

McIntyre Mediation Services
162 Church Street
Clinton, MA 01510
978 368 1251

MEDIATION AGREEMENT

THIS AGREEMENT is made on the _____ day
of _____ 2010

among **Edward W. McIntyre** of McIntyre Mediation Services ("the Mediator") and the mediating parties (whose names appear below and who are collectively referred to as "the parties")

The parties hereby retain the services of the Mediator to assist them in their efforts to settle an existing dispute. For the purposes of this paragraph (and all other portions of the Mediation Agreement) the term "party" shall be deemed to include any attorney for the party. Each party shall compensate the Mediator for time spent by him in this matter at the rate of \$525.00 per party per half day (up to a maximum of three hours) or \$1,250.00 per party per full day (up to a maximum of six hours). Each party shall compensate the Mediator for time spent in excess of a scheduled half day or full day (including time for follow up communications) at the rate of \$225.00 per hour per party.

For the purposes hereof, individuals or entities with distinctly different interests or represented by different attorneys shall be deemed separate parties. In the event that a scheduled mediation session is canceled or postponed with less than two weeks' notice to the Mediator, the full charge shall be due and owing and shall be paid by the party responsible for the cancellation. In the event that a scheduled mediation session covering more than one full day is canceled or postponed with less than three weeks' notice to the Mediator, the full charge shall be due and owing and shall be paid by the party responsible for the cancellation. If agreement cannot be reached regarding responsibility for any late cancellation fee, such responsibility shall be determined by the mediator.

The parties understand that the Mediator is a neutral intermediary who shall not act as an advocate or attorney for any party. He shall focus the process on the interests and objectives of the parties, seeking possible solutions that, in the judgment of the parties, would be fair, equitable and to their mutual benefit.

The Mediator shall have sole authority to determine the order, length and structure

of the mediation sessions and to establish the agenda thereof. The mediation sessions shall be attended by the parties and by any others having full settlement authority.

The parties are encouraged to submit a memorandum of no more than 10 pages regarding the dispute to the Mediator 10 days in advance of the mediation session for the purpose of educating the mediator about the dispute. The Mediator strongly encourages the parties to exchange their respective memorandum before the mediation session.

Upon request of the parties, and in the discretion of the Mediator, he shall provide an evaluation of the parties' negotiating positions and of the likely result and expense if the dispute is not settled. In so doing, and at all times, the Mediator shall not be deemed to be acting as an attorney or providing legal advice.

The parties acknowledge that the Mediator has practiced law as a trial lawyer since 1981 and continues to practice law. He has served as President of the Massachusetts Bar Association and the Worcester County Bar Association, as a Hearing Officer for the Board of Bar Overseers and Chair of the Clients' Security Board and has contact with an incalculable number of insurers, lawyers and parties. The Mediator shall disclose to the parties the potential for possible conflict of interest between his obligations to the parties as a Mediator and his personal interests.

All statements made during the course of the mediation are privileged settlement discussions, are made without prejudice to any party's legal position, and are neither discoverable nor admissible for any purpose in any legal proceeding. All offers, promises, and statements, whether oral or written, made during mediation by any party or by the Mediator are confidential. Such offers, promises and statements shall not be disclosed to third parties and are privileged and inadmissible for any purpose, including impeachment. However, evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or not discoverable as a result of its use in mediation. All participants in this mediation understand that their communications shall be confidential pursuant to c. 233, §23C of the Massachusetts General Laws and shall be treated as a compromise negotiation for the purposes of the Federal Rules of Evidence and applicable state & federal laws.

The parties acknowledge that the Mediator shall disclose information learned in the course of this mediation concerning: 1) child abuse or neglect; 2) the risk or threat of harm to an individual; and 3) the planned commission of a crime. The parties agree not to call the Mediator as a witness or as an expert in any pending or subsequent litigation or arbitration involving them. They agree that the Mediator shall be disqualified as a witness

or as an expert in any pending or subsequent proceeding relating to the dispute which is the subject matter of the mediation. The parties agree to defend the Mediator from any subpoenas issued by outside parties arising out of the mediation. If one of the parties does seek testimony of the Mediator in contravention of this Agreement, that party shall indemnify the Mediator from any and all expenses relating thereto, including attorney's fees and costs, and shall compensate the Mediator for any time spent by him as a result at his then current hourly rate.

This Agreement relates to a voluntary, non-binding mediation process. The parties agree to participate in good faith in the process, but any party may terminate its participation in the mediation at any time.

The parties acknowledge that this Agreement is a binding legal document.

McIntyre Mediation Services

By _____
Edward W. McIntyre

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