

## AGREEMENT TO MEDIATE

We, \_\_\_\_\_ and \_\_\_\_\_ by our signatures below, hereby voluntarily agree to participate in mediation. Kristine M. Rogers has explained the process and will provide services to us. We understand and agree to the following guidelines:

1. Good Faith: We agree to enter into this mediation in good faith; that is, we will sincerely attempt to resolve the issues at hand by participating fully and genuinely in the search for fair and workable solutions.
2. Honesty: We agree to be honest and to completely disclose all relevant information and documents concerning this matter to the other party and mediator. This includes all documentation that would be available through the discovery process in a normal proceeding. If either party fails to disclose fully, the agreement reached in mediation may be voided.
3. Courtesy: We agree to cooperate with the mediation process by remaining courteous throughout the sessions. We will refrain from personal attacks and angry outbursts, and will respect the opinions, perceptions and feelings of the other parties in mediation.
4. Neutrality of Mediator: We understand that the mediator serves as a neutral third party whose purpose is to promote communication and help the parties reach a mutually satisfying agreement. She will not act as an advocate, attorney or a judge and will not offer legal advice. Nor is she a therapist or counselor. Her role is that of a neutral facilitator.
5. Independent Advice: We understand that the mediator encourages us to consult with an attorney regarding our legal interests, rights and obligations. We have also been advised that consultation with other professionals, including a tax advisor or financial planner, may be advantageous in protecting our interests. We also understand that a therapist or family counselor could be helpful in addressing emotional and psychological concerns which may accompany involvement in a dispute.  
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6. Confidentiality: We understand that the mediation process requires open and honest communication in order to succeed.

The mediator will not reveal anything discussed in mediation without the permission of both parties. However, she is required to report certain matters, such as incidents of child abuse, abuse of an elderly or incapacitated person and computer crimes, and confidentiality does not extend to these matters. Mediation confidentiality does not apply to a threat or statement of a plan to inflict bodily injury or commit a crime of violence nor does it apply to a mediation communication used to plan a crime, attempt to commit a crime or commit a crime or to conceal an ongoing crime or ongoing criminal activity. Pursuant to the Utah Uniform Mediation Act, mediation communications may not be confidential if the court finds that (1) the evidence is not otherwise available, (2) there is a need for the evidence that substantially outweighs confidentiality, and (3) the mediation communication is sought to be offered in a court proceeding involving a felony or a misdemeanor. Similarly, a mediation communication may not be confidential if the court finds that (1) the evidence is not otherwise available, (2) there is a need for the evidence that substantially outweighs confidentiality, and (3) the mediation communication is sought to be offered in a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of a mediation. See UCA Sec. 78-31c-106.

The parties agree that they will not at any time, during or after the mediation, call the mediator as a witness in any legal or administrative proceeding concerning this dispute. To the extent that they may have a right to call the mediator as a witness, that right is hereby waived. The parties agree not to subpoena or demand the production of any records, notes, work product or the like of the mediator in any legal or administrative proceeding concerning this dispute. To the extent that they may have a legal right to demand these documents,

that right is hereby waived. If, at a later time, either party decides to subpoena the mediator, the mediator will move to quash the subpoena. That party agrees to reimburse the mediator for whatever expenses he incurs in such an action.

7. Caucus or Private Meetings: We agree that either party may hold private sessions with the mediator at their or the mediator's request. The parties may specify what will remain confidential from these private sessions. No private meeting will occur without the mutual consent of both parties.

8. Withdrawal from Mediation: We understand that mediation is a voluntary process, and that either party may terminate the mediation at any time. The mediator also reserves the right to withdraw if she determines that the issues cannot be resolved in mediation or that he is unable to provide the services necessary to reach resolution. If either party or the mediator decides to withdraw, we agree to discuss the decision with the other involved parties, and to confirm the termination in writing.

9. Fees: We understand that our mediator charges \$150 per hour and payment is due at the end of our mediation session. We agree to share the total cost equally.

We have read the Agreement to Mediate thoroughly and agree to the terms of the mediation.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Kristine M. Rogers  
Mediator

\_\_\_\_\_  
Date