **Release of Documents for Judicial Proceedings.** Upon a party's written request, the arbitrator shall furnish to the party at the party's expense certified copies of any papers in the arbitrator's possession that may be required in judicial proceedings relating to the arbitration.

31. **Applications to Court; Exclusion of Liability.**

a. No Waiver. No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

b. Judgment On Award. Parties to proceedings conducted pursuant to this

stipulation shall be deemed to have consented that the judgment upon the arbitration award may be entered in any court having jurisdiction.

- c. Arbitrator Immunity. The arbitrator shall be entitled to immunity as provided by law.

32. **Expenses.** Expenses of witnesses shall be paid by the party producing such witnesses. The parties shall bear equally all other expenses of the arbitration, including required travel and other expenses of the arbitrator (if provided in the arbitrator's fee agreement with the parties) and of any witness and the cost of any proof produced at the arbitrator's direct request, or the arbitrator assesses these expenses or any part of them against a specified party or parties. To the extent provided by law, fees and expenses of legal counsel shall be included among costs of the arbitration.

33. **Deposits.** The arbitrator may require the parties to deposit, in advance of any hearing, such sums of money as the arbitrator deems necessary to cover expenses of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the close of the case. If such advance deposits are to be made, provision shall be made in the arbitrator's fee agreement with the parties.

34. **Interpretation and Application of Rules.** The arbitrator shall interpret and apply the provisions of this stipulation.

35. **Time.** Time periods prescribed under this consent stipulation or by the arbitrator shall be computed in accordance with the North Carolina Rules of Civil Procedure and North Carolina law.

36. **Experts.**

- a. Appointment of Expert by Arbitrator. The arbitrator may appoint one or more independent experts to report in writing to the arbitrator on specific issues designated by the arbitrator and communicated to the parties.
- b. Information to Expert. The parties shall provide the expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require. A dispute between a party and the expert as to relevance of the requested information or goods shall be referred to the arbitrator for decision.
- c. Dissemination of Report of Expert. Upon receipt of an expert's report, the arbitrator shall send a copy to all parties and shall give the parties an opportunity to express their opinions on the report in writing. A party may examine any document in order to express his/her opinion on the report in

writing. A party may examine any document upon which the expert relied in the report.

- d. Examination of Expert. At any party's request, the arbitrator shall give the parties an opportunity to question the expert at a hearing. The parties may present expert witnesses to testify on the points at issue during this hearing.

37. **Arbitration Award.** The parties shall faithfully abide by and perform any arbitration award.

This the _____ day of _____, 20__.

Arbitrator

We have read this Stipulation for Arbitration Procedures and consent to these provisions.

_____, Plaintiff

Date: _____

_____, Attorney for Plaintiff

Date: _____

_____, Defendant

Date: _____

_____, Attorney for Defendant

Date: _____

[CERTIFICATE OF SERVICE]

2. Agreement to Arbitrate and Agreement for Arbitration Procedures (Short Form)

NORTH CAROLINA)
)
_____ COUNTY) **AGREEMENT TO ARBITRATE AND
AGREEMENT FOR ARBITRATION PROCEDURES
(Short Form)**

THIS AGREEMENT TO ARBITRATE AND AGREEMENT FOR ARBITRATION PROCEDURES, hereinafter referred to as "agreement," is made on this the ____ day of _____, 20__ by and between _____ and _____;

WITNESSETH:

WHEREAS the parties agree to submit certain matters in controversy to arbitration for a final determination pursuant to N.C.G.S. § 50-41, *et seq*;

WHEREAS the arbitration is to be conducted subject to the conditions and provisions set forth herein.

NOW THEREFORE said parties, for and in consideration of the acts and things herein respectively agreed by them and to be done and performed, do mutually agree, each with the other as follows:

I. **Basic Rules.** The arbitration shall be conducted pursuant to the North Carolina Basic Rules for Arbitrating Family Law Disputes (Basic Rules) in force as of the date of the execution of this agreement, except these Basic Rules: [here list numbered Basic Rules that the parties agree shall not apply].

II. **Optional Rules.** The arbitration shall also be conducted pursuant to these North Carolina Optional Rules for Arbitrating Family Law Disputes (Optional Rules) in force as of the date of the execution of this agreement: [here list numbered Optional Rules that parties agree shall apply].

III. **Additional Rules.** These additional rules shall govern this arbitration: [here recite any additional rules].

IV. **Arbitrator[s].** The parties appoint _____ to serve as arbitrator[s].

V. **Issues:** The following issue[s] shall be submitted to arbitration:

- 1. _____
- 2. _____
- 3. _____
- 4. _____

VI. **Arbitration Award.** The parties agree to faithfully abide by and perform any arbitration award.

VII. **Severability.** In the event any of the provisions of this agreement are deemed to be invalid or unenforceable, the same shall be severed from the remainder of this agreement and shall not cause invalidity or unenforceability of the remainder of this agreement. If such provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

VIII. **Entire Agreement.** This agreement constitutes the entire understanding of the parties. There are no representations, promises, warranties, covenants or undertakings other than those expressly set forth herein.

IN WITNESS WHEREOF, the parties hereunto affix their respective hands and seals of the date subscribed on the first page of this agreement.

_____(Seal)

_____(Seal)

NORTH CAROLINA

_____ COUNTY

I, _____, a Notary Public for said County and State, certify that _____, the principal herein, personally appeared before me this day, and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein in the following capacity: _____ and I further certify as follows:

_____ I have personal knowledge of the identity of the principal

_____ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____.

Date: _____

_____, Notary Public

(Print Name)

(Official Seal)

My commission expires: _____

NORTH CAROLINA

_____ COUNTY

I, _____, a Notary Public for said County and State, certify that _____, the principal herein, personally appeared before me this day, and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein in the following capacity: _____ and I further certify as follows:

_____ I have personal knowledge of the identity of the principal

_____ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____.

Date: _____

_____, Notary Public

(Print Name)

(Official Seal)

My commission expires: _____

3. Agreement to Arbitrate and Agreement for Arbitration Procedures (Long Form)

NORTH CAROLINA) **AGREEMENT TO ARBITRATE AND**
) **AGREEMENT FOR ARBITRATION PROCEDURES**
_____ COUNTY) **(Long Form)**

THIS AGREEMENT TO ARBITRATE AND AGREEMENT FOR ARBITRATION PROCEDURES, hereinafter referred to as "agreement," is made on this the ____ day of _____, 20__ by and between _____ and _____;

WITNESSETH:

WHEREAS the parties agree to submit certain matters in controversy to arbitration for a final determination pursuant to N.C.G.S. § 50-41, et seq;

WHEREAS the arbitration is to be conducted subject to the conditions and provisions set forth herein.

NOW THEREFORE said parties, for and in consideration of the acts and things herein respectively agreed by them and to be done and performed, do mutually agree, each with the other as follows:

1. **Issues.** The following issues shall be submitted to arbitration:
 - a. _____
 - b. _____
 - c. _____

2. **North Carolina Canons of Ethics for Arbitrators.** The North Carolina Canons of Ethics for Arbitrators shall apply to this arbitration proceeding.

3. **Date, Time and Place of Arbitration Hearing.**
 - a. Date, Time and Place. The arbitration hearings shall be held at the law offices of _____ located at _____, _____, North Carolina or at any other location as the arbitrator may designate. The arbitrator shall set the date and time for each mediation hearing. The arbitrator shall send a written notice of hearing at least 20 days before the hearing. Attendance at a hearing waives notice of the hearing.

- b. Change of Location. If a party requests in writing that an arbitration hearing be held at another specific location because of serious inconvenience of a party or parties or of a witness or witnesses such that justice in the arbitration cannot be had, the arbitrator may, after receiving the request and a written response from the other party filed within 30 days after receiving the request, determine the other place requested by a party, or a neutral site or sites. The arbitrator's decision shall be final and binding.

4. **Arbitrator.** _____ shall serve as the single arbitrator.

5. **Arbitrator's Fees and Expenses.** The arbitrator's fees and charges have been set out in a separate agreement signed by the parties and the arbitrator.

6. **Initiation of Arbitration.** This arbitration shall be initiated by the filing of this fully executed agreement with the designated arbitrator.

7. **Interim Relief and Interim Measures.**

- a. Relief from Arbitrator. A party shall seek interim measures as described in subsection (b) of this section from the arbitrator. A party has no right to seek interim relief from a court, except that a party may request from the court enforcement of the arbitrator's order granting interim measures and review or modification of any interim measures governing child support or child custody.
- b. Specific Interim Relief Permitted. The arbitrator may grant, pursuant to subsection (a) of this section, any of the following:
 - i. An order of attachment or garnishment;
 - ii. A temporary restraining order or preliminary injunction;
 - iii. An order for claim and delivery;
 - iv. Appointment of a receiver;
 - v. Delivery of money or other property into court;
 - vi. Notice of lis pendens;
 - vii. Any relief permitted by N.C.G.S. §§ 7B-502, 7B-1902, 50-13.5(d), 50-16.2A, 50-20(h), 50-20(I), or 50-20(i1), or Chapter 50A,

Chapter 50B, or Chapter 52C of the General Statutes; or

viii. Any other order necessary to ensure preservation or availability of assets or documents, the destruction or absence of which would likely prejudice the conduct or effectiveness of the arbitration.

