MPI# _____

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

AGREEMENT AUTHORIZING IN VITRO FERTILIZATION AND ASSISTANCE WITH GESTATIONAL CARRIER

THIS AGREEMENT is made this, the _____ day of _____, 20___, for good and valuable consideration, by and between **REPRODUCTIVE ENDOCRINE ASSOCIATES OF CHARLOTTE, P.C.** (hereinafter referred to as "REACH"); _____ (hereinafter referred to as "First Partner"[1]), and _____ (hereafter referred to as "Second Partner"[2]).

In addition, although not a party to this contract, at all times herein _____ shall be referred to as "Gestational Carrier."

(Print all names as appears on driver's license)

R E C I T A L S

WHEREAS, REACH is a Professional Corporation organized, existing, and doing business within the State of North Carolina; and

WHEREAS, REACH operates a medical clinic in Charlotte, Mecklenburg County, North Carolina, in which its physicians, in pertinent part, provide reproductive assistance to its patients; and

WHEREAS, among the techniques employed by the physicians and technicians of REACH to assist couples in having children which may be biologically related to the First Partner and/or the Second Partner (hereinafter referred to collectively as "Parents") is a procedure known as In Vitro Fertilization With the Assistance of a Gestational Carrier; and

WHEREAS, First Partner and Second Partner are each adults who are mutually monogamous;

[1] Generally, the First Partner shall be the Female Partner, if any.
[2] Generally, the Second Partner shall be the Male Partner, if any.

WHEREAS, Parents desire for the Gestational Carrier to be medically implanted with one or more embryo(s) created from the union of the Second Partner's sperm (or sperm provided by a donor) and the First Partner's egg (or one or more eggs provided by a donor), and to carry and deliver Parents' child for the sole purpose of allowing Parents to experience parenthood of a child which may be biologically related to one or both of the Parents; and

WHEREAS Parents and Gestational Carrier (and Gestational Carrier's Husband, if married) have executed a private and separate contract which defines the expectations, obligations and responsibilities of each party including, but not limited to, the intentions of the parties that the child conceived as a result of the procedure contemplated herein may be the biological child of one or both of the Parents, that Gestational Carrier (and, if married, Gestational Carrier's Husband) are <u>not</u> the biological parents of the child conceived of the procedure contemplated herein, that Parents will retain full and legal care, custody and control of the child and that Gestational Carrier (and Gestational Carrier's Husband, if married) will not have any legal relationship with the child born of the procedure contemplated herein; and

WHEREAS, the Parents acknowledge and confirm that a licensed physician has determined to a reasonable medical certainty that the Parents cannot gestate a pregnancy to term; or that the gestation will cause a risk to the physical health of the First Partner; or that the gestation will cause a risk of health to the fetus; and

WHEREAS, Parents have had the opportunity to be fully advised and counseled by persons of trust and confidence including, but not limited to, attorneys licensed to practice law with respect to the obligations assumed under this Agreement, and have considered the ramifications, consequences, obligations, and effects of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and with the intention of being fully bound, the Parties agree as follows:

1. **<u>Consent By Female Partner To The Procedure</u>**. First Partner stipulates, agrees to, and understands the purpose of this Agreement, has read each and every provision of it and chooses and agrees to go forward as a participant in the IVF and Gestational Surrogacy Procedure contemplated by this Agreement.

2. **<u>Consent By Male Partner To The Procedure</u>**. Second Partner stipulates, agrees to, and understands the purpose of this Agreement, has read each and every provision of it, and chooses and agrees to go forward as a participant in the IVF and Gestational Surrogacy Procedure contemplated by this Agreement.

3. **General Description Of The IVF And Gestational Surrogacy Procedure**. Parents agree that the following description set forth below is a simple outline of the IVF and Gestational Surrogacy Procedure contemplated by the Parties. The Parties agree and stipulate that the procedure shall be tailored specifically to the Parents in order to create the greatest likelihood for a safe and healthy pregnancy and delivery of a healthy child. However, Parents understand that there are no assurances by REACH of a successful completion of the IVF and Gestational Surrogacy Procedure, that a pregnancy will be achieved by the procedure contemplated herein, or that a healthy child will be delivered.

