

**AGREEMENT TO MEDIATE**

The participants are attempting to resolve a controversy among themselves through the process of Mediation, and have asked Glenn M. Gottlieb to serve as Mediator to assist them in reaching a settlement. The participants acknowledge, understand and agree to the following:

**Role of the Mediator:** The Mediator will act as an impartial, neutral intermediary, whose role is to assist the participants in reaching a settlement by negotiation between or among themselves. The Mediator will not act as an attorney or advocate for any participant, nor will he give legal, tax or other professional advice to any participant. In this regard, no professional-client or fiduciary relationship is created between the Mediator and any participant. The Mediator cannot impose a settlement, but will assist the participants toward achieving their own settlement.

**Attorney Consultation:** The participants acknowledge that they are free to consult an attorney at any time during the Mediation process. No representations made by the Mediator during the Mediation should be considered legal advice. If the dispute is settled, the participants should have the settlement agreement independently reviewed by their own counsel prior to signing it.

**Confidentiality:** In order to promote communication and facilitate the Mediation process, all statements made and all writings prepared during the mediation are strictly confidential, are made without prejudice to any participant's legal position, are generally not subject to discovery outside the mediation process, and are not admissible in any subsequent proceeding. Furthermore, the Mediator may not testify in any proceedings, and the participants shall not seek to compel him to testify or to disclose any such confidential information. In addition, the parties agree not to disclose any such statements or writings to any other person or in the media.

Post-Mediation communications between any participant and the Mediator related to the Mediation shall also be confidential. The participants agree that the Mediator may consult with colleagues about this matter and may describe this matter to colleagues for educational purposes so long as he does not disclose the participants' names or any other information which would specifically identify the participants.

The participants acknowledge and agree that all disclosures made during the course of the Mediation are made with an understanding of, and are expressly conditioned upon, this agreement of confidentiality. Accordingly, the participants agree that any breach of this agreement will cause irreparable injury and harm, and that monetary damages will not be an adequate remedy for the unauthorized disclosure of the confidential information. The participants therefore agree that any participant may seek and obtain an injunctive order or other equitable relief against wrongful disclosure of the confidential information.

Notwithstanding the above, written or oral agreements reached by the participants in the course of the Mediation may, under certain circumstances, be legally enforceable and admissible in a subsequent proceeding.

**Limited Liability, Release and Indemnification:** The participants hereby agree to release the Mediator from any and all claims arising out of their failure to reach agreement or their decision to enter into any agreement or any other aspect of the mediation process. Further, the Mediator makes no representation that the participants will reach an agreement on any of the issues, disputes or controversies discussed in the Mediation. Any participant who brings any claim, action or proceeding of any nature against the Mediator, who seeks to have the Mediator testify, or who breaches this agreement in any other respect, shall be responsible to indemnify the other parties and the Mediator for any expense, loss or damage incurred, including, without limitation, attorneys fees and expenses incurred in connection with such claim, action or proceeding brought by such participant.

**Matter:**

Date: \_\_\_\_\_

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Glenn M. Gottlieb, Mediator

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(Signature)

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(Type or Print Name, Role in Mediation)

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