- c. Preservation of Subject Matter. The arbitrator may, at a party's request, order any party to take such interim measures of protection as the arbitrator considers necessary in respect of the subject matter of the dispute, including interim measures analogous to interim relief specified in subsection (b) of this section. The arbitrator may require any party to provide appropriate security, including security for costs as provided in N.C.G.S. § 50-51 in connection with interim measures.
- d. Agreement Controls. A party seeking interim measures or any other proceeding before the arbitrator shall proceed in accordance with this agreement. The arbitrator, after consulting with the parties' attorneys, shall notify the parties of the date, time and place of the hearing.

8. **Administrative Conference; Preliminary Hearing; Mediation Conference.**

- a. Administrative Conference. An administrative conference with the arbitrator and the parties and counsel may be scheduled to expedite arbitration proceedings. This conference may be held by conference telephone call or similar means.
- b. Preliminary Hearing. The arbitrator may schedule a preliminary hearing with parties and their counsel to specify issues to be resolved, to stipulate as to uncontested facts, or to consider other matters to expedite the arbitration proceedings. A preliminary hearing may be conducted by conference telephone call or similar means.
- c. Scheduling. Consistent with the expedited nature of arbitration, at an administrative conference or preliminary hearing the arbitrator may establish (i) the extent of and schedule for production of relevant documents and other information, (ii) the scheduling of depositions, (iii) the scheduling of third party discovery, (iv) the scheduling of other discovery, (v) the identification of witnesses to be called, and (vi) a schedule for further hearings to resolve the dispute.
- d. Financial Disclosures. In the arbitrator's discretion each party shall exchange and file with the arbitrator, before the administrative conference or other hearing as the arbitrator directs, a full and complete financial

statement on forms specified by the arbitrator. Each party shall update these statements as necessary, unless the parties otherwise agree and the arbitrator approves. The arbitrator may set the schedule for the filing and exchange of these statements and may require production and exchange of any other such information as the arbitrator deems necessary. Corruption, fraud, misconduct or submission of false or misleading financial information, documents or evidence by a party shall be grounds for imposing sanctions by the arbitrator or the court, and for vacating an award by the arbitrator.

- e. Mediation. The arbitrator may arrange a mediation conference under principles stated in the North Carolina District Court and Superior Court mediation statutes and rules. Unless the parties otherwise agree, the mediator may not be an arbitrator in the present case.

9. **Record of Arbitration.** _____ shall make arrangements with a court reporting service to have all of the arbitration proceedings transcribed. The parties shall equally share the costs for the services of the court reporting service and for obtaining copies of the stenographic record. This transcription shall constitute the official record of these proceedings and shall be made available to the arbitrator and to each of the parties.

10. **Attendance at Hearings.** The arbitrator, the parties and their counsel shall maintain the privacy of the hearings and other proceedings, (e.g., discovery incident to the arbitration) unless the law provides otherwise or unless the parties agree in writing. Any person having a direct material interest in the arbitration may attend hearings. The arbitrator shall otherwise have the power to require exclusion of any witness, other than a party or other essential person, during any other witness's testimony. The arbitrator has discretion to determine the propriety of attendance of any other person.

11. **Oaths.** Before proceeding with the first hearing, the arbitrator may take an oath or affirmation of office. The arbitrator may require witnesses to testify under oath or affirmation administered by the arbitrator. The arbitrator's oath or affirmation shall state names of parties to the arbitration agreement and shall be substantially in this form:

"[Name], being duly [sworn or] affirmed, hereby accepts this appointment, attests that the biography or other information submitted by the arbitrator to the parties [and the court] is accurate and complete; will faithfully and fairly hear and decide matters in controversy between the above-named parties in accordance with their arbitration agreement and the North Carolina Canons of Ethics for Arbitrators and the rules incorporated into the parties' arbitration agreement; and will make an award according to the best of the arbitrator's understanding."

The oath or affirmation shall be signed and dated by the arbitrator, who shall send copies to the

parties and the court.

12. **Postponements.** For good cause shown, the arbitrator may postpone any hearing upon a party's written request or upon the arbitrator's own initiative. The arbitrator shall grant a postponement upon written request of all parties. The arbitrator may impose costs incurred by parties or the arbitrator in connection with a postponement.

13. **Order of Proceedings; Communication with Arbitrator.**

- a. Opening of Hearing. The initial hearing shall be opened by the filing of the oath of the arbitrator, where required; by recording the date, time and place of the hearing, and the presence of the arbitrator, the parties, and their counsel, if any; and by the arbitrator's receipt of statement of the claim and answering statement, including any counterclaim, if any.
- b. Opening Statements. At the beginning of the hearing the arbitrator may ask for statements clarifying the issues involved. In some cases, part or all of these statements may have been submitted at the preliminary hearing conducted by the arbitrator.
- c. Sequence of Presentation of Evidence. The complaining party shall then present evidence to support that party's claim. The defending party shall then present evidence supporting its defense and counterclaim, if any, after which the complaining party may present evidence supporting its response to the counterclaim. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for presentation of material and relevant evidence.
- d. Exhibits. The arbitrator may receive exhibits in evidence when offered by a party.
- e. Witnesses and Exhibits Into Record. All witnesses' names and addresses and a description of exhibits in the order received shall be made a part of the record.
- f. No Ex Parte Communications. There shall be no direct communication between parties and a neutral arbitrator other than at oral hearings, unless the parties and the arbitrator agree otherwise in writing.

14. **Witnesses; subpoenas; depositions; court assistance.**

- a. Subpoenas. The arbitrator have the power to administer oaths and may

issue subpoenas for attendance of witnesses and for production of books, records, documents and other evidence. Subpoenas issued by the arbitrator shall be served and, upon application to the court by a party or the arbitrator, enforced in the manner provided by law for service and enforcement of subpoenas in a civil action.

- b. Depositions. On the application of a party and for use as evidence, the arbitrator may permit depositions to be taken, in the manner and upon the terms the arbitrator designates.
- c. Authority to Compel. All provisions of law compelling a person under subpoena to testify are applicable.
- d. Court Assistance. The arbitrator or a party with the approval of the arbitrator may request assistance from the court in obtaining discovery and taking evidence, in which event the Rules of Civil Procedure under Chapter 1A of the General Statutes and Chapters 50, 50A, 52B and 52C of the General Statutes apply. The court may execute the request within its competence and according to its rules on discovery and evidence and may impose sanctions for failure to comply with its orders.
- e. Witness Compensation. A subpoena may be issued as provided by N.C.G.S. § 8-59, in which case the witness compensation provisions of N.C.G.S. §§ 6-51, 6-53 and 7A-314 shall apply.

15. **Arbitration in the Absence of a Party or Counsel for a Party.** Unless the law provides to the contrary, the arbitration may proceed in the absence of a party or counsel who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

16. **Evidence and Procedure.**

- a. Relevant and Material Evidence. The parties may offer such evidence as is relevant and material to the dispute and shall produce evidence that the arbitrator deem necessary to an understanding and determination of the dispute.
- b. Subpoena Procedure. The arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon a party's request or independently.
- c. Determination of Relevance and Materiality. The arbitrator shall be the

judge of the relevance and materiality of evidence offered.

- d. Rules of Evidence and of Civil Procedure. The rules of evidence and civil procedure shall be general guides in conducting the hearing. The arbitrator has the discretion to waive or modify these rules to permit efficient and expeditious presentation of the case. The rules of privilege shall apply as in civil actions.
- e. Evidence in Open Proceeding. Evidence shall be taken in the presence of all arbitrators and all parties, except where a party is absent in default or has waived the right to be present.

17. Evidence by Affidavits; Post-Hearing Filing of Documents or Other Evidence.

- a. Affidavits. The arbitrator may receive and consider evidence of witnesses by affidavit but shall give this evidence only such weight as the arbitrator deems it entitled after considering objections to its admission.
- b. Documents Produced Subsequent to Hearing. If the parties agree or the arbitrator directs that documents or other evidence be submitted to him after the hearing, the documents or other evidence shall be filed with him. All parties shall be afforded an opportunity to examine such documents or other evidence.

18. Inspection or Investigation. If the arbitrator finds it necessary to make an inspection or investigation in connection with the arbitration, he shall advise the parties. The arbitrator shall set the date, time and place and shall notify the parties. Any party desiring to do so may be present at such an inspection or investigation. If one or all parties are not present at the inspection or investigation, the arbitrator shall make a written report to the parties unless the parties agree otherwise and afford them an opportunity to comment.

19. Closing of Hearing.

- a. Further Proofs Inquiry. The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer, witnesses to be heard, or whether they wish to be heard in final argument. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.
- b. Briefs. If briefs are to be filed, the hearing will be declared closed as of the final date the arbitrator sets for receipt of briefs. If documents are to be filed as provided above ("Evidence by Affidavits...") and the date set for

their receipt is later than that set for receipt of briefs, the later date shall be the date of closing the hearing.

- c. Running of Time Limit for Award. The time limit within which the arbitrator must make the award shall begin to run upon the closing of the hearing.

20. **Reopening Hearing.** At anytime before the award is made, the hearing may be reopened on the arbitrator's initiative or upon any party's application. The arbitrator may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to make the award.

21. **Waiver of Oral Hearing.** The parties may agree in writing to waive oral hearings.

22. **Waiver of Rules.** A party who proceeds with the arbitration knowing that a provision or requirement of this agreement has not been complied with and who fails to object in writing shall be deemed to have waived the right to object. An objection must be timely filed with the arbitrator with a copy sent to other party, unless made orally in a hearing.

23. **Extensions of Time.** The parties may agree to modify any period of time. The arbitrator may for good cause extend any period of time established by this consent stipulation, except the time for making the award. The arbitrator shall notify the parties of any extension.