Unless eggs are to be obtained from a Donor, it is anticipated that the First Partner will be prescribed ovulation induction drugs, including clomiphene citrate, human menopausal gonadotropin, and follicle stimulating hormones to encourage multiple egg production. Further, Pituitary Suppression Hormones may be used in conjunction with the aforementioned drugs to regulate ovarian function. Human chorionic gonadotropin (hCG) is often prescribed to trigger ovulation and to assist in the maturation process of the eggs prior to egg retrieval. From time-to-time, First Partner will have blood samples collected and ovarian ultrasound examinations performed, a standard technique in which high frequency sound waves are used to form an image. The purpose of these tests is to identify the time at which the egg(s) is/are suitable for recovery. Surgery will be scheduled near the time of projected ovulation in order to recover the eggs from the First Partner. Eggs are collected by means of vaginal guided aspiration of ovarian follicles using a specially designed needle introduced through the vaginal wall under local anesthesia and/or intravenous sedation.

Unless sperm is to be obtained from a Donor, Second Partner will be required to provide several semen samples. First, before the start of a cycle, Second Partner will be asked to supply a semen sample for laboratory analysis. Second Partner may be asked to provide a semen sample to be cryopreserved in advance of the insemination in order to ensure its availability at the time of egg retrieval. Finally, immediately prior to insemination, a third sample of semen will be obtained from the Second Partner. After evaluation and preparation, this sample will be used for insemination. Semen collected in this manner can generally be used to fertilize the egg. However, if there are any doubts concerning the viability of the collected sample, the frozen sample may be thawed or spermatozoa may be obtained from a testicle using a minor surgical procedure called Testicular Sperm Retrieval. A specific consent form will be required before Testicular Sperm Retrieval is employed. (See Exhibit A for additional consent documents.)

In the event that sperm or eggs used in the process contemplated herein are to be obtained from a Donor, then each of the Parents shall execute a specific additional consent form. (See Exhibit A for additional consent documents.)

Once the sperm and eggs are both available (either from the respective Parents or one or more Donor(s)), the eggs will be prepared in marked dishes and inseminated with a sample of the designated sperm which has been prepared by a procedure which removes the sperm from the seminal fluid.

At or about the same time, the Gestational Carrier will receive certain drugs to prepare her uterus to receive the embryos which result from the aforementioned IVF Procedure. Finally, some or all of the embryos which have been created from the union of the designated egg and designated sperm may be placed in the Gestational Carrier's uterus by means of a small catheter which passes through her cervix under ultrasound guidance.

Once pregnant, it is anticipated that the Gestational Carrier shall carry the child, which results from the aforementioned procedure, to term for and on behalf of the Parents under the terms set forth in the underlying contract between the Parents and the Gestational Carrier (and if applicable, her Husband).

4. **Acknowledgment And Assumption Of Risks Created By The Procedure**. Parents understand and agree to assume all risks to each of them, and to the child, including the risk of death, which are incident to conception, pregnancy, childbirth, and postpartum complications. Parents assume and acknowledge that they have discussed the potential risk**s**, adverse consequences, and complications which may relate, directly or indirectly, to the course of conduct described in this Agreement with their physicians, psychologists, attorneys and others. While many of the risks are listed and described below or in the separate informed consent forms (attached hereto, incorporated herein by reference, and hereinafter referred to as Exhibit A), the Parents understand, agree and acknowledge that some risks may not be known, nor contemplated, and the Parents accept those unanticipated risks and their consequences.

5. **Success Rates**. The Parents have been informed, acknowledge that they understand, agree and stipulate that while REACH hope that pregnancy will result from the IVF and Gestational Carrier Procedure, they cannot guarantee it. Even in normal fertile couples, the chance of pregnancy is approximately twenty-five (25%) in a menstrual cycle. If no pregnancy occurs, then the Parents may be offered participation in future cycles when assessment by the physicians at REACH reveal no contraindications. As indicated above, failure to obtain pregnancy may result from many reasons including, but not limited to, the following:

(a) Maturation of the egg(s) may not occur, or the time of the egg maturation may be misjudged, may not be predictable or may not take place in the monitored cycle.