24. **Serving Notice.**

- a. Mail or Personal Service. The parties shall be deemed to have consented that any papers, notices or process necessary for initiation or continuation of an arbitration under this agreement; for any court action in connection therewith; or for entry of judgment on any award made under this agreement may be served on a party by mail addressed to the party or the party's counsel at the last known address or by personal service in or outside the State where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.
- b. Electronic Communications. The arbitrator and the parties may also use facsimile transmission, telex, telegram, electronic communication (e-mail), or other written forms of electronic communication to give notices permitted or required by this agreement.

25. **Time of Award.** The arbitrator shall make the award promptly and no later than 30 days from the date of closing the hearing.

26. **Form and Scope of Award.**

- a. Contents of Award. The award shall be in writing and dated and shall be signed by the arbitrator with a statement of the place where the arbitration was conducted and where the award was made. It shall be executed in the manner required by law.
- b. Remedies. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the parties' agreement, including, but not limited to, specific performance.

27. **Award, costs.**

- a. Delivery of Award. The arbitrator shall deliver or send by registered or certified mail, return receipt requested, a copy of the award to each party's counsel (or directly to each party if he or she is without counsel). Time of delivery shall be computed from the date of personal delivery or date of mailing.
- b. Findings of Fact and Conclusions of Law. The award shall state the reasons upon which it is based and shall enter findings of fact and conclusions of law.
- c. Interest. The arbitrator may award interest as provided by law.
- d. Costs.
 - i. Awarding of costs of an arbitration shall be in the arbitrator's discretion.
 - ii. In making an award of costs, the arbitrator may include any or all of the following as costs:
 - (1) Fees and expenses of the arbitrator and expert witnesses;
 - (2) Fees and expenses of counsel;
 - (3) Any other expenses incurred in connection with the arbitration proceedings;
 - (4) Sanctions awarded by the arbitrators or the court, including those provided by Rules 11 and 37 of the North Carolina Rules of Civil Procedure; and

(5) Costs allowed by N.C.G.S. Chapters 6 and 7A.

iii. In making an award of costs, the arbitrators shall specify each of the following:

(1) The party who is entitled to costs;

(2) The party who shall pay costs;

(3) The amount of costs or method of determining that amount; and

(4) The manner in which costs shall be paid.

e. Time Limits. The award shall be made within the time the court orders on a party's application. The parties may extend the time in writing either before or after the expiration of this time. A party waives objection that an award was not made within the time required unless that party notifies the arbitrator of his or her objection prior to delivery of the award to that party.

28. **Judicial Review and Appeal.** No judicial review of errors of law in the award is permitted.

29. **Award upon Settlement.** If the parties settle their dispute during the arbitration, the arbitrator shall set forth the settlement terms in an award, termed a consent award.

30. **Delivery of Award to Parties.** The parties shall accept the placing of the award or a true copy of the award in first-class mail and addressed to a party or a party's counsel at the party's or counsel's last known address, personal service of the award, or filing of the award in any other manner permitted by law as legal and timely delivery.

31. **Release of Documents for Judicial Proceedings.** Upon a party's written request, the arbitrator shall furnish to the party at the party's expense certified copies of any papers in the arbitrator's possession that may be required in judicial proceedings relating to the arbitration.

32. **Applications to Court; Exclusion of Liability.**

a. No Waiver. No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

b. Judgment On Award. Parties to proceedings conducted pursuant to this

agreement shall be deemed to have consented that the judgment upon the arbitration award may be entered in any court having jurisdiction.

- c. Arbitrator Immunity. The arbitrator shall be entitled to immunity as provided by law.

33. **Expenses.** Expenses of witnesses shall be paid by the party producing such witnesses. The parties shall bear equally all other expenses of the arbitration, including required travel and other expenses of the arbitrator (if provided in the arbitrator's fee agreement with the parties) and of any witness and the cost of any proof produced at the arbitrator's direct request, or the arbitrator assesses these expenses or any part of them against a specified party or parties. To the extent provided by law, fees and expenses of legal counsel shall be included among costs of the arbitration.

34. **Deposits.** The arbitrator may require the parties to deposit, in advance of any hearing, such sums of money as the arbitrator deems necessary to cover expenses of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the close of the case. If such advance deposits are to be made, provision shall be made in the arbitrator's fee agreement with the parties.

35. **Interpretation and Application of Rules.** The arbitrator shall interpret and apply the provisions of this agreement.

36. **Time.** Time periods prescribed under this agreement or by the arbitrator shall be computed in accordance with the North Carolina Rules of Civil Procedure and North Carolina law.

37. **Experts.**

- a. Appointment of Expert by Arbitrator. The arbitrator may appoint one or more independent experts to report in writing to the arbitrator on specific issues designated by the arbitrator and communicated to the parties.
- b. Information to Expert. The parties shall provide the expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require. A dispute between a party and the expert as to relevance of the requested information or goods shall be referred to the arbitrator for decision.
- c. Dissemination of Report of Expert. Upon receipt of an expert's report, the arbitrator shall send a copy to all parties and shall give the parties an opportunity to express their opinions on the report in writing. A party may examine any document in order to express his/her opinion on the report in writing. A party may examine any document upon which the expert relied in the report.

NORTH CAROLINA

_____ COUNTY

I, _____, a Notary Public for said County and State, certify that _____, the principal herein, personally appeared before me this day, and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein in the following capacity: _____ and I further certify as follows:

_____ I have personal knowledge of the identity of the principal
_____ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____.

Date: _____
_____, Notary Public
(Print Name)

(Official Seal) My commission expires: _____

NORTH CAROLINA

_____ COUNTY

I, _____, a Notary Public for said County and State, certify that _____, the principal herein, personally appeared before me this day, and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein in the following capacity: _____ and I further certify as follows:

_____ I have personal knowledge of the identity of the principal
_____ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____.

Date: _____
_____, Notary Public
(Print Name)

(Official Seal) My commission expires: _____

**4. Agreement to Arbitrate and Agreement for Arbitration Procedures
(Long Form - Multi-Arbitration Panel)**

NORTH CAROLINA)
)
_____ COUNTY) **AGREEMENT TO ARBITRATE AND
AGREEMENT FOR ARBITRATION PROCEDURES
(Long Form- Multi-Arbitrator Panel)**

THIS AGREEMENT TO ARBITRATE AND AGREEMENT FOR ARBITRATION PROCEDURES is made on this the ____ day of _____, 20__, by and between _____ (the "Husband"), residing at _____, and _____ (the "Wife"), residing at _____.

WITNESSETH:

WHEREAS, the parties entered into an Arbitration Agreement dated _____, and now desire and agree that such Arbitration Agreement shall be revised and restated as follows:

A. _____ and _____, husband and wife, were married _____ (date) _____, and have lived separate and apart since _____ (date) _____; _____ children were born of the marriage;

B. On the ____ day of _____, _____, the _____ instituted an action against the _____ in the District Court of _____ County (____ CVD _____) in which he [she] is asserting claims for custody, child support, postseparation support, alimony, equitable distribution, interim distribution, attorney fees, expert witness fees and costs. Except for custody and discovery matters deemed by the parties to be more appropriately conducted in the District Court, this action filed by the _____ shall be stayed pending the completion of the arbitration, except that the District Court shall have the right to make such rulings as are permitted by Chapter 50 or otherwise necessary to implement and enforce any award of the Arbitrators. The parties agree that any pleadings filed in this case may be amended as a matter of right at any time up to forty-five (45) days in advance of the first hearing of the arbitration panel;

C. The Wife and Husband wish to submit to arbitration pursuant to Article III, Family Law Arbitration Act (N.C.G.S. §50-41 through N.C.G.S. §50-62), ("FLAA") before three (3) Arbitrators (the "Arbitrators"), all controversies arising out of the marital relationship (except for divorce and custody), including, without limitation, all issues of:

- i. Temporary child support and/or permanent child support;
- ii. Postseparation support and/or alimony;
- iii. Attorney fees pursuant to law;
- iv. Equitable distribution of marital and divisible property;
- v. Interim distributions, including the consideration of prior interim

- distributions;
- vi. All issues relating to the implementation of the Award;
- vii. Any matters relating to the preservation and protection of the marital estate and the divisible estates;
- viii. Expert fees; and
- ix. Costs (including the cost of the arbitration).

The parties have executed a custody agreement pertaining to their _____ children simultaneously with the execution of this agreement.

D. A Joint Escrow Account has been established by the parties to fund the cost of the arbitration (the "Joint Escrow Account" see page 3, paragraph 4); and

E. The parties further desire to set forth the rules for the conduct of the arbitration.

NOW THEREFORE in consideration of the mutual promises set forth herein, the Husband and Wife agree as follows:

1. MATTERS TO BE ARBITRATED AND ORDER OF ARBITRATION

A. The parties desire to resolve all controversies arising out of the marriage, except divorce and custody, by binding arbitration, including without limitation, all issues of:

- i. Temporary child support and/or permanent child support;
- ii. Postseparation support and/or alimony;
- iii. Attorney fees pursuant to law;
- iv. Equitable distribution of marital and divisible property;
- v. Interim distributions, including the consideration of prior interim distributions;
- vi. All issues relating to the implementation of the Award;
- vii. Any matters relating to the preservation and protection of the marital estate and the divisible estates;
- viii. Expert fees; and
- ix. Costs (including the cost of the arbitration).

B. The parties agree, without prejudice to the right at any time to hear child support, postseparation support, attorney fees, or interim distribution claims, that the initial hearing shall be limited to equitable distribution of marital and divisible property, to be followed after the Equitable Distribution Award has been rendered, with a hearing on permanent alimony, child support and other controversies mentioned in paragraph C on the first page of this agreement.

C. The financial status quo shall be maintained and funds shall be provided to the Wife for her support and support of the children consistent with past practices.

2. THE ARBITRATION PANEL

A. The North Carolina Canons for Ethics for Arbitrators shall apply to this Arbitration Agreement and the Arbitrators shall be bound by said Canons. The Arbitrators shall be entitled to immunity as provided by law.

B. The parties have selected _____ and _____ as Arbitrators. The parties have agreed that _____ shall serve as Alternate Arbitrator. By their signatures below, _____ and _____ agree to serve as Arbitrators; and _____ agrees to serve as Alternate Arbitrator. Discovery and other issues arising shall be ruled on by _____. The three shall select the Chief Arbitrator. For purposes of this Arbitration Agreement, Chief Arbitrator shall mean _____ until there is a vote of the Arbitrators, and after such vote, Chief Arbitrator shall mean the person selected by the three.

C. If, before or after the commencement of arbitration, one of the Arbitrators dies, becomes disabled, or for any reason is unable or unwilling to complete the arbitration, such Arbitrator will be replaced by the Alternate Arbitrator. The Alternate Arbitrator, if called upon to serve, shall have the same authority and responsibility as the other Arbitrators and shall be provided with a copy of all submissions to the Arbitrators, copies of all decisions rendered, as well as the transcripts of all prior proceedings. An Arbitrator shall not be replaced in the event he/she is able to resume his/her duties within thirty (30) days.

- D. One of the three Arbitrators shall be designated the Chief Arbitrator and may:
- i. Schedule an administrative conference with counsel to expedite arbitration proceedings. This conference may be held by conference telephone call or similar means.
 - ii. Schedule a preliminary hearing with counsel to specify issues to be resolved, to stipulate as to uncontested facts, or to consider other matters to expedite the arbitration proceeding. A preliminary hearing may be conducted by a conference telephone call or similar means.
 - iii. Consistent with the expedited nature of arbitration, at the administrative conference or preliminary hearing the Chief Arbitrator may establish a schedule for:
 - a) discovery request to be heard;
 - b) implementation of discovery rulings;
 - c) the submission of papers, including equitable distribution and financial standing affidavits, briefs and proposed exhibits;
 - d) the identification of witnesses to be called; and
 - e) further hearings to resolve the dispute.

3. PLACE OF ARBITRATION HEARING

The arbitration shall be held at a place mutually agreed on by the parties. If not, at whatever place shall be agreed on by the Arbitrators. All expenses incurred as a result of the utilization of this facility shall be paid from the Joint Escrow Account.

4. JOINT ESCROW

A Joint Escrow Account has been established at _____ in an amount agreed upon by the parties. The Joint Escrow account shall be used to fund the cost of the arbitration, including but not limited to the Arbitrators' fees, expenses, court transcripts, appraisals, teleconferencing, telefaxing, and such other costs in connection with the arbitration as are ordered to be paid by the Arbitrators. The Joint Escrow Account shall be held and administered by _____, and _____. The Wife's equal contribution to the escrow account shall be provided through interim distribution from the Husband to the Wife of her appropriate share and the Arbitrators shall take this interim distribution in consideration and proper credit, if any, shall be given pursuant to N.C.G.S. §50-20(i1).

5. DISCOVERY REQUESTS WHICH CANNOT BE RESOLVED BETWEEN THE PARTIES

A. The Chief Arbitrator shall order and direct:

- i. The production of books and records;
- ii. The issuance of subpoena; and
- iii. Make such orders as may be needed to compel out of state depositions, document production or interrogatories by letter.

B. In deciding such matters, the Chief Arbitrator, who shall be chosen by the Arbitrators, shall be governed by the Rules of Civil Procedure, but may shorten or expand the time normally permitted by such rules in connection with the discovery that is ordered. The Chief Arbitrator shall also have authority to order depositions by videotape, as well as video-conferencing, regardless of where a witness may be located. The parties acknowledge and agree that in the event either party desires to conduct depositions and review documents where the individuals, entities or documents are outside the jurisdiction of the North Carolina Courts, the Chief Arbitrator or another Arbitrator designated by him shall have the power to prepare and execute such orders as are sufficient to exercise jurisdiction over such witnesses, entities and documents and to issue subpoenas and subpoena duces tecum for depositions.

C. The Arbitrators' fees and charges are as set out in a letter to the Arbitrator Candidates dated _____, which is incorporated by reference. By signing this Agreement, the Arbitrators and Alternate Arbitrator and the parties agree to such fees and

changes.

6. SERVING NOTICE

The parties shall be deemed to have consented that any papers, notices or process necessary or proper for any court action in connection with this matter or for entry of judgment on any award made under this agreement may be served on a party by first class mail or nationally recognized overnight courier addressed to the party's counsel at the last known address or by personal service in or outside of the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party. The Arbitrator and counsel may also use facsimile transmission, e-mail or other written forms of electronic communication to give notices permitted or required in this agreement.

7. INTERIM RELIEF AND INTERIM MEASURES

A. A party may seek interim measures from the Chief Arbitrator. A party has no right to seek interim relief from a court, except that a party may request from the court enforcement of the Arbitrators' order granting interim measures including, but not limited to:

- i. An order of attachment or garnishment;
- ii. A temporary restraining order upon an injunction;
- iii. An order for claim and delivery;
- iv. Appointment of a receiver;
- v. Delivery of money or other property into court;
- vi. Notice of Lis Pendens;
- vii. Any relief permitted by N.C.G.S. §50-13.5(d), §50-16.2(a), §50-20(h), §50-20(l), or §50-20(i1), or Chapter 52C of the General Statutes; or
- viii. Any other order necessary to insure preservation or availability of assets or documents, the destruction or absence of which would likely prejudice the conduct or effectiveness of the arbitration.

B. The Chief Arbitrator may, at a party's request, order any party to take such interim measures of protection as the Chief Arbitrator considers necessary in respect of the subject matter of the dispute, including interim measures, analogous to interim relief specified in subsection A of this section. The Chief Arbitrator may require any party to provide appropriate security, including security for costs, as provided in N.C.G.S. §50-51 in connection with interim measures.

C. The party seeking interim measures or any other proceeding before the Chief Arbitrator shall proceed in accordance with this Agreement to Arbitrate. The Chief Arbitrator, after consulting with the parties' attorneys, shall notify the parties of the date, time and place of hearing. Either party may request that a disputed matter be heard by the entire panel.

8. ATTENDANCE AT HEARINGS

The hearings will be public, except that either party may, for good cause, exclude someone from the hearing room by application of a party to the Arbitrators, followed by order of a majority of the Arbitrators approving the exclusion.

9. OATH

A. Before proceeding with the first hearing, the Arbitrators shall take an oath or affirmation of office. The Arbitrators' oath or affirmation shall state names of the parties to the arbitration agreement and shall be substantially in this form: "[Name], being duly sworn and affirmed, hereby accepts this appointment, attests that the biography or other information submitted by the Arbitrator to the parties (and the court) is accurate and complete; will faithfully and fairly hear and decide matters in controversy between the above-named parties in accordance with the arbitration agreement, the North Carolina Canons of Ethics for Arbitrators and the rules incorporated into the parties' arbitration agreement; and will make an award according to the best of the Arbitrator's understanding." The oath or affirmation shall be signed and dated by the Arbitrators, who shall provide copies to the parties and the court.

B. The Chief Arbitrator shall require witnesses to testify under oath or affirmation administered by the Chief Arbitrator.

10. HEARING

A. The Arbitrators shall appoint a date and time for the hearing and notify the parties or counsel by personal service or by registered or certified mail, return receipt requested, or by nationally recognized overnight courier, not less than thirty (30) days before the hearing. Appearance at the hearing waives any claim of deficiency of notice. The Arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause shown or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The Arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the willful failure of a party duly notified to appear.

B. The parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

C. The Arbitrators shall cause to be made a record of testimony and evidence introduced at the trial. The Arbitrators shall decide how the cost of the record will be apportioned.

D. The hearing of this matter will commence on _____, 20____. The hearing will be scheduled on consecutive days Monday through Thursday of each week from 9:30 a.m. until 5:00 p.m. on each such days, with an hour and a half luncheon break from 12:30 p.m.

until 2:00 p.m. However, this schedule may be varied upon consent of the parties or by order of the Arbitrators.

11. ORDER OF PROCEEDINGS; COMMUNICATION WITH ARBITRATOR

A. The hearing shall be commenced by (i) the filing of the oath of the Arbitrators; (ii) recording the date, time and place of the hearing, in the presence of the Arbitrators, the parties, and their counsel; and (iii) the Arbitrator's receipt of the statement of claim and answering statement, including any counterclaims.

B. At the beginning of the hearing the Arbitrators may ask for statements clarifying the issues involved. In some cases, part or all of these statements may have been submitted at the preliminary hearing conducted by the Chief Arbitrator.

C. The Wife shall present evidence to support her claims. The Husband shall then present evidence supporting his claims, defenses and any counterclaims after which the Wife may present evidence supporting her response to the Husband's evidence. Witnesses for each party, including the parties themselves, shall submit to questions or other examination. The Arbitrators have the discretion to vary this procedure, but shall afford a full and equal opportunity to all parties for presentation of material and relevant evidence.

D. The Arbitrators may, subject to the rules of evidence, receive exhibits and evidence when offered by a party.

E. All witnesses' names and addresses and a description of exhibits and the order in which they are received shall be made a part of the record.