(b) Pelvic adhesion may prevent access to the First Partner's (or Donor's) ovary with the follicles, thus causing the procedure to obtain the eggs from the ovary to fail.

(c) The egg(s) obtained from First Partner (or the Donor) may be abnormal.

(d) Normal spermatozoa may not be available from the Second Partner (or the Donor).

(e) Normal fertilization of the egg(s) by the sperm may not occur.

(f) Cleavage or cell division of the embryo(s) may not occur or the embryos(s) may not develop normally.

(g) The embryo(s) may become contaminated by infection in the semen or bacteria from the vagina.

(h) Implantation of the embryo(s) in the uterus after embryo transfer may not occur or an early pregnancy may be lost after an initial positive result.

(i) Even if pregnancy is established, delivery of a child may not occur due to miscarriage, ectopic pregnancy (outside the uterus), stillbirth, or other complications associated with pregnancy and delivery.

(j) There may be unknown side effects from any of the procedures resulting in abnormal pregnancy or abnormal fetal development.

Under no circumstances can, nor does, REACH guarantee a resultant pregnancy, the normality of any infant born as a result of the IVF procedure, nor otherwise success of the program.

6. **Medical Release Executed By Gestational Carrier**. Before any procedure contemplated herein begins, Gestational Carrier shall execute, or have executed, an Agreement and Medical Release attached hereto as part of Exhibit A. All Parties acknowledge, agree and stipulate that they have read, reviewed, understood, and consented to the terms, provisions, and warnings contained in Exhibit A.

7. **Waiver**. Parents acknowledge, agree, and stipulate that the procedure contemplated by this agreement and described above does not guarantee: (1) that REACH will complete the process contemplated herein; (2) that pregnancy will be achieved by the procedure; nor (3) that a healthy child will be delivered.

8. **Informed Consent**. Parents agree and stipulate that the medical procedures contemplated by this Agreement are invasive. In this regard, the Parents have signed a written document titled Informed Consent. A copy of this Informed Consent is attached hereto and incorporated herein as part of Exhibit A. The Parents agree and stipulate that said informed consent describes, in part, the purpose of the treatment, the procedures to be followed, anticipated discomfort and risks of the procedure, financial responsibilities of the Parents, unknown complications, and some possible reasons for failure. Each Party agrees and stipulates that he/she has read said Informed Consent in its entirety before signing his or her respective signature/name to the document.

9. **Acknowledgment Of Advice**. Each Party acknowledges that he or she fully understands this Agreement and its legal effect, having had the opportunity to review this Agreement with all persons of confidence, including an attorney, and having discussed each and every provision in detail with all the possible ramifications which may be associated with these provisions. Each Party acknowledges that he or she is signing this Agreement freely and voluntarily, being fully informed of its possible ramifications, and that no Party has reason to believe that the other did not freely and voluntarily execute this Agreement.

10. **Acknowledgment And Assumption Of Responsibility For Their Child**. Except as specifically set forth in the underlying agreement between the Parents and Gestational Carrier (and her Husband, if any), Parents hereby assume legal responsibility for any child born pursuant to the procedure contemplated by this Agreement and state that they have been advised concerning the risk of infant abnormalities which may occur as a result of the processes incident to conception, pregnancy and delivery. The Parents agree to accept custody of the child which results from the procedure contemplated herein (including all parental rights and responsibilities) immediately upon the child's birth, regardless of any impairment to the child.

11. **Eggs Removed During Retrieval**. The Parents agree, stipulate, and it is acknowledged that REACH cannot guarantee the number of eggs which will be removed from the First Partner (or, if necessary, from the Donor), whether the eggs retrieved will be normal, nor whether the eggs retrieved will be mature. In fact, some of the First Partner's follicles (or the Donor's follicles) may not yield eggs and, on some occasions, none of the follicles will yield eggs.

The egg retrieval process involves the use of equipment such as incubators, suction apparatuses, and ultrasound machines. These machines may fail due to technical malfunction.

Further, once the eggs are isolated in the laboratory, blood and abnormal nursing cells will be removed from around the eggs using dissection needles. Although it is unlikely, some or all of the designated eggs may be damaged in this process.