F. There shall be no direct communication between parties and the Arbitrators other than at oral hearings, unless the parties and the Arbitrators agree otherwise.

G. The proceeding shall be recorded by "real time" court reporter and transcripts of the proceeding shall be made available to all counsel and the Arbitrators on a "real time" basis.

12. WITNESSES; SUBPOENAS; DEPOSITIONS; AND COURT ASSISTANCE

A. The Arbitrators have the power to administer oaths and, at the request of a party or independently, may issue subpoenas for attendance of witnesses and for production of books, records, documents and other evidence. Subpoenas issued by the Arbitrators shall be served and, upon application to the court by a party or the Arbitrators, enforced in a manner provided by law for service and enforcement of subpoenas in a civil action.

B. On the application of a party and for use as evidence, the Arbitrators may permit depositions to be taken, pursuant to the Rules of Civil Procedure and the Rules of Evidence.

C. All provisions of law compelling a person under subpoena to testify are applicable.

D. The Arbitrators may request assistance from the court in obtaining discovery and taking evidence, in which event the Rules of Civil Procedure under Chapter 1A of the General Statutes and Chapter 50, 50A, 52B and 52C of the General Statutes apply. The court may execute the request according to its rules of discovery and evidence and may impose sanctions for failure to comply with its orders.

E. A subpoena may be issued as provided by N.C.G.S. §8-59, in which case the witness compensation provisions of N.C.G.S. §6-51, 6-53 and 7A-314 shall apply.

13. EVIDENCE AND PROCEDURE

A. The parties may offer such evidence as is relevant and material to the dispute and shall produce evidence that the Arbitrators deem necessary to an understanding and determination of the dispute.

B. An agreement regarding the use of _____ documents is contained in a letter to Plaintiff's counsel dated _____.

C. _____, employed by _____, and _____, employed by _____, shall be entitled to be called as witnesses by their respective employers without objection and without waiving any attorney-client, work product or other privilege.

D. The Arbitrators may subpoena witnesses or documents upon a party's request or independently.

E. The Arbitrators shall be the judge of the relevance and materiality of evidence offered, in accordance with the N. C. Rules of Evidence and the Rules of Civil Procedure.

F. Except to the extent, if any, modified by this Agreement, hearings shall be conducted in the same manner as a trial in _____ County District Court and the panel shall apply the N. C. Rules of Evidence as if the case were being tried in that court.

G. Evidence shall be taken in the presence of all Arbitrators and all parties, except where a party is absent in default or has waived the right to be present.

H. The parties shall comply with the Local Rules of the _____ Judicial District, _____ County, North Carolina, for equitable distribution to the extent that such Rules are not in conflict with this Agreement.

14. MAJORITY RULE

The Arbitrators' awards shall be made by a majority and the Arbitrators powers shall be exercised by a majority pursuant to N.C.G.S. §50-46, except for those powers specifically delegated to the Chief Arbitrator.

15. INTERPRETATION AND APPLICATION

The Arbitrators shall interpret and apply the provisions of this Agreement.

16. CLOSING OF HEARING

Unless otherwise agreed by the parties, the Arbitrators shall close the evidentiary hearing proceedings, including all post-hearing submissions, no later than fifty (50) days after the testimony concludes with the initial post-hearing submissions to be served on opposing counsel and the Panel within thirty (30) days after the conclusion of testimony at the evidentiary hearing; and, replies to such post-hearing submissions (if applicable) are to be served on opposing counsel and the Panel within twenty (20) days thereafter.

17. REOPENING HEARING

The hearing may be reopened by any one or more Arbitrators, or upon any party's application, at any time before the award is made.

18. AWARD; COST

A. The Award shall be in writing, dated and signed by the Arbitrators joining in the Award. The Award, and any dissent, shall state the reasons upon which it is based and shall find the facts, reach conclusions of law and render written decrees in accordance with the laws of North Carolina. The Arbitrators shall deliver a copy of the Award to each party personally, by registered mail, certified mail, return receipt requested, or by nationally recognized overnight courier, addressed to the attorneys for the parties.

B. The Arbitrators shall have the right to allocate between the parties all of the fees and expenses of the arbitration, including each party's attorney's fees pursuant to Chapter 50 and expert witness fees, as well as to impose any statutory sanctions which the Arbitrators has deemed appropriate.

C. The Arbitrators may award interest as provided by law.

D. The Award shall be made within thirty (30) days of the closure of the evidentiary hearing proceeding, unless the parties agree otherwise, or unless the three Arbitrators conclude it is in the interest of justice that time should be extended. A decision of the Arbitrators as to such

extension shall specifically set forth the reason for such findings.

E. An application for a modification or correction of the Award shall be made within thirty (30) days of the issuance of the Award.

F. Any notice of appeal shall be filed within thirty (30) days of the issuance of the dissenting award of an Arbitrator following the final closure of the evidentiary hearing proceeding or any decision following the reopening thereof.

19. COMPLIANCE WITH THE ARBITRATION AWARD

The parties shall faithfully abide by and perform any Arbitration Award.

20. JUDICIAL REVIEW AND APPEAL

Judicial review of errors of law in the Award is permitted only as to issues and matters contained in any dissent that differ from the majority award. Judicial review alleging the Award was procured by corruption, fraud or other undue means is allowed, even if there is no dissent. Upon reversal and remand on appeal, the matter shall be returned to the same panel of Arbitrators.

21. ADMISSION *PRO HAC VICE*

The parties consent to the participation of the law firm of _____ in the arbitration on behalf of the Wife, and further consent to the admission *pro hac vice* of any lawyers affiliated with said law firm.

22. SEVERABILITY

In the event that any of the provisions of this agreement are deemed to be invalid or unenforceable, the same shall be severed from the remainder of this agreement and shall not cause invalidity or unenforceability of the remainder of this agreement. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

23. ENTIRE AGREEMENT

This agreement constitutes the entire understanding of the parties. There are no representations, promises, warranties, covenants or undertakings other than those expressly set forth herein.

Except as provided and modified above, the provisions of the Family Law Arbitration Act shall apply.

This the _____ day of _____, 20____.

_____, Plaintiff (SEAL) _____, Defendant (SEAL)

_____, Attorney for Plaintiff (SEAL) _____, Attorney for Defendant (SEAL)

_____, Arbitrator (SEAL)

NORTH CAROLINA

_____ COUNTY

I, _____, a Notary Public for said County and State, certify that _____, the principal herein, personally appeared before me this day, and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein in the following capacity: _____ and I further certify as follows:

_____ I have personal knowledge of the identity of the principal

_____ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____.

Date: _____

_____, Notary Public
(Print Name)

(Official Seal)

My commission expires: _____

NORTH CAROLINA

_____ COUNTY

I, _____, a Notary Public for said County and State, certify that _____, the principal herein, personally appeared before me this day, and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein in the following capacity: _____ and I further certify as follows:

_____ I have personal knowledge of the identity of the principal

_____ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____.

Date: _____

_____, Notary Public
(Print Name)

(Official Seal)

My commission expires: _____

5. Stipulation Regarding Filing of Documents

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

_____ COUNTY

_____ CVD _____

_____,)
Plaintiff,)
v.)
_____,)
Defendant.)

**STIPULATION REGARDING FILING
OF DOCUMENTS**

The parties, by and through the undersigned counsel, stipulate and agree that all pleadings and papers in this arbitration proceeding shall be filed with the arbitrator and not with the Clerk of Court, except that motions and applications to the Court for rulings shall be filed with the Clerk of Court as required by the North Carolina Rules of Civil Procedure.

This the _____ day of _____, 20__.

By: _____
Attorney for _____

By: _____
Attorney for _____

D. Arbitrator Forms

1. Arbitrator Fee Contract

NORTH CAROLINA)
)
_____ COUNTY)

ARBITRATOR FEE CONTRACT

_____ and _____ agree as follows:

1. Purpose. Certain matters of dispute have arisen between the parties, and the parties desire to enter into binding arbitration pursuant to the North Carolina Family Law Arbitration Act with _____ serving as their arbitrator.

2. Arbitrator Fees and Expenses. The parties agree that _____ of the law firm of _____, shall be their arbitrator. By affixing their signatures to this contract, the parties agree that they will be responsible for the costs of the arbitration including the following arbitrator fees and expenses: (1) one-time administration fee of \$_____; (2) \$_____ per hour for all time expended in arbitration, in preparation for the arbitration, in travel to and from the arbitration and in any deliberations or other post-arbitration matters; and (3) \$.445 per mile for round trip travel distances if arbitrator is required to conduct any session outside of _____ County. Any expenses connected with the arbitration such as copying, postage, long distance and cellular telephone, or legal assistant time will be billed separately. If the parties are unable to agree upon an appropriate apportionment of these fee and expenses, this issue shall be determined by arbitration. These rates are binding for six months from the date of the execution of this agreement and subject to change if this arbitration continues beyond this time.

3. Advance Deposit. An advance deposit for the arbitration fees and expenses is required. Your signature on this contract signifies your agreement to make this payment no later than ten days prior to the arbitration session. The required advance payment is \$_____ per party. These funds will be placed in the trust account at _____ and will be billed against as the fees and expenses are actually incurred. Absent an agreement between the parties to the contrary, any amounts remaining in the trust account at the conclusion of the arbitration will be refunded to the parties in the same proportion as their initial contributions.

4. Subsequent Legal Proceedings. Should either party compel the arbitrator to participate in any subsequent legal proceeding, the party compelling such participation agrees to compensate the arbitrator pursuant to the terms set forth in Section 2 above.

5. Arbitration Fee and Award. If the funds in the trust account are insufficient to cover the arbitrator fees and expenses as provided in Section 2 above, the parties hereby authorize any additional fees to be made a part of any arbitration award at the exclusive election of the arbitrator.

6. Liability Release. Both parties hereby release, waive, and forever discharge the above arbitrator from any liability to either of them as a result of the arbitrator's actions or lack of action with regard to the arbitration process being undertaken by the parties. There are no oral agreements between the parties and the arbitrator modifying or expanding the terms of this agreement.

7. Severability. In the event that any of the provisions of this agreement are deemed to be invalid or unenforceable, the same shall be severed from the remainder of this agreement and shall not cause invalidity or unenforceability of the remainder of this agreement. If such provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

8. Entire Agreement. This agreement constitutes the entire understanding of the parties. There are no representations, promises, warranties, covenants or undertakings other than those expressly set forth herein.

This the ____ day of _____, 20__.

Wife

Husband

_____, Arbitrator

2. Arbitrator Disclosure Form

NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
_____ CVD _____

_____,
Plaintiff,
v.
_____,
Defendant.

ARBITRATOR DISCLOSURE FORM

Prior to accepting an appointment to serve as an arbitrator in this matter and pursuant to N.C.G.S. § 50-45.1, the undersigned, after making a reasonable inquiry, hereby makes the following disclosures and acknowledgments:

1. I have no financial or personal interest in the outcome of this arbitration proceeding.

2. I have no existing or past financial, business, professional, family or social relationships which are likely to affect my impartiality in this arbitration or which might reasonably create an appearance partiality or bias except as follows:

_____.

3. I have no past or existing relationship as described in paragraph number 2 above with any of the parties to the agreement or consent order to arbitrate or to the arbitration proceeding, their counsel or representatives, an identified witness, or other arbitrators except as follows: _____

_____.

4. I am aware of no past or existing relationships as described in paragraph number 2 above involving my spouse, minor children residing in my household or my current employer, partners or business associates except as follows: _____

_____.

5. I have made reasonable efforts to inform myself of any interests or relationships as described herein above.
6. I understand that the duty to disclose is a continuing duty which requires me to disclose at any stage of the arbitration, any such interests or relationships which may arise, or which are recalled or discovered.
7. I agree to be bound by the North Carolina Canons of Ethics for Arbitrators in all matters relating to this arbitration.

This the _____, day of _____, 20__.

Arbitrator

3. Arbitrator's Oath/Affirmation (Pending Litigation)

NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
_____ CVD _____

_____,
Plaintiff,
v.
_____,
Defendant.

ARBITRATOR'S OATH/AFFIRMATION

I, _____, the designated Arbitrator herein [being duly sworn] hereby accept this appointment, and attest and affirm that I will faithfully and fairly hear and decide the matters in controversy between the above-named parties in accordance with their Consent Order for Arbitration and any agreed upon rules for arbitration and will make an award according to the best of my understanding.

This the _____ day of _____, 20____.

Arbitrator

NORTH CAROLINA
_____ COUNTY

I, _____, a Notary Public for said County and State, certify that _____, the principal herein, personally appeared before me this day, and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein in the following capacity: _____ and I further certify as follows:

_____ I have personal knowledge of the identity of the principal
_____ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____.

Date: _____

_____, Notary Public
(Print Name)

(Official Seal)

My commission expires: _____

4. Arbitrator's Oath/Affirmation (Contract)

STATE OF NORTH CAROLINA

_____ COUNTY

ARBITRATOR'S OATH/AFFIRMATION

I, _____, the designated Arbitrator herein [being duly sworn] hereby accept this appointment and attest and affirm that I will faithfully and fairly hear and decide the matters in controversy between the above-named parties in accordance with their Arbitration Agreement and any agreed upon rules for arbitration and will make an award according to the best of my understanding.

This the _____ day of _____, 20__.

Arbitrator

NORTH CAROLINA

_____ COUNTY

I, _____, a Notary Public for said County and State, certify that _____, the principal herein, personally appeared before me this day, and acknowledged to me that he or she voluntarily signed the foregoing document for the purpose stated therein in the following capacity: _____ and I further certify as follows:

_____ I have personal knowledge of the identity of the principal
_____ I have seen satisfactory evidence of the principal's identity, by a current state or federal identification with the principal's photograph in the form of a _____.

Date: _____

_____, Notary Public
(Print Name)

(Official Seal)

My commission expires: _____

E. Model Arbitration Decision and Award

1. Model Arbitration Decision and Award

NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
_____ CVD _____

Plaintiff,

v.

Defendant.

**ARBITRATION DECISION
AND AWARD**

The parties to this action entered into an arbitration agreement on the ____ day of _____, 20___. _____ was designated as the arbitrator. A hearing was held on _____ at the law offices of _____. The hearing began at approximately _____ p.m. and concluded at approximately _____ p.m. This arbitration was conducted pursuant to the North Carolina Family Law Arbitration Act, (N.C.G.S. § 50-41 et seq.) and the parties' Arbitration Agreement.

APPEARANCES

Plaintiff appeared in person with her legal counsel, _____ of the law firm of _____ of _____, North Carolina and defendant appeared in person with his legal counsel, _____ of the law firm of _____ of _____, North Carolina. The only non-party witness was _____ who was called to testify by the defendant.

ISSUES

I. Bank IRA Account (Account Number XXX).

Is this account marital or defendant's separate property? If account is determined to be marital, how shall any appreciation be treated?

II. Former Marital Residence.

1. Should this residence be sold?
2. Should separate monies be credited back to contributing party?
3. If it is to be sold, when should this residence be listed and by whom?
4. How should the listing price be determined?
5. How should homeowners' dues, homeowners' insurance and real property taxes be paid pending a sale?
6. How long should house be on market before the price is reduced?

7. How shall the net sales proceeds be divided?

III. Distributional Factors.

What distributional factors, if any, entitle either plaintiff or defendant to more than 50% of the marital estate?

ARBITRATION AGREEMENT

The parties' Arbitration Agreement includes the following pertinent provisions:

1. Basic Rules. The arbitration shall be conducted pursuant to the North Carolina Family Law Arbitration Act and the North Carolina Basic Rules for Arbitrating Family Law Disputes (Basic Rules) in force as of the date of the execution of this Agreement.
2. Arbitrators. The parties appoint _____ to serve as arbitrator.
3. Testimony and Cross Examination. Arbitrator may take testimony from the parties in separate rooms and each party waives the right to be present during the other party's testimony and to have his or her attorney present during the other party's testimony. Each party waives the right to have his or her attorney cross-examine the other party.
4. Information Received During Mediation. Arbitrator shall not be required to exclude information that he received when serving as a mediator but shall strive to focus on evidence provided to him in arbitration in reaching arbitration decision.

**STIPULATIONS ARISING DURING AND
AFTER THE ARBITRATION SESSION**

During and after the arbitration, the parties through their respective attorneys reached the following agreements and stipulations to which they intend the arbitrator to be bound:

1. Ex Parte Communication. Defendant waives the right to object to the ex parte voice mail message received by arbitrator from plaintiff after the arbitration session was concluded on the condition that the arbitrator not consider anything said in this message in reaching his decisions in this matter.
2. Mediator/Arbitrator Fees. The parties, attorneys and arbitrator agreed to have arbitrator's fees satisfied from the proceeds of the XXXX joint tax refund check that was endorsed by the parties and delivered in trust. The parties agreed that the arbitrator's total fees while serving as a mediator and arbitrator shall be first satisfied from these funds and any remaining balance evenly divided. Each party shall be responsible for one half of the total mediation-arbitration fees in excess of these funds held in trust. The parties and the arbitrator

choose to memorialize this fee obligation by separate contract and not include the terms of the mediator and arbitrator fees in this arbitration decision and award.

3. Fix-up Repairs for the Residence. The parties agreed that if the residence is directed to be sold, any repairs or fix-up expenses necessary to enhance the marketability of this residence shall be equally borne by the parties and the parties' realtor shall determine the appropriate fix-up repairs to be made.

4. Former Marital Residence. The parties agree that the former marital residence shall be sold.

PARTIES' CONTENTIONS

I. Bank IRA Account (Account Number XXX).

A. Plaintiff's Contentions. Plaintiff contends that this IRA is marital to be appropriately divided. Defendant has not provided adequate documentation to prove that there were only premarital contributions and that all growth on any premarital contributions is passive and therefore defendant's separate property. The current value of this account is \$XXX,XXX.XX. Defendant has not provided records of his trades to show that they were not substantial. Defendant did not use a broker but handled all of the trades himself. Plaintiff contends that the defendant's trading activity was substantial in terms of number of trades as well as the significance of the amounts involved and therefore appreciation on this account during the marriage was active rendering the amount of such appreciation marital. Defendant's pay stub of _____ indicated that he had made stock purchases of \$XXX.XX in the pay period of _____ to _____ and stock purchases of \$XXXX.XX year to date as of _____.

B. Defendant's Contentions. Defendant contends that all \$XXX,XXX.XX of the funds in this IRA are his separate funds. Defendant contends that he started buying stock immediately when he started working for his present employer on _____. In _____, defendant moved the funds into the X-Trade account. Defendant contends that he never put marital funds into the X-Trade account. Defendant acknowledges that he did not use the services of an investment broker and that he made four to five trades during the first year that the funds were in the X-Trade account and two to three trades since then. Defendant contends that these trades did not constitute substantial activity so as to render these otherwise separate funds marital.

II. Former Marital Residence.

A. Plaintiff's Contentions. Plaintiff would like the former marital residence sold as soon as possible. She contends that the net sales proceeds should be divided equitably based on the distributional factors after certain credits are given to both plaintiff and defendant. Plaintiff

contends that she should receive the first \$XX,XXX.XX as a credit to her separate estate for the \$XX,XXX.XX loan that her mother forgave when the parties first bought a house together in 1990.

Plaintiff further contends that she is entitled to the next \$XX,XXX.XX plus interest from _____ as a credit to her separate estate as a result of defendant using plaintiff's inherited funds to pay off the mortgage on the marital residence shortly before plaintiff went into the hospital. Plaintiff contends that she was not of sound mind and does not recall agreeing to use her separate funds to pay off this mortgage. Plaintiff concedes that if she is entitled to the above credits, defendant is also entitled to a \$X,XXX.XX credit before the net proceeds are divided to reimburse his separate estate for funds from his father that he put into the marital residence. Plaintiff also contends that she is entitled to a separate estate credit for contributing \$XXX.XX to repair a hurricane damaged roof. Plaintiff further contends that she is entitled to a credit for \$XXX.XX for the repair of a kitchen sink that defendant damaged. Plaintiff contends that this repair was paid for with marital funds.

Plaintiff wants this residence listed with a realtor immediately with the parties bound to follow realtor recommendations concerning the initial asking price as well as when the price should be reduced if it has not sold. She does not want the sale to be handled via the Internet or through sale by owner. Plaintiff contends that she is entitled to a credit of from \$X,XXX.XX per month rental value from the date that defendant has resided in the former marital residence exclusively (_____). Plaintiff also contends that defendant should be required to pay and should receive no credit for the following expenses related to the former marital residence until possession of this residence is relinquished to a third-party buyer: Homeowners insurance, homeowners dues and property taxes. Plaintiff contends that all net proceeds after expenses of sale and after above credits are applied should be divided equitably giving due consideration to all distributional factors.

B. Defendant's Contentions. Defendant also believes that the former marital residence should be sold and he would like to list it with realtor _____. Defendant believes that the expenses of sale should be the only funds deducted from the sales proceeds before the balance is equally divided. Defendant does not believe that he should pay rent for the period of time that he is in the house exclusively but he is willing to pay the taxes and homeowners insurance and dues without credit during this period of time. Defendant believes that the \$XX,XXX.XX credit for the loan forgiveness is inappropriate as a credit from the house proceeds because the funds were not used as a down payment on the house but rather to install an alarm system, and water system. Most of the funds were used to purchase furniture.

III. Distributional Factors.

A. Plaintiff's Contentions. Plaintiff contends that any of the above classification issues not resolved in her favor should be considered as distributional factors in her favor. Plaintiff contends that her age and health are distributional factors. She is ___-years-old and

defendant is ___-years-old. Plaintiff suffers from multiple sclerosis. Plaintiff objects to defendant receiving distributional credit for taxes that defendant may have paid on her separate assets. In the alternative, plaintiff contends that she should be given distributional credit for marital funds expended for taxes on defendant's separate assets. Plaintiff believes that she is entitled to a credit for the \$XX,XXX.XX loan forgiveness by her mother, the \$XX,XXX.XX of her inheritance used to payoff the mortgage on the marital residence plus interest and the \$XX,XXX.XX plus interest of funds from her inheritance placed in the parties' minor son's account. If plaintiff does not get credit for her mother's loan forgiveness, she contends that she should receive an unequal division of furniture and furnishings as a distributional factor. Plaintiff further believes that she is entitled to credit for \$XXX.XX in repairs made to the former marital residence and for the rental value of the former marital residence while defendant has lived there exclusively.

B. Defendant's Contentions. Defendant contends that he should be given distributional consideration for the approximately \$XX,XXX.XX of contributions that he made to trust accounts for plaintiff's children and grandchildren. Defendant also contends that he should get distributional credit for his payment of income, capital gains and property taxes on wife's income and separate assets. He further contends that he should receive credit for the \$X,XXX.XX from his father that was placed into the marital residence. Defendant contends that his _____ tax liability should be considered as a distributional factor if it is not considered a marital debt pursuant to his Tax Liability contention described above.

FINDINGS

1. The parties are both residents of _____ County.
2. The parties were married to each other or _____.
3. During the marriage the parties had one child who is named _____ and was born on _____.
4. The parties lived together as husband and wife until they separated on _____ with plaintiff moving from the former marital residence, thereby relinquishing exclusive possession of this residence to defendant.
5. Plaintiff is ___-years-old and defendant is ___-years-old.
6. Plaintiff was a licensed realtor until recently when she let her license lapse. She has not used her license in a number of years although she considered developing a business.
7. In _____, plaintiff's father died and plaintiff inherited \$XX,XXX.XX. These funds were placed into a joint bank account with defendant. Defendant paid off the mortgage with \$XX,XXX.XX from these funds. Plaintiff was told of the disposition of these funds but she does not recall being told. Defendant paid \$X,XXX.XX in capital

gains taxes on plaintiff's inherited funds from marital funds.

8. Defendant began purchasing stock when he began working for his current employer on _____, prior to his marriage to plaintiff. In _____, defendant moved these funds into the present X-Trade Securities, Inc. IRA account. Defendant never commingled marital funds with these stocks either before or after _____. Defendant never used an investment broker to make trades of any of these stocks but he made no more than a total of 8 trades himself in 17 years.
9. The marital residence has a monthly rental value of \$X,XXX.XX and since _____ defendant has been living there exclusively. Since _____, defendant has paid no rent but he has paid approximately \$XXX.XX per month in taxes and homeowners insurance premiums.
10. The parties have equally divided by value all personal property, furniture and furnishing that had previously been located at the former marital residence.
11. The current appraised value of the marital residence is \$XXX,XXX.XX.
12. Defendant has not provided a complete record of his securities trades concerning the stock and the X-Trade account although plaintiff has requested such records.
13. Two hundred fifty shares of stock is marital property as stipulated to by the parties. This stock had a fair market value of \$X,XXX.XX on _____. On _____, its fair market value was \$X,XXX.XX.
14. In _____ when the plaintiff received an inheritance from her father, the defendant paid the capital gains taxes on \$XX,XXX.XX of gain associated with this inheritance. He paid \$X,XXX.XX in capital gains taxes on plaintiff's inheritance.
15. In _____, the parties separated briefly and defendant transferred \$X,XXX.XX, plus XXX shares of stock to plaintiff as a "informal settlement" of their marital estate. These funds remained in her separate account after the parties reconciled.
16. Defendant believed that the payoff on the mortgage on the marital residence from plaintiff's inheritance was a set-off against the approximately \$XX,XXX.XX in value that he transferred to plaintiff during the _____ separation.
17. During the parties' marriage and particularly during the early years, there was a substantial amount of commingling of separate assets with the marital estate.

Based on the foregoing Findings, the Arbitrator hereby reaches the following Conclusions:

CONCLUSIONS

1. The arbitrator has authority pursuant to N.C.G.S. § 50-41 et seq. and pursuant to the parties' Arbitration Agreement entered into on _____ and the parties' Stipulation entered into on _____ to enter this Arbitration Decision and Award.
2. Trades made by defendant without the assistance of an investment broker of his E-Trade, Inc. IRA account do not constitute substantial activity sufficient to convert this separate asset of defendant into a marital asset.
3. Due to the significant commingling of separate assets with the marital estate during the parties' marriage and particularly in the early years, it is impossible to credit the separate estates beyond that which has been done in the Decision and Award. It is also impossible to give any additional child support, equitable distribution or alimony credits for periods preceding the separation of the parties and for the period of time immediately following their separation due in large part to this commingling. Furthermore, it is likely that gifts to the marital estate were intended when many of these transfers were made during a happier time for the parties.
4. The parties are entitled to the credits specifically set forth in the adjudicatory portion of this Arbitration Decision and Award. While the plaintiff's health might have warranted distributive factor consideration, the arbitrator declines to assign a distributive credit since this factor was taken into consideration in the alimony award. The arbitrator concludes that no other distributive adjustments are appropriate except that the arbitrator declines to assign a negative net value to the _____ Automobile due to the circumstances under which it was purchased. The net result is a distributive credit to plaintiff of \$X,XXX.XX.

Based on the foregoing Findings and Conclusions, the Arbitrator hereby enters the following Award:

AWARD

I. PROPERTY DISTRIBUTION

A. Bank IRA Account. This asset with a current value of \$XXX,XXX.XX is the separate property of the defendant.

B. Former Marital Residence.

1. Sale of Property. This residence shall be listed with a reputable realtor and

placed on the market immediately. If the parties are unable to agree upon a realtor, the parties' attorneys shall each select a realtor and those two realtors shall select a third who shall be the realtor for the parties. The parties shall abide by the reasonable recommendations of the realtor concerning necessary repairs to market the property, initial asking price and final sales price. The parties shall share the expenses of making any necessary repairs to prepare the residence for sale as suggested by the realtor.

2. Disposition of Net Sales Proceeds. When the property is sold, all liens of record and expenses of sale including realtor commissions shall be paid. The parties shall equally share the expenses for any repairs made to the residence at the suggestion of the realtor to prepare the property for sale. Plaintiff shall receive the next \$XX,XXX.XX as reimbursement for the portion of her inheritance that plaintiff used to payoff the mortgage in _____. No interest shall be reimbursed in addition to these funds. Defendant shall next be reimbursed for the \$X,XXX.XX that came from his father than went into the house. Defendant shall next be reimbursed \$X,XXX.XX for one-half of the capital gain taxes that he paid on plaintiff's \$XX,XXX.XX inheritance. Either party shall next be reimbursed for one-half of any insurance or taxes paid on this residence from _____ until it is sold. Plaintiff shall next be compensated for the fair rental value from _____ until this house is sold at the rate of \$XXX.XX per month. The parties shall divide the remaining proceeds with the defendant receiving \$X,XXX.XX more than one-half of these proceeds to equalize the division of marital property as a result of plaintiff receiving the automobile at \$X,XXX.XX and the life insurance policy cash value of \$X,XXX.XX.

C. Stock. The parties have stipulated that 250 shares of Stock is marital property. These shares of stock shall be equally divided in-kind.

D. Plaintiff's IRA Account. Plaintiff's IRA is hereby assigned to Plaintiff. \$XX,XXX.XX of this IRA is Plaintiff's separate property and \$X,XXX.XX is marital property using _____ values.

E. Stock. Plaintiff shall receive all of her separate _____ stock.

F. Farm Real Estate. Plaintiff shall receive the _____ farmland as his/her separate property at a combined value of \$XX,XXX.XX on date of separation.

G. 401 (k) and Cash Balance (Formerly Pension Plan) Accounts. The marital portion of these accounts of defendant shall be calculated using the coverture fraction with the numerator of the fraction being the total amount of funds contributed from date of marriage to date of separation plus interest or depreciation on these funds and the denominator of the fraction being the total funds contributed plus all interest or depreciation. The marital portion shall be equally divided and the transfer of funds from defendant's account shall be made to an account designated by plaintiff pursuant to one or more qualified domestic relations orders that shall be entered by consent. Plaintiff shall be responsible for having the necessary qualified domestic relations

order(s) prepared and entered.

H. Joint Federal and State Income Tax Refunds. The parties shall equally divide any funds remaining from their joint _____ federal and state income tax refund checks after all arbitrator fees have been paid from these funds.

I. Distributional Factors. Neither party is entitled to any distributional factor credit other than that which is specifically addressed elsewhere in this Decision and Award.

This award is hereby entered on this the _____ day of _____, 20__ in _____, North Carolina.

_____, Arbitrator

F. Post-Award Forms

1. Order and Judgment Confirming Arbitration Award

NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
_____ CVD _____

Plaintiff,
v.

Defendant.

**ORDER AND JUDGMENT CONFIRMING
ARBITRATION AWARD**

THIS CAUSE was heard before the undersigned judge and the Court makes the following findings:

1. Plaintiff and defendant entered into an arbitration agreement on _____, _____, 20__ wherein they agreed to arbitrate certain issues pursuant to the North Carolina Family Law Arbitration Act (N.C.G.S. § 50-41 et seq.).
2. An arbitration hearing was held on _____, 20__, before the parties' designated arbitrator, _____.
3. On _____, 20__, the arbitrator entered the attached and incorporated arbitration award.
4. Plaintiff [Defendant] filed a notice and application for court-ordered confirmation on _____, 20__ and served the opposing party on _____, 20__.

Based upon the foregoing findings and upon a review of the above-referenced arbitration award, the court concludes that it has both the authority and the duty to confirm the above-referenced arbitration award pursuant to N.C.G.S. § 50-53 and that this Order and Judgment should be docketed and enforced as any other order or judgment pursuant to N.C.G.S. § 50-57.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the above-referenced attached and incorporated arbitration award is hereby confirmed and the Clerk

of Superior Court for the above-referenced county is hereby directed to docket this order and judgment as any other order or judgment.

This the _____ day of _____, 20____.

Judge Presiding

[CERTIFICATE OF SERVICE]

**2. Motion to Vacate Arbitration Award and Motion for Hearing Pursuant to
N.C. Gen. Stat. § 50-54(a)(6)**

NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
_____ CVD _____

_____,
Plaintiff,
v.
_____,
Defendant.)

**MOTION TO VACATE ARBITRATION
AWARD AND MOTION FOR HEARING
PURSUANT TO N.C.G.S. § 50-54(a)(6)**

Pursuant to N.C.G.S. § 50-54 (a)(6), the plaintiff moves the Court for an order vacating the child custody and child support arbitration award entered on the ___ day of ___, 20___ and setting this matter for hearing in the district court and in support of said motion shows unto the court the following:

1. On _____, 20___, the parties entered into a consent order to arbitrate issues of child custody and child support and designated _____ as their arbitrator.

2. There was one child born to the marriage of the parties, namely, _____, who was born on _____, _____.

3. An arbitration hearing was conducted on _____, 20___ that resulted in an arbitration award that was signed by the arbitrator on _____, 20___ and delivered to the plaintiff-applicant on _____, 20___.

4. This motion is being made within 90 days of delivery of a copy of the award to plaintiff-applicant.

5. The arbitrator's award for child custody and child support is not in the best interest of the child and in support of said contention, plaintiff shows unto the court the following:

- a.
- b.
- c.
- d.

WHEREFORE, plaintiff prays the Court to vacate the arbitrator's child custody and child support award of _____, 20____ and to conduct a full hearing on the issues of child custody and child support.

This the _____ day of _____, 20____.

Attorney for _____

[CERTIFICATE OF SERVICE]

**3. Motion to Vacate Arbitration Award and Motion for Hearing Pursuant to
N.C. Gen. Stat. § 50-54(a)(8)**

STATE OF NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
_____ CVD _____

_____,
Plaintiff,

v.

_____,
Defendant.

)
) **MOTION TO VACATE ARBITRATION**
) **AWARD AND MOTION TO REVIEW**
) **ERRORS OF LAW PURSUANT TO**
) **N.C.G.S. §50-54 (a)(8)**
)
)
)

Pursuant to N.C.G.S. § 50-54 (a)(8), the plaintiff moves the Court for an order vacating the arbitration award entered on the ___ day of _____, 20__ and setting this matter for hearing in the district court and in support of said motion shows unto the court the following:

1. On _____, 20__, the parties entered into a Consent Order to Arbitrate the various issues raised by the pleadings in this lawsuit and designated _____ as their arbitrator.

2. Pursuant to North Carolina General Statutes § 50-54 (a) (8), the parties contracted in the arbitration agreement (Consent Order to Arbitrate) for judicial review of errors of law in the award. Among the provisions of the Consent Order to Arbitrate is the following provision in paragraph ____: "The parties agree to judicial review of errors of law as N.C.G.S. §§ 50-54 (a) (8), 50-60(b) provide."

3. An arbitration hearing was conducted on _____, 20__ that resulted in an arbitration award that was signed by the arbitrator on _____, 20__ and delivered to the plaintiff on _____, 20__ .

4. This motion is being made within 90 days of delivery of a copy of the award to plaintiff-applicant.

5. The arbitrator committed the following errors of law in the arbitration award, said errors prejudicing the plaintiff's rights:

- a.
- b.

c.

d.

WHEREFORE, plaintiff prays the Court to conduct a judicial review of the arbitrator's errors of law, to vacate the arbitrator's award and to remand the award to the arbitrator for rehearing as necessary to correct the award.

This the _____ day of _____, 20____.

Attorney for _____

[CERTIFICATE OF SERVICE]

4. Notice of Appeal

NORTH CAROLINA
_____ COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
_____ CVD _____

Plaintiff,
v.

Defendant.

)
)
)
)
)

NOTICE OF APPEAL

TO THE HONORABLE COURT OF APPEALS OF NORTH CAROLINA

Plaintiff [Defendant] _____, hereby gives notice of appeal to the Court of Appeals of North Carolina from the final judgment of the Honorable _____, District Court Judge, entered on the ___ day of _____, 20__ in the District Court of _____ County, which allowed [denied] plaintiff's [defendant's] motion to vacate arbitration award and to remand the award to the arbitrator for rehearing made pursuant to N.C.G.S. §50-54 (a) (8), said right to appeal having been preserved by the parties in their consent order to arbitrate.

This the ___ day of _____, 20__.

Attorney for _____

[CERTIFICATE OF SERVICE]

Conclusion

The foregoing documents should help in arbitrating family law cases under the Act. Practice and experience under the FLAA may suggest others. Counsel considering family law arbitration may be advised to consult with others who have arbitrated these cases for suggestions.

Any document must be considered for its usefulness in a particular case. Any document should be compared with the Forms and Rules in this 2006 Revised Handbook, Volume I, Parts II.B and II.C, if some or all of these Forms and Rules are written into or incorporated by reference in an agreement to arbitrate. Although standard form books offer arbitration-related documents, parties must be aware of differences between the old FLAA and the current FLAA, today's FLAA and the former North Carolina Uniform Arbitration Act (NCUAA), and between the FLAA and the North Carolina Revised Uniform Arbitration Act (NCRUAA). A case in point is what may be waived; the former FLAA, the FLAA after the 2004 amendments, the NCUAA and the NCRUAA all differ on the issue.¹ Although the FLAA provides for uniformity of interpretation, a decision from another jurisdiction may not persuade a North Carolina court on an identically-worded statute and a document based on it.² Some documents, particularly those in form publications, may be acceptable for NCUAA or NCRUAA-governed arbitrations but may not be useful for FLAA arbitrations.³

¹ See N.C. Gen. Stat. § 50-42.1 (2005) and Vol. I, Part I.B.3.

² See N.C. Gen. Stat. § 50-62(a) (2005) and Vol. I, Part I.B.25.

³ See also Vol. I, Part III, general Conclusions for the 2006 Revised Handbook.