Further, once removed from the body, the eggs may undergo spontaneous degenerative changes due to their new environment.

Initial egg yield numbers are counted once, and only once, immediately prior to the eggs being placed into the incubators so as to stabilize conditions. The eggs are not visualized during the egg retrieval. Instead, eggs are found by locating the nursing cells which surround the eggs. Whether an egg is normal cannot be determined at the time an egg is retrieved. The exact number of eggs is only determined at the time of insemination or at Intracytoplasmic Sperm Injection (ICSI).

12. **Disposition Of Unwanted Or Unsuitable Cells, Fluids, Eggs & Embryos**.

(a) Parents agree, stipulate, and acknowledge that blood, blood products, and cells, as well as follicular and seminal fluids and cells, and any other genetic or biological material which is obtained during follicular monitoring or egg or sperm retrieval, may be used for scientific observations and/or discarded at the discretion of REACH without any further observations.

(b) Parents agree, stipulate, and acknowledge that in the event immature, unfertilized, or abnormally fertilized egg(s) result, these genetic materials may be subjected to scientific observations and/or discarded at the discretion of REACH without further studies. The Parents regard these eggs as unwanted and they should be disposed of or, in REACH's sole discretion, studied and then disposed of by REACH.

(c) Parents agree and stipulate, that embryos which arrest after one (1) to six (6) days after egg retrieval, that partially degenerate, or for any other reasons are considered by the Embryologists at REACH to be unsuitable for embryo transfer or cryopreservation may be scientifically observed and studied and/or discarded at the discretion of REACH without further studies. These observations and studies use protocols that will cease the immediate growth of the individual cells. The Parents agree and stipulate that these embryos or their cells will never be used for purposes other than scientific research. The Parents further agree and stipulate that the embryos and their cells are unwanted and considered to be abnormal and should be disposed of or, in REACH's discretion, studied and then disposed of by REACH.

13. **Cryopreservation**. In the discretion of REACH, viable embryos which are not transferred may be cryopreserved for possible replacement in a subsequent cycle. Parents agree and stipulate that there are potential risks associated with cryopreservation. In part, for various reasons, some embryos may not grow in the laboratory and reach a stage where they can be cryopreserved. Other embryos which have been cryopreserved may not resume their normal growth when they are thawed, nor will they successfully implant when they are placed in the uterine cavity. Further, Parents agree and stipulate that the viability of the embryos may be compromised due to malfunction of equipment used in the cryopreservation laboratory. Storage and disposition of cryopreserved embryos is provided for in Paragraph 14 herein.

14. **Disposition of Cryopreserved Genetic Material**. The medical procedure contemplated by the Parents herein may result in one (1) or more eggs of the Parents or the Parents' embryo, being cryopreserved (frozen) and maintained by REACH. Storage of such genetic material shall be covered by a separate document titled "Agreement For Determining The Disposition Of Embryos Not Transferred, Cryopreservation Of Embryos And Decisions For Future Disposition Of Cryopreserved Embryos."

15. **Consideration**. In consideration for the medical procedure contemplated herein, the Parents, individually and jointly, agree to pay and guarantee payment in full of any and all charges for services rendered or to be rendered to the Parents by REACH.

16. **Withdrawal From The Program**. Parents, at any time, may decide to withdraw from participation from the program contemplated herein. However, the Parents decision to withdraw shall not relieve them of their obligation to compensate REACH for the fee that it has earned at the time of withdrawal.

17. **Confidentiality**. Any information obtained during the procedure contemplated herein shall remain confidential and will be disclosed only with each of the Parents' express written permission. However, REACH reserves the right to publish results or information in a manner which protects the Parents' confidentiality. Specifically, any publication will not identify the Parents. In addition, from time-to-time, representatives of the Food and Drug Administration (FDA), The Center for Disease Control (CDC), and the Society of Assisted Reproduction Technologies (SART), and other agencies, may inspect certain medical records.

18. **Release And Indemnification**. Except for negligent acts and omissions, First Partner and Second Partner, on their own behalf, and on behalf of the child, hereby release REACH and its physicians, scientists, technicians, and personnel, from any liability for any physical or emotional health consequences or damages known or unknown, anticipated or unanticipated, which may result from participation in the medical procedure described herein.

19. **Alternate Dispute Resolution**. Any controversy or claim arising out of, or related to, this Agreement shall be submitted to mediation. A neutral shall be agreed upon by the Parties. Each party agrees to participate in good faith in mediation to reasonably, timely, and cost effectively resolve all disputes, if possible.

If after mediation the Parties are unable to attain a resolution of all of the issues in dispute, they agree to have the unresolved issues determined in binding arbitration through the American Arbitration Association. The unsuccessful party shall pay the entire cost of the arbitration as well as the other party's attorney fees, unless the arbitrator should determine otherwise.

20. **Dispute Between Parents And Gestational Carrier**. Parents agree and stipulate that they shall indemnify and hold REACH harmless for any and all claims and disputes that arise by and between Parents and Gestational Carrier (and her Husband, if married), or their respective representatives, agents or assigns, and which are in any way related to the prenatal care of the child, birth of the child, custody or placement of the child or any other direct or indirect aspect of that underlying Gestational Surrogacy Agreement between the Parents and the Gestational Carrier (and her Husband, if any).

21. **Health Insurance**. Parents warrant that they each have health insurance and have confirmed that Gestational Carrier has health insurance covering pregnancy care and delivery, including, but not limited to, C-Section. Parents agree to insure that Gestational Carrier keeps and maintains that health insurance she has at the execution of this Agreement and covering pregnancy care and delivery throughout her pregnancy. Finally, Parents agree and stipulate that they will insure that the child is covered by a health insurance policy at and after the time of birth.

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

23. **Integration**. This Agreement and its attached Exhibits set forth the entire agreement between the Parties with regard to the subject matter hereof. All agreements, covenants, representations, and warranties, expressed or implied, oral and written, of the Parties are contained herein. No other agreements, covenants, representations, or warranties, expressed or implied, oral or written, have been made by any Party to any of the others with respect to the subject matter of the Agreement. All prior and contemporaneous conversations, negotiations, possible and alleged Agreements and representations, covenants, and warranties with respect to the subject matter hereof are waived, merged herein and superseded hereby. This document and its attachments constitutes an integrated Agreement.

24. **Modifications, Revisions, Or Amendments**. Any future revision, modification, amendment, or waiver of any of the provisions of this Agreement shall be effective only if made in writing, dated, signed, and executed with the same formality as this Agreement. Any such provision, modification, or amendment will specifically provide that it is intended to revise, modify, or amend this Agreement. No oral revisions, modifications, amendments, or waivers will be effective to revise, modify, amend, or waive any terms or conditions of this Agreement. Failure of either Party to insist upon strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any subsequent default of the same or similar nature. However, from time to time, the Gestational Carrier may be asked to execute and shall execute additional consent documents which shall be binding and enforceable.

25. **Jurisdiction and Controlling Law**. This Agreement will be governed by, construed, and enforced with, the laws of the State of North Carolina.

26. **Definition of Child**. At all times used herein, "child" shall mean, denote, and include one (1) or more child(ren), fetus(es), or embryo(s) which result from the medical implantation procedure described herein.

27. **Gender Neutralization of Pronouns**. Whenever pronouns are used in this instrument, such respective pronouns shall be held and taken to include both the singular and the plural, the masculine, feminine and neuter gender thereof and shall apply equally to the male and female parties herein.

_____ Date:_____
Female Partner signature

_____ Date:_____
Male Partner signature

_____ Date:_____
REACH Representative verifying completion of consent

REPRODUCTIVE ENDOCRINE ASSOCIATES OF CHARLOTTE, P.C.

If signed outside of REACH facility, then both partner signatures need notary attestation.

STATE OF _____
COUNTY OF _____

I, , a Notary Public of _____ County and State of

_____, certify that _____

And (if partner) _____ personally appeared before me this

day and acknowledged the execution of the foregoing instrument consisting of _____ pages.

Witness, my hand and official seal, this, the _____ day of _____, 20___.

Notary Public _____

My Commission Expires